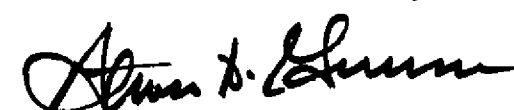


# EXHIBIT D



CLERK OF THE COURT

1 **ODM**  
2 GORDON SILVER  
3 ERIC R. OLSEN  
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9 3960 Howard Hughes Pkwy., 9th Floor  
10 Las Vegas, Nevada 89169  
11 Tel: (702) 796-5555/Fax: (702) 369-2666  
12 Attorneys for Plaintiff

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

10 HIGCO, INC., a Nevada corporation,

11 Plaintiff,

12 vs.

13 BOCA PARK PARCELS, LLC, a revoked  
14 Nevada limited liability company; BOCA PARK  
15 MARKETPLACE LV, LLC, a Nevada limited  
16 liability company; BOCA PARK  
17 MARKETPLACE LV SYNDICATIONS  
18 GROUP MM, INC., a Nevada corporation;  
19 BOCA PARK MARKETPLACE  
20 SYNDICATIONS GROUP, LLC, a Nevada  
21 limited liability company; and DOES I-X, and  
22 ROE ENTITIES I-X, inclusive,

23 Defendants.

CASE NO. A-14-710780-B  
DEPT. XI

**ORDER DENYING DEFENDANTS  
MOTION TO DISMISS**

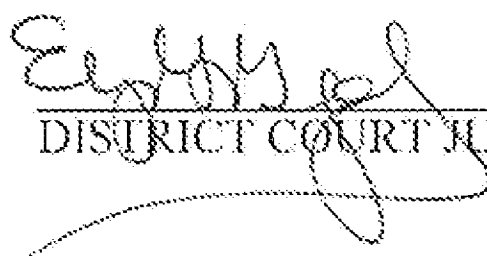

**Date of Hearing: February 26, 2015**  
**Time of Hearing: 8:30 a.m.**

20 Defendants BOCA PARK PARCELS, LLC, BOCA PARK MARKETPLACE LV, LLC,  
21 BOCA PARK MARKETPLACE LV SYNDICATIONS GROUP MM, INC. and BOCA PARK  
22 MARKETPLACE SYNDICATIONS GROUP, LLC, (collectively "Defendants"), having filed a  
23 Motion to Dismiss ("Motion"), Plaintiff, HIGCO, INC. ("Plaintiff") having filed an Opposition  
24 to the Motion to Dismiss ("Opposition"), and the Defendants having filed a Reply in Support of  
25 the Motion ("Reply"), and the matter having come on for hearing in Department XI of the Eighth  
26 Judicial District Court on the 26th day of February, 2015. The Court having considered the  
27  
28

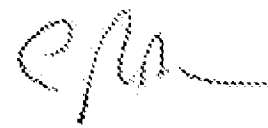
1 papers and pleadings on file herein, including the Motion, Opposition and Reply, and having  
2 heard the argument of counsel, and the Court being fully advised in the premises and good cause  
3 appearing therefore:

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion to Dismiss  
5 is DENIED.

6 Dated this 4<sup>th</sup> day of March, 2015.


8   
DISTRICT COURT JUDGE 

9  
10 GORDON SILVER

11 By:   
12 Eric R. Olsen  
13 Nevada Bar No. 3127  
14 Dylan T. Ciciliano  
15 Nevada Bar No. 12348  
16 3960 Howard Hughes Pkwy., 9th Floor  
17 Las Vegas, Nevada 89169  
18 Attorneys for Plaintiff

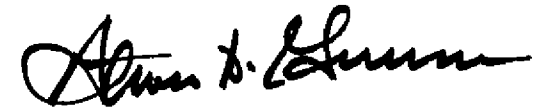
19 Approved as to form only and  
20 reserving all rights:

21 HEJMANOWSKI & McCREA, LLC

22 By:   
23 Charles H. McCrea  
24 Nevada Bar No. 104  
25 520 South Fourth Street, Suite 320  
26 Las Vegas, Nevada 89101  
27 Attorneys for Defendants  
28

# EXHIBIT C





CLERK OF THE COURT

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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

HIGCO, INC., a Nevada corporation,

Plaintiff,

vs.

BOCA PARK PARCELS, LLC, a revoked  
Nevada limited liability company; BOCA PARK  
MARKETPLACE LV, LLC, a Nevada limited  
liability company; BOCA PARK  
MARKETPLACE LV SYNDICATIONS  
GROUP MM, INC., a Nevada corporation;  
BOCA PARK MARKETPLACE  
SYNDICATIONS GROUP, LLC, a Nevada  
limited liability company; and DOES I-X, and  
ROE ENTITIES I-X, inclusive,

Defendants.

CASE NO. A-14-710780-B  
DEPT. XI

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

PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law and Judgment, a  
copy of which is attached as Exhibit 1 hereto, was entered in the above-entitled matter on the 2<sup>nd</sup>  
day of August, 2016.

Dated this 3<sup>rd</sup> day of August, 2016.

GARMAN TURNER GORDON LLP

/s/ Dylan Ciciliano  
ERIC R. OLSEN  
Nevada Bar No. 3127  
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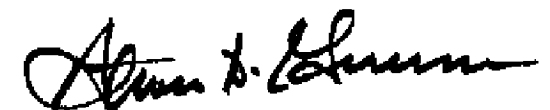
**CERTIFICATE OF SERVICE**

The undersigned, an employee of Garman Turner Gordon LLP, hereby certifies that on the 3<sup>rd</sup> day of August, 2016, she caused a copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**, by electronic service in accordance with Administrative Order 14.2, to all interested parties, through the Court's **Odyssey E-File & Serve** system addressed to:

Charles H. McCrea  
Nevada Bar No. 104  
520 South Fourth Street  
Suite 320  
Las Vegas, Nevada 89101  
Tel: (702) 834-8777  
[chm@hmlawlv.com](mailto:chm@hmlawlv.com)  
Attorneys for Defendants

/s/ CM Rowe  
An employee of GARMAN TURNER  
GORDON LLP

# EXHIBIT 1



CLERK OF THE COURT

FFCL

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

HIGCO, INC., a Nevada corporation,

Plaintiff,

vs.

BOCA PARK PARCELS, LLC, et al.,

Defendants.

Case No. A-14-710780-B

Dept. No. XI

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND JUDGMENT**

This matter having come on for non-jury trial before the Court beginning on July 26, 2016 and concluding on July 28, 2016. Plaintiff HIGCO, Inc. doing business as *Three Angry Wives* ("TAW") was present through its President Sean Higgins and represented by Eric R. Olsen, Esq. and Dylan T. Ciciliano, Esq. of the law firm of Garman Turner Gordon LLP; and Defendants Boca Park Parcels, LLC, Boca Park Marketplace LV, LLC; Boca Park Marketplace LV Syndications Group MM, Inc.; and Boca Park Marketplace Syndications Group, LLC (collectively "Defendants") were represented by Charles McCrea, Esq. of the law firm of Hejmanowski & McCrea LLC. The Court having read and considered the pleadings filed by the parties; having reviewed the evidence admitted during the trial; and having heard and carefully considered the testimony of the witnesses called to testify by deposition; the Court having considered the oral and written arguments of counsel, and with the intent of deciding all remaining claims before the Court pursuant to NRCP 52(a) and 58,<sup>1</sup> the Court makes the

<sup>1</sup> On February 16, 2016, the Court granted Plaintiff's Motion for Partial Summary Judgment on the issue of Defendants liability for breach of TAW's lease, which was unopposed

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1 following findings of fact and conclusions of law:<sup>2</sup>

2 **FINDINGS OF FACT**

3 1. On or about November 5, 2002, TAW and Defendant Boca Park Parcels, LLC  
4 entered into a lease for a property in Boca Park Phase I ("Lease").

5 2. TAW, as tenant, and Boca Park, as landlord, are parties to a lease (the "Lease")  
6 on premises in the Boca Park Marketplace Shopping Center (the "Shopping Center") located on  
7 the northeast corner of West Charleston Boulevard and South Rampart Boulevard, Las Vegas,  
8 Nevada, referred to in the Lease as "Boca Park Phase I." The Lease is dated November 5, 2002.  
9 The "Commencement Date" as defined in the Lease was September 20, 2003 and, if all Lease  
10 extensions are exercised by TAW, the Lease will terminate on September 30, 2033.

11 3. The Lease granted TAW "an exclusive for Boca Park Phase I for a tavern and  
12 gaming," (the "Exclusive Use") except for any tenants currently located in the center, which  
13 allow gaming (i.e., Vons, Longs).  
14  
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17

18 by Defendants. Therefore, the trial focused solely on TAW's damages, if any, resulting from  
19 Defendants' breach of the lease and from Wahoo's operation of slot machines on its premises.

20 <sup>2</sup> On December 5, 2014, TAW filed the instant action seeking money damages for the same  
21 breach of the Lease forming the basis for the declaratory judgment entered in the First Action.  
22 The Complaint in this action asserts two causes of action: Breach of contract and breach of the  
23 implied covenant of good faith and fair dealing. In the instant action, TAW is asserting rights  
24 and seeking a remedy against Boca Park based on the transaction out of which the First Action  
25 arose. TAW could have asserted its claims for breach of contract and breach of the implied  
26 covenant of good faith and fair dealing in the First Action but did not. On January 26, 2015,  
27 Boca Park moved to dismiss this case with prejudice on the grounds that TAW is prohibited from  
28 asserting the claims alleged in this action under the doctrines of "claim preclusion" and "claim-  
splitting." The Court denied the motion on February 26, 2015. On March 6, 2015, Boca Park  
filed a Petition for Writ of Prohibition or, in the Alternative, for Writ of Mandamus ("Writ  
Petition") with the Nevada Supreme Court seeking review of the Court's order denying Boca  
Park's motion to dismiss. On May 21, 2015, the Writ Petition was denied on procedural  
grounds. The Nevada Supreme Court "was not persuaded that [Defendants had] met their  
burden to demonstrate that our extraordinary intervention is warranted."

4. TAW's representative Sean Higgins provided the un rebutted testimony that the Exclusive Use was a valuable term under the Lease and was negotiated by and between TAW and Defendants.

5. The Court finds that while the Exclusive Use was a valuable term, it was not assigned a specific value under the Lease, nor is there a liquidated damages provision if the Exclusive Use was breached by Defendants.

6. Since the Commencement Date of the Lease, TAW has operated a tavern on the leased premises offering food, alcoholic beverages and gaming to its patrons 24 hours a day 7 days a week. The gaming on the premises consists of 15 slot machines.

7. The Lease commenced on September 20, 2003 and has an initial period of 10 years, followed by four (4) options of five (5) years each.

8. TAW has exercised the first of four options and its representatives testified that it intends on exercising the remaining three (3) options.

9. The Court previously found that TAW has performed under the lease and Defendants have failed to show that TAW would be unable to exercise the options under the lease. The Lease will expire on or about September 20, 2033.

10. On April 29, 2011, Boca Park entered into a lease (the “Wahoo’s Lease”) with *Wahoo’s Fish Taco’s* (“Wahoo’s”) for premises located in Boca Park Phase I.

11. The Wahoo's Lease allows Wahoo's to "operate slot machines from the Leased Property."

12. The Wahoo's Lease provides that Defendants receive, as rent, 6% of Wahoo's Gross Sales.<sup>3</sup>

<sup>3</sup> This percentage of gross sales does not apply to any gaming revenues.

1           13.     The Court previously determined that Defendants breached the Lease by allowing  
2 gaming at Wahoo's.

3           14.     Wahoo's lease is for a period of five (5) years, with two (2), five (5) year options  
4 that can be exercised at Wahoo's discretion.<sup>4</sup>

5           15.     Wahoo's lease commenced on November 8, 2011, and therefore if the options are  
6 exercised Wahoo's lease will continue until November 8, 2026.

7           16.     On April 19, 2012, the Nevada Gaming Control Board approved Wahoo's  
8 application for a restricted gaming license.<sup>5</sup>

9           17.     Wahoo's began offering gaming on May 1, 2012.

10          18.     On April 23, 2012, TAW filed a Complaint against Boca Park in Department XIII  
11 of this Court (the "First Action")<sup>6</sup> seeking a judicial declaration that Boca Park breached the  
12 Lease by allowing Wahoo's to operate slot machines on its premises. A final declaratory  
13 judgment was entered in the First Action in favor of TAW on November 7, 2012. No further  
14 action was taken by TAW or Boca Park and the time to appeal or amend the judgment entered in  
15 the First Action expired.

16          19.     TAW offered Jeremy A. Aguero ("Aguero") as an expert on the subject of TAW's  
17 damages. Aguero has extensive experience analyzing Las Vegas' gaming markets and has an  
18 expertise in gaming markets. Aguero is also an analytics professor at UNLV.

19          20.     Aguero is qualified to provide expert testimony regarding the Las Vegas gaming  
20 market, gaming player's behavior and propensity to game, and the damages suffered by TAW as  
21

22  
23  
24  
25           <sup>4</sup>     Wahoo's had no gaming for the first six months of its leasehold.

26           <sup>5</sup>     Higgins testified he learned of Defendants' breach when he saw Wahoo's on the agenda  
27 for gaming approval.

28           <sup>6</sup>     *Higco, Inc. v. Boca Park Parcels, LLC*, Case No. A660548.

1 a result of the breach of the Exclusive Use. Agüero's testimony was limited to his field of  
2 expertise and assisted the Court in determining TAW's damages.

3 21. Agüero testified to the importance of exclusivity or lack of competitors.

4 22. Wahoo's offers gaming in Boca Park Phase I, but it is situated approximately 600  
5 feet from TAW. It is clear that Wahoo's is competing against TAW for the same gaming  
6 customers, which decreases the value of the location for TAW and eliminates the value of the  
7 Exclusive Use.  
8

9 23. There are a number of other competing businesses in the general vicinity of TAW  
10 and Wahoo's that offer food, alcoholic beverages and gaming.<sup>7</sup> Defendants argue that other  
11 gaming locations opened in surrounding areas during the relevant time period that may have led  
12 to TAW's damages. While this overlooks that the Lease prohibited Wahoo's from offering  
13 gaming in Boca Park Phase I, it also neglects that the other gaming locations were not "new"  
14 gaming locations but rather rebranding of existing gaming locations. Thus, the gaming locations  
15 do not represent "additional" competition to TAW.  
16

17 24. The Wahoo's Lease and the TAW Lease overlap for a period of 174 months (May  
18 1, 2012 to November 8, 2026) (14.5 years) allowing both TAW and Wahoo's to operate slot  
19 machines on their premises during that period.  
20

21 25. The fundamental purpose of the Exclusive Use provision of the Lease is to  
22 prevent anyone other than the pre-existing Vons (grocery store) and Longs (drug store) from  
23

---

24 <sup>7</sup> Those businesses existed prior to TAW's opening and include Calico Jack's (15 slot  
25 machines – located approximately one mile to the east), Dotty's #3 (15 slot machines – located  
26 approximately one mile to the south), Chicago Brewing Company (15 slot machines – located  
27 approximately one mile to the south), The Martini (15 slot machines – located approximately  
28 one-half mile to the south), Four Sevens Sports Bar & Restaurant (15 slot machines – located  
approximately two miles to the south), Distill (15 slot machines – located approximately two and  
one-half miles to the west), Dotty's #84 (15 slot machines – located approximately two blocks to  
the east), The Lion's Tail (15 slot machines – located approximately one mile to the north) and  
The Pint (15 slot machines – located approximately one and one-half miles to the west).



1 offering gaming in Boca Park Phase I. No other tenant should derive any revenue from gaming  
2 in Boca Park Phase I. It is undisputed that between July 2012 and June 2015, Wahoo's generated  
3 \$10,452,017 in coin-in and more than \$399,923 in revenue. This amounts to an average of  
4 \$133,308 in gaming revenue per year for Wahoo.

5  
6 26. Damages have occurred to TAW as a result of the loss of their exclusive ability to  
7 provide gaming activities. There is a difference of opinion among the witnesses as to the  
8 appropriate method for evaluation and calculation of the damages.

9 27. But for Defendants' breach of the lease, Wahoo's would not earn any gaming  
10 revenue in Boca Park Phase I. TAW argues that a measure of their damages could be all of  
11 Wahoo's gaming revenue, as TAW was entitled to capture all gaming revenue in Boca Park  
12 Phase I. Defendants contend that TAW should only be able to recover existing revenue that was  
13 lost to Wahoo. TAW is entitled to recover as damages revenue that TAW likely would have  
14 earned but-for Defendants' breach.

15  
16 28. Wahoo's gaming revenue is increasing, not decreasing. Aguero testified that  
17 Wahoo's increasing gaming revenue demonstrate that Wahoo's is becoming established as a  
18 gaming location and that customers are becoming familiar with its services. Aguero further  
19 testified that it is expected that a new business's revenue will stabilize within a few years of  
20 opening. His opinion is that Wahoo's gaming revenues and activity in the twelve-months  
21 preceding July 2015 are more representative of Wahoo's long-term gaming revenue than  
22 preceding years or an average of the years because Wahoo's business had essentially stabilized.  
23 The Court disagrees, and believes his alternate time period between July 2012 and June 2015 is  
24 more representative of Wahoo's likely future gaming performance than the "stabilized" year.

25  
26 29. Both Wahoo's and TAW have loyalty card programs supported by the common  
27 slot route operator, where gaming players have the ability to "log-in" to video poker machines to  
28

1 gain rewards based on their level of play. When a player is logged-in, the machine tracks the  
2 amount of "coin-in" and "win" for that person. This type of play is "Rated Play." When a player  
3 does not log-in to the machine ("Unrated Play"), the amount of "coin-in" and "win" cannot be  
4 attributed to any one player. Between July 2012 and March 2015, Rated Play represented 56% of  
5 all of Plaintiff's gaming activity and 42% of Wahoo's gaming activity.  
6

7 30. Agüero analyzed Wahoo's Rated Play against persons who are Rated Players at  
8 TAW. He determined that for the entire period of July 2012 to June 2015, 28.7% of Wahoo's  
9 Rated Play can be attributed to customers who are rated players with TAW. From July 2014 to  
10 June 2015, 37.1% of Wahoo's Rated Play can be attributed to customers who are rated players at  
11 TAW (referred to along with the 28.7% as "Shared Play"). Agüero testified that Shared Play is  
12 conservative because it only tracked Rated Player's Rated play. Agüero testified that to a  
13 reasonable degree of certainty TAW would have captured the Shared Play but-for Defendants'  
14 breach of the lease. His opinion was based on the fact that the Shared Play is attributable to  
15 TAW's known gaming players, which make up 56% of all of TAW's gaming activity. It is  
16 therefore reasonably certain that these players would continue to frequent TAW. Any player at  
17 Wahoo's would already be at Boca Park Phase I. Since the player was already in Boca Park  
18 Phase I, it is likely that they would go to the only (but-for the breach) location offering gaming in  
19 Boca Park Phase I. His conclusion was based on his research and experience with the importance  
20 of location and impact of competition on gaming establishments.  
21

22 31. Agüero testified that Non-Rated and Rated players differ only in their propensity  
23 to gamble and the amount gambled during each visit, but that in numerous market studies he  
24 conducted for gaming properties, Non-Rated and Rated players otherwise have similar  
25 preferences and behaviors. It was therefore his expert opinion that during the period of July 2012  
26 to June 2015, 28.7% of Wahoo's overall gaming revenue can be attributed to TAW's customers  
27  
28

1 and that from July 2014 to June 2015, 37.1% of Wahoo's overall gaming revenue can be  
2 attributed to TAW's customers. He further concluded that the figure was conservative in light of  
3 the fact that some new gaming players to Boca Park Phase I would never visit TAW because  
4 they would have been diverted to Wahoo.

5  
6 32. Defendants' expert Michael Rosten ("Rosten") opined that gaming revenue  
7 derived for common loyalty card users cannot be used to determine those Wahoo's gaming  
8 players that would have otherwise patronized TAW. The Court disagrees. The evidence  
9 introduced by TAW demonstrates that the Shared Play comes from gaming players that were  
10 already customers of TAW and that were already within close proximity of TAW, 600 feet.  
11 Aguero testified that his research and gaming studies show that TAW's customers would have  
12 played at TAW but for the existence of Wahoo's and Defendants submit no evidence of the  
13 contrary. Aguero's testimony establishes that non-Rated Players exhibit the same behavior as  
14 Rated Players and therefore substantial evidence exists that TAW's Non-Rated players would  
15 have contributed a similar amount of gaming revenue to Wahoo, as TAW's Rated Players.

16  
17 33. Defendants suggest that some of TAW's customers may have preferred Wahoo's  
18 or its cuisine. This position is fundamentally flawed and a customer's preference for Wahoo's or  
19 its cuisine is irrelevant. Had Defendants not breached the exclusivity provision of the lease,  
20 customers would not have had the option to visit Wahoo's, making the preference irrelevant.

21  
22 34. Defendants also argue that TAW impermissibly includes those players who  
23 contributed less than 15% of their coin-in to TAW or Wahoo. This position is flawed. As  
24 testified to by Aguero, the method employed by TAW captures all of Plaintiff's Rated customers  
25 who contributed to Wahoo's Rated gaming revenue. It is irrelevant whether that contribution was  
26 evenly split between TAW and Wahoo's or disparately contributed. What is relevant is that the  
27  
28

1 person is a known customer to TAW. Defendants method is flawed in that it excludes significant  
2 players who would have almost certainly played at TAW but for the existence of Wahoo.<sup>8</sup>

3 35. Defendants also contend that many of TAW's Rated Players, who were also  
4 Wahoo's Rated Players, did not decrease the number of visits they made to TAW after Wahoo's  
5 opened. Once again, Defendants argument is misplaced. The relevant question is whether those  
6 players gamed at Wahoo's and they undeniably did. Defendants analysis considers number of  
7 visits and not volume of play, or where those players would have contributed the coin-in to  
8 TAW, as opposed to Wahoo's.

10 36. TAW's claimed damages are based on an opinion rendered by its expert, Jeremy  
11 Agüero. The essence of Agüero's opinion is that after Wahoo's began operating slot machines,  
12 some customers of TAW played those slot machines resulting in lost revenue to TAW.<sup>9</sup>

14 37. While evidence was presented indicating that there was overlap of customers of  
15 TAW and Wahoo's that played slot machines at both locations, there was no evidence to suggest  
16 a correlation between play by those customers at Wahoo's and a loss of gaming revenue to  
17 TAW.

---

20 <sup>8</sup> Defendants classify 33 people as "Wahoo's customers" and removed them from the  
21 analysis. Those 33 customers contributed \$41,205 in coin-in to TAW during the same period,  
22 with certain players contributing thousands in coin-in to TAW. Not only would none of the  
23 revenue been earned by Wahoo's but for the breach, but the evidence shows that those players  
24 were willing and likely to contribute the coin-in to TAW. Defendants exclude 65 Wahoo's Rated  
25 Players that they contend are "Minor Customer of Wahoo's." Those 65 customers contributed  
26 \$97,820 in coin-in to Wahoo. Certain of those customers made as many as 51 visits to Wahoo.  
To exclude this group of individuals from the analysis ignores that many are not "minor"  
customers of Wahoo, that they would not have had the opportunity to be customer "but-for" the  
breach of contract, and that given their level of play at TAW, it is a near certainty that the players  
would have contributed the coin-in to TAW.

27 <sup>9</sup> Higgins testified that given the bargained for exclusivity he believed the appropriate  
28 method of calculation of TAW's damages would be all of the gaming revenue earned by Wahoo.

1           38.     TAW's calculation of alleged damages in this action is based on a finding by its  
2 expert that 28.7% to 37.1% of Wahoo's gaming customers were also gaming customers of TAW  
3 and would have wagered exactly the same amount of money in TAW's slot machines that they  
4 wagered in Wahoo's slot machines if Wahoo's did not offer gaming.

5           39.     TAW's expert's opinion of damages is supported by actual facts and is based on  
6 assumptions that are reliable.

7           40.     The Court finds that substantial evidence supports Aguero's conclusion that  
8 28.7% of Wahoo's overall gaming revenue can be attributed to Plaintiff's customers or  
9 customers that otherwise would have gamed at Plaintiff but for the existence of Wahoo. The  
10 Court further finds that Wahoo's appropriate gaming level is the period between July 2012 to  
11 June 2015, as opposed to an average across the "stabilized" year. Therefore, Plaintiff's yearly  
12 damages are \$38,314 per year.

13           41.     Plaintiff's yearly damages are \$38,314 per year through the end of the last option  
14 period of Wahoo's.<sup>10</sup> That total is \$499,997.70 after taking into consideration the deduction of  
15 10% for the slot route operator's fees.

16           42.     The Court made inquiry of Defendant's expert as to the disagreement between the  
17 experts and his stated methodology for calculating the discount rate to be applied to the award.

18           43.     The Court finds Aguero's opinion<sup>11</sup> related to the set off of the discount rate  
19 against the growth rate is more appropriate in determining the present value of TAW's damages.

20  
21  
22  
23  
24 <sup>10</sup>     The Court does not award damages beyond the term of the Wahoo's lease (14.5 years) as  
25 Defendant's entering into a new lease violating the exclusivity provision would be a new and  
26 separately actionable breach.

27 <sup>11</sup>     Aguero testified that based on the industry, as established by expert testimony, a more  
28 appropriate discount figure would be the Nevada Safe Interest Rate, which reflects the time-  
value of money and that the evidence shows that Plaintiff's growth rate will at least likely equal  
the discount rate. Thus, he opines the discount rate should equal 0%.

1           44.     If any findings of fact are properly conclusions of law, they shall be treated as if  
2 appropriately identified and designated.

3                                   **CONCLUSIONS OF LAW**

4           1.     While damages need not be ascertained with "mathematical exactitude," there still  
5 must be a basis for determining reasonably accurate damages

6           2.     The appropriate measure of damages for breach of a covenant against competition  
7 in a commercial lease is the difference in the value between the leasehold with the covenant  
8 unbroken and broken.

9           3.     The evidence presented in this action is sufficient to enable the Court to ascertain  
10 with a reasonable degree of certainty the damages that have been sustained as a result of Boca  
11 Park's breach of the Lease.

12           4.     Plaintiff's total damages are \$499,997.70.

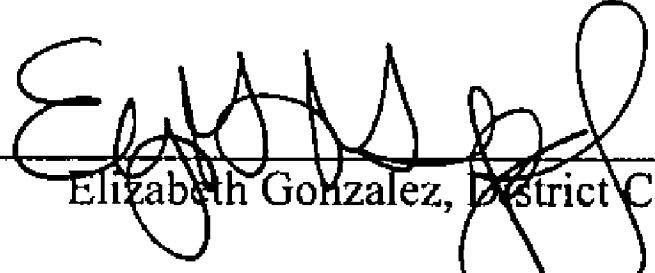
13           5.     If any Conclusion of Law is properly a Finding of Fact, they shall be treated as if  
14 appropriately identified and designated.

15                                   **JUDGMENT**

16           Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby

17           ORDERED, ADJUDGED AND DECREED that judgment shall be and the same is  
18 entered herein in favor of Plaintiff HIGCO, INC. and against Defendant BOCA PARK  
19 MARKETPLACE SYNDICATIONS GROUP, LLC in the amount of FOUR HUNDRED  
20 NINETY NINE THOUSAND NINE HUNDRED NINETY SEVEN AND 70/100 DOLLARS  
21 (\$499,997.70) plus pre- and post-judgment interest.  
22

23                                   DATED and DONE this 2<sup>nd</sup> day of August, 2016.

24                                     
25                                   Elizabeth Gonzalez, District Court Judge  
26  
27  
28

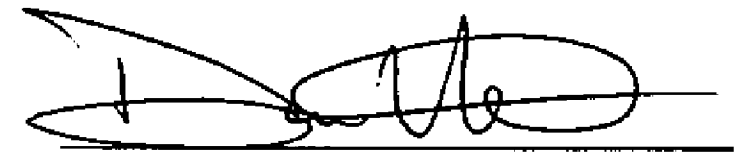
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**Certificate of Service**

I hereby certify that on or about the date filed, this document was served on the parties identified on Wiznet's e-service list, a copy of this Order was placed in the attorney's folder on the 1<sup>st</sup> Floor of the RJC or mailed to the proper party as follows:

Eric R. Olsen, Esq. (Garman Turner Gordon)

Charles H. McCrea, Esq. (Hejmanowski & McCrea)

  
Dan Kutinac

35.19. Tenant acknowledges that the site plan attached hereto as Exhibit A-2 is for the purposes of convenience only and that Landlord reserves the right at any time during initial construction or thereafter to expand, reduce, remove, demolish, change, renovate or construct any existing or new improvements at the Center.

35.20. The parties hereto understand that this is a legal document and each acknowledges that they have had the opportunity to seek independent legal counsel to review this Lease.

35.21. Upon Landlord's request, and within thirty (30) days thereof, Tenant agrees to modify this Lease to meet the reasonable requirements of a lender selected by Landlord who demands such modification as a condition precedent to granting a loan and placing a deed of trust or other mortgage encumbrance upon the Parcel or the Leased Property; provided such modification does not increase the monthly minimum rent, percentage rent or any other monetary obligation of Tenant under this Lease; provided further, that such lender agrees to execute an attornment and non-disturbance agreement in favor of Tenant concurrently with Tenant's execution of any documents required under this Section 35.21.

### SECTION 36 QUEING AND CROWD CONTROL

36.01. Orderly Queuing and Crowd Control. Tenant agrees to (i) maintain all queuing, which occurs due to the Permitted Use of the Leased Property, in an orderly fashion whether such queuing occurs inside or outside the Leased Property or the Center; and (ii) keep all crowds, which may gather due to the Permitted Use of the Leased Property under control whether such crowds gather inside or outside the Leased Property or the Center.

36.02. Additional Measures. If Landlord determines, in its sole judgement, that Tenant has not complied with Paragraph a hereof, Tenant will, upon Landlord's direction and at Tenant's sole cost and expense (i) hire a security guard or guards; and/or (ii) install temporary and removable crowd control devices in areas designated by Landlord.

36.03. Other Directions by Landlord. Tenant agrees to follow Landlord's other directions regarding orderly queuing and crowd control.

36.04. Self-help. If Tenant fails to comply with Landlord's directions pursuant to Sections 36.02 and 36.03 hereof, Landlord shall have the right to do so on Tenant's behalf, and Tenant shall concurrently reimburse Landlord for the cost and expense of doing so.

(SIGNATURE PAGE FOLLOWS)



IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first set forth above.

"TENANT"

HIGCO, INC.  
a Nevada corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

*Sean J. Higgins*  
\_\_\_\_\_  
*Sean J. Higgins*  
\_\_\_\_\_  
*President*  
\_\_\_\_\_

"LANDLORD"

BOCA PARK PARCELS, LLC  
a Nevada limited liability company

By: \_\_\_\_\_

John M. McCall

Manager; Corporate Counsel

*[Signature]*  
\_\_\_\_\_  
*[Signature]*  
\_\_\_\_\_  
*[Signature]*  
\_\_\_\_\_

## GUARANTY

GUARANTY OF LEASE dated \_\_\_\_\_ by and between Boca Park Parcels, LLC, a Nevada limited liability company, as Landlord, and Higco, Inc., a Nevada corporation, as Tenant.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned Guarantor hereby unconditionally and irrevocably guarantees the full and faithful performance by Tenant of all the terms, covenants and conditions of the above-referenced Lease. This Guaranty shall remain in full force and effect regardless of any amendment, modification, extension, compromise or release of any term, covenant or condition of the Lease or of any party, assignee or subtenant thereto, as the case may be.

The undersigned agrees to indemnify Landlord against any and all liability, loss, costs, charges, penalties, obligations, expenses, attorneys' fees, litigation, judgments, damages, claims and demands of any kind whatsoever in connection with, arising out of or by reason of the assertion by Tenant of any defense to its obligations under the Lease or the assertion by Guarantor of any defense to its obligations hereunder. Guarantor waives any right or claim or rights to cause a marshalling of Tenant's assets or to proceed against Guarantor or Tenant or any security for the Lease or this Guaranty in any particular order and Guarantor agrees that any payments or performance required to be made hereunder shall become due upon demand in accordance with the terms hereof immediately upon the happening of a default under the Lease, whether or not Guarantor has been given notice of such default, and Guarantor hereby expressly waives and relinquishes all rights and remedies accorded by applicable law to guarantors, including, but not limited to, notice of demand, notice of default, any failure to pursue Tenant or its property, any defense arising out of the absence, impairment or loss of any right of reimbursement or subrogation and any defense arising by reason of any defense of Tenant or by reason of the cessation of the liability of Tenant or any defense by reason of the assertion by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease, or by reason of summary or other proceedings against Tenant.

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

Guarantor agrees that any judgment rendered against Tenant for monies or performance due Landlord shall in every and all respects bind and be conclusive against Guarantor to the same extent as if Guarantor had appeared in any such proceedings and judgment therein had been rendered against Guarantor. Guarantor agrees that Landlord may seek any and all damages and/or remedies from Guarantor directly without first having to seek damages and/or remedies from Tenant.

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

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

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

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

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

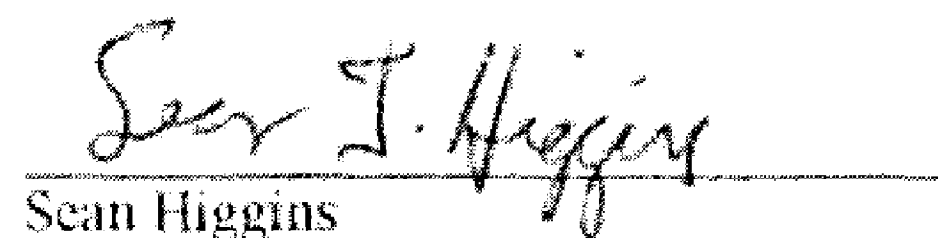
The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Guaranty. The venue for any disagreement, dispute or litigation shall be the State of Nevada, County of Clark and City of Las Vegas.

Should Guarantor consist of more than one person or entity, then, in such event, all such persons and entities shall be jointly and severally liable as Guarantor hereunder. In any action brought by Landlord to enforce any of its rights under or arising from this Guaranty, Landlord shall be entitled to receive its costs and legal expenses including reasonable attorneys' fees, whether such action is prosecuted to judgment or not. If Landlord shall engage the services of any attorney for the purpose of collecting any rental due from Tenant, having first given Tenant five (5) days' notice of its intention so to do, Tenant shall pay the reasonable fees of such attorney for his services regardless of the fact that no legal proceeding or action may have been filed or commenced.

Dated this 5<sup>th</sup> day of November, 2002.

"GUARANTORS"

  
Kevin Higgins

  
Sean Higgins

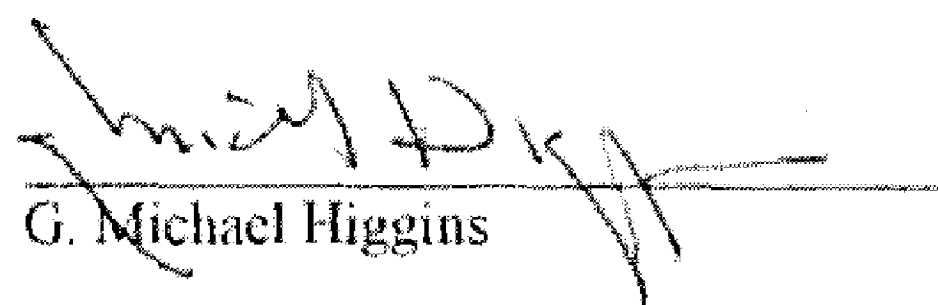
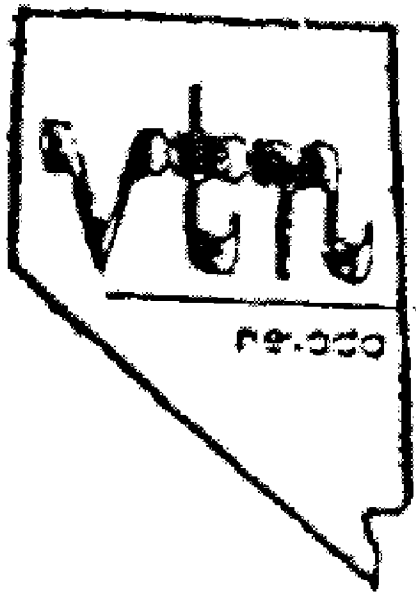
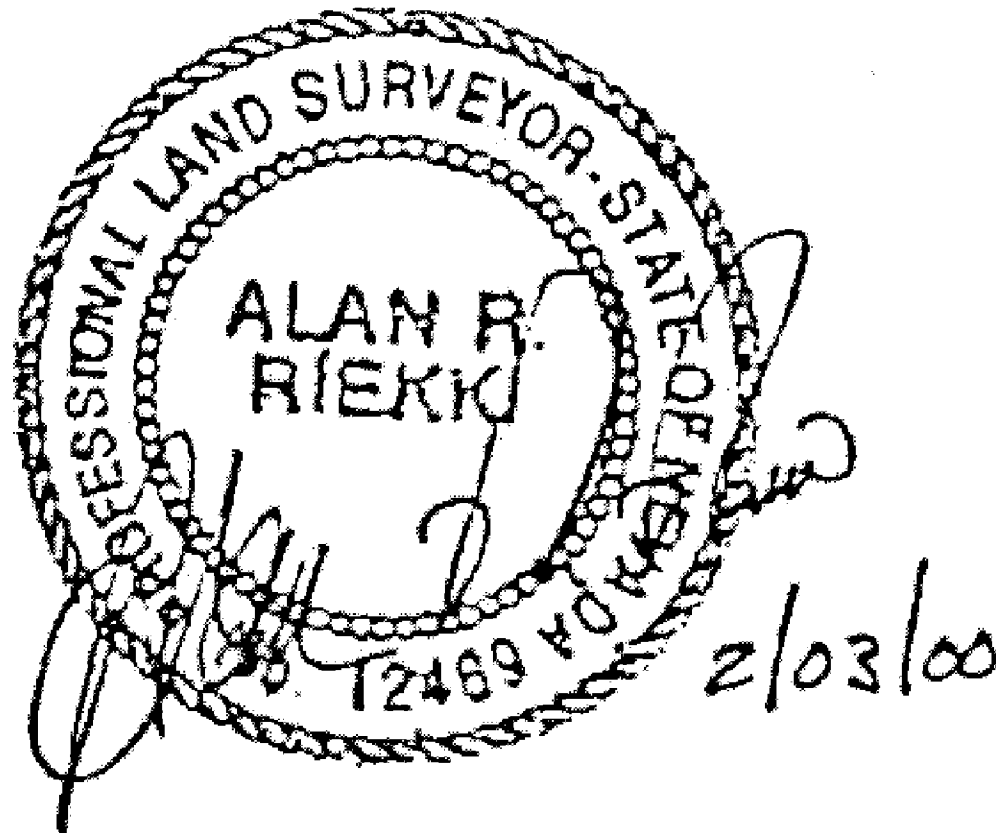
  
G. Michael Higgins

EXHIBIT A-1  
LEGAL DESCRIPTION OF CENTER

See Attached



CONSULTING ENGINEERS • PLANNERS • SURVEYORS  
PROVIDING QUALITY PROFESSIONAL  
SERVICES SINCE 1960



W.O. 5334-1  
OCTOBER 15, 1998  
BY: TZ / ARR  
P.R. BY: ARR  
PAGE 1 OF 2  
REVISED: 5/27/99  
REVISED: 2/03/00

**EXPLANATION:**

THIS LEGAL DESCRIBES A PARCEL OF LAND GENERALLY LOCATED NORTHEASTERLY OF RAMPART BOULEVARD AND CHARLESTON BOULEVARD.

**LEGAL DESCRIPTION  
PHASE 1**

BEING A PORTION OF LOT 1, BLOCK 1 OF THAT COMMERCIAL SUBDIVISION KNOWN AS "PECCOLE RANCH TOWN CENTER" ON FILE IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA, IN BOOK 86 OF PLATS, AT PAGE 23, LOCATED WITHIN THE SOUTH HALF (S 1/2) OF SECTION 32, TOWNSHIP 20 SOUTH, RANGE 60 EAST, M.D.M., CITY OF LAS VEGAS, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST SIXTEENTH SECTION CORNER OF SAID SECTION 32, BEING ON THE CENTERLINE OF RAMPART BOULEVARD; THENCE NORTH 00°33'39" WEST, ALONG THE CENTERLINE OF SAID RAMPART BOULEVARD, 119.00 FEET; THENCE NORTH 89°26'21" EAST, DEPARTING SAID CENTERLINE, 56.00 FEET TO THE EASTERLY RIGHT-OF-WAY OF SAID RAMPART BOULEVARD, SAME BEING THE POINT OF BEGINNING;

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY, THE FOLLOWING COURSES: NORTH 00°33'39" WEST, 124.06 FEET; THENCE NORTH 07°45'20" EAST, 60.83 FEET; THENCE NORTH 01°42'24" WEST, 81.44 FEET; THENCE NORTH 15°44'35" WEST, 41.23 FEET; THENCE NORTH 01°42'24" WEST, 118.57 FEET; THENCE NORTH 00°33'39" WEST, 457.05 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 1650.00 FEET; THENCE NORTHEASTERLY, 547.45 FEET ALONG SAID RIGHT-OF-WAY AND SAID CURVE THROUGH A CENTRAL ANGLE OF 19°00'36"; THENCE SOUTH 71°33'03" EAST, DEPARTING SAID EASTERLY RIGHT-OF-WAY, 15.00 FEET; THENCE 72°37'30" EAST, 200.04 FEET; THENCE SOUTH 04°29'51" EAST, 151.87 FEET; THENCE NORTH 89°26'21" EAST, 681.46 FEET; THENCE SOUTH 00°24'22" EAST, 131.38 FEET; THENCE NORTH 89°26'21" EAST, 782.86 FEET; THENCE SOUTH 00°19'57" EAST, 530.10 FEET; THENCE NORTH 89°40'03" EAST, 125.00 FEET TO THE WESTERLY RIGHT-OF-WAY OF MERIALDO LANE; THENCE SOUTH 00°19'57" EAST, ALONG SAID WESTERLY RIGHT-OF-WAY, 541.00 FEET TO

LEGAL DESCRIPTION CONTINUED

W.O.5334-1

10/15/98

PAGE 2 OF 2

REVISED: 5/27/99

REVISED: 2/03/00

THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 54.00 FEET; THENCE SOUTHWESTERLY, 84.82 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $90^{\circ}00'00''$  TO THE NORTHERLY RIGHT-OF-WAY OF CHARLESTON BOULEVARD; THENCE SOUTH  $89^{\circ}40'03''$  WEST, ALONG SAID NORTHERLY RIGHT-OF-WAY, 559.98 FEET; THENCE SOUTH  $89^{\circ}26'21''$  WEST, CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY, 1215.42 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 54.00 FEET; THENCE NORTHWESTERLY, 84.82 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $90^{\circ}00'00''$  TO THE POINT OF BEGINNING, AS SHOWN ON THE "EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION" ATTACHED HERETO AND MADE A PART HEREOF.

CONTAINING 51.11 ACRES, MORE OR LESS, AS DETERMINED BY COMPUTER METHODS.

BASIS OF BEARINGS:

NORTH  $00^{\circ}33'39''$  WEST, BEING THE BEARING ON THE CENTERLINE OF RAMPART BOULEVARD, AS SHOWN ON THAT CERTAIN PARCEL MAP ON FILE IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA, IN FILE 82 OF PARCEL MAPS, AT PAGE 11.

NOTE: THIS LEGAL DESCRIPTION IS PROVIDED AS A CONVENIENCE AND IS NOT INTENDED FOR THE PURPOSE OF SUBDIVIDING LAND NOT IN CONFORMANCE WITH NEVADA REVISED STATUTES.

END OF DESCRIPTION.

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RAMPART BOULEVARD  
BASIS OF BEARINGS

T20S R60E  
W 1/16 S 32  
T21S R60E

P.O.C.

P.O.B.

CHARLESTON BOULEVARD

T20S R60E  
1/4 S 32  
T21S R60E

MERIALDO LANE

T20S R60E  
E 1/16 S 5  
T21S R60E

REVISED: 5/27/99  
REVISED: 2/03/00

G:\C\S\5334\PHASE.DWG



EXHIBIT TO ACCOMPANY  
LEGAL DESCRIPTION  
PHASE 1

W.O.#: 5334-1  
DATE: 10/15/98  
BY: TZ / ARR  
SCALE: 1"=300'  
SHEET 1 OF 1

Project: 5334srvy  
Lot Map Check

Thu Feb 03 10:58:52 2000

Lot name: PHASE1NEW

North: 16123.28 East: 17690.35  
 Line Course: N 00-33-39 W Length: 124.06  
     North: 16247.33 East: 17689.14  
 Line Course: N 07-45-20 E Length: 60.83  
     North: 16307.60 East: 17697.34  
 Line Course: N 01-42-24 W Length: 81.44  
     North: 16389.01 East: 17694.92  
 Line Course: N 15-44-35 W Length: 41.23  
     North: 16428.69 East: 17683.73  
 Line Course: N 01-42-24 W Length: 118.57  
     North: 16547.21 East: 17680.20  
 Line Course: N 00-33-39 W Length: 457.05  
     North: 17004.24 East: 17675.73  
 Curve Length: 547.45 Radius: 1650.00  
     Delta: 19-00-36 Tangent: 276.26  
     Chord: 544.94 Course: N 08-56-39 E  
     Course In: N 89-26-21 E Course Out: N 71-33-03 W  
     RP North: 17020.39 East: 19325.65  
     End North: 17542.55 East: 17760.45  
 Line Course: S 71-33-03 E Length: 15.00  
     North: 17537.81 East: 17774.68  
 Line Course: S 72-37-30 E Length: 200.04  
     North: 17478.07 East: 17965.59  
 Line Course: S 04-29-51 E Length: 151.87  
     North: 17326.67 East: 17977.50  
 Line Course: N 89-26-21 E Length: 681.46  
     North: 17333.34 East: 18658.93  
 Line Course: S 00-24-22 E Length: 131.38  
     North: 17201.96 East: 18659.86  
 Line Course: N 89-26-21 E Length: 782.86  
     North: 17209.62 East: 19442.68  
 Line Course: S 00-19-57 E Length: 530.10  
     North: 16679.53 East: 19445.76  
 Line Course: N 89-40-03 E Length: 125.00  
     North: 16680.26 East: 19570.76  
 Line Course: S 00-19-57 E Length: 541.00  
     North: 16139.27 East: 19573.90  
 Curve Length: 84.82 Radius: 54.00  
     Delta: 90-00-00 Tangent: 54.00  
     Chord: 76.37 Course: S 44-40-03 W  
     Course In: S 89-40-03 W Course Out: S 00-19-57 E  
     RP North: 16138.95 East: 19519.90  
     End North: 16084.95 East: 19520.21  
 Line Course: S 89-40-03 W Length: 559.93  
     North: 16081.70 East: 18960.24  
 Line Course: S 89-26-21 W Length: 1215.42  
     North: 16069.81 East: 17744.88  
 Curve Length: 84.82 Radius: 54.00



Thu Feb 03 10:58:52 2000

Project: 5334srvy

Lot Map Check

Delta: 90-00-00

Chord: 76.37

Course In: N 00-33-39 W

RP North: 16123.80

End North: 16123.28

Tangent: 54.00

Course: N 45-33-39 W

Course Out: S 89-26-21 W

East: 17744.35

East: 17690.35

Perimeter: 6534.39 Area: 2,226,298.754 sq.ft. 51.109 acres

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.00

Course: S 50-22-28 E

Error North: -0.001

East: 0.001

Precision 1: 3,557,022.19

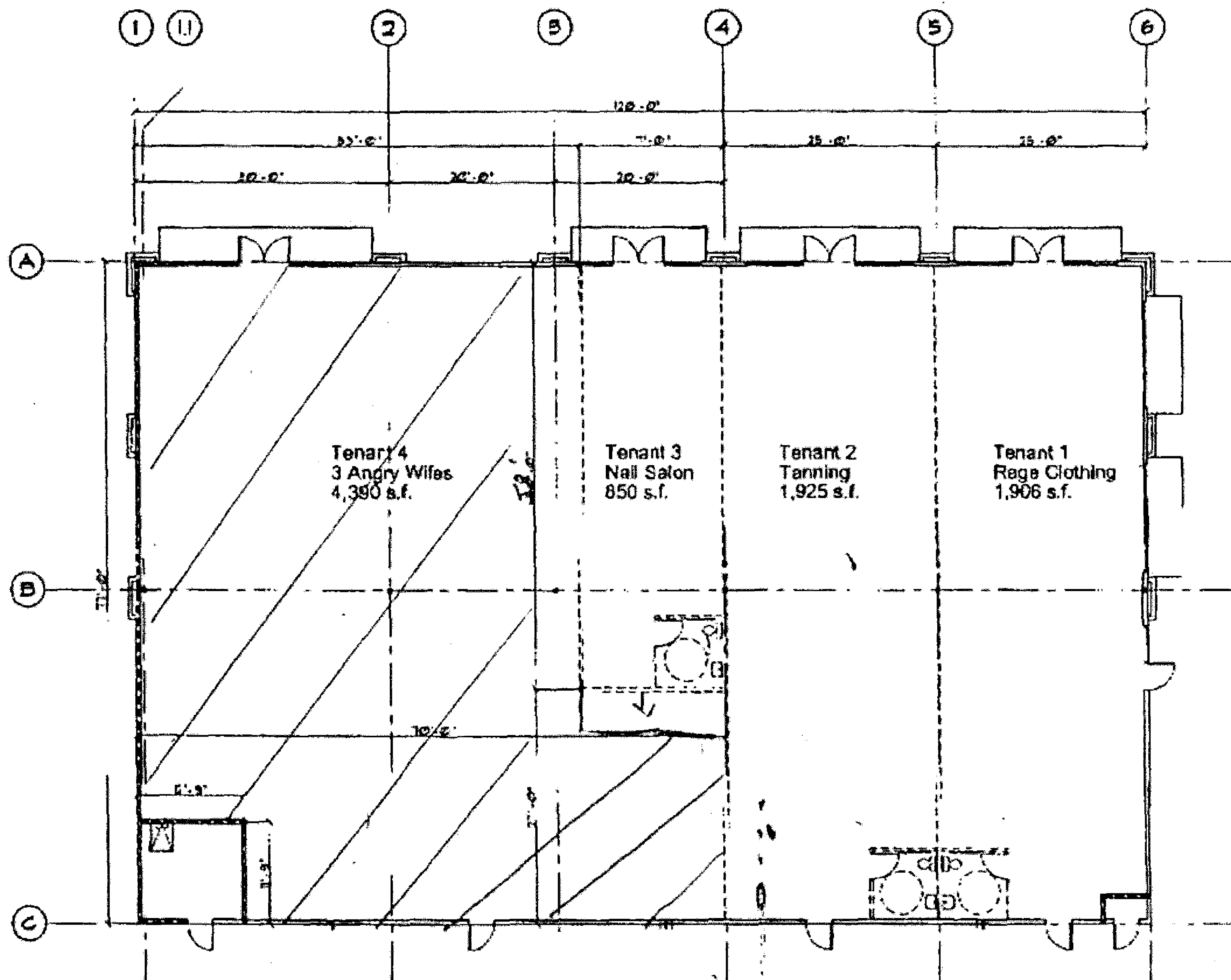
EXHIBIT A-2

SITE PLAN

See Attached

## Building Information

Building Area		9,240 gsf
Building Size		120' x 77'
Tenant 1	57'+/- x 77'	4,390 sf
Tenant 2	17' x 50'	850 sf
Tenant 3	25' x 77'	1,925 sf
Tenant 4	25' x 77'	1,906 sf
Total Retail		9,071 sf
Common		169 sf
		9,240 sf



# Pad J @ Boca Park I

Triple Five Nevada Dev. Corp.  
Las Vegas, Nevada 702-242-6937



Scale: 1" = 20'

**Perlman**  
ARCHITECTS

PERLMAN ARCHITECTS, INC.  
2230 CORPORATE CIRCLE, SUITE 200  
HENDERSON, NEVADA 89074  
702.990.9900 702.932.3222 fax

Note: This Layout is Conceptual in Nature and No Guarantee of its accuracy is implied.  
All Dimensions and Sizes are Preliminary and Subject to Change

Date: July 29, 2002  
Project Number: 102021

© 2002 PERLMAN ARCHITECTS, INC.

EXHIBIT B  
COMMENCEMENT DATE

Sean T. Higgins  
Higco, Inc.  
10273 Garden Glen Lane  
Las Vegas, Nevada 89135

*Re: Three Angry Wives – Boca Park Marketplace  
Commencement Date Memorandum*

Dear Mr. Higgins:

The commencement date of that Lease dated as of \_\_\_\_\_, 200\_\_\_\_, by and between Boca Park  
Parcels, LLC, a Nevada limited liability company, as Landlord, and Higco, Inc., a Nevada corporation, as Tenant, was  
the \_\_\_\_ of \_\_\_\_\_, 200\_\_\_\_.

“LANDLORD”

BOCA PARK PARCELS, LLC  
a Nevada limited liability company

By: \_\_\_\_\_  
John M. McCall  
Manager, Corporate Counsel

## EXHIBIT C

### DESCRIPTION OF WORK

When Landlord's architect has completed drawings of the basic shell of the building (or if such drawings have already been completed, then promptly after the execution of this Lease), Landlord shall deliver a floor plan of the Leased Property to Tenant showing the columns and other structural work in the Leased Property.

Within fifteen (15) days after receipt of said floor plan, Tenant shall submit to Landlord four (4) sets of fully dimensioned scale drawings of the interior space of the Leased Property, prepared by Tenant's registered architect at Tenant's expense. Said drawings shall indicate the specific requirement of Tenant's space showing clearly interior partitions, trade fixture plans, location and layout of the bar, restrooms, telephones and post locations ("Interior Plans"). Tenant shall also deliver to Landlord specifications for all such trade fixtures. Landlord, at landlord's sole cost and expense, shall, using the Interior Plans complete all architectural, mechanical, electrical and plumbing drawings. Landlord shall allow Tenant to review said plans and the parties shall both sign off on the final drawings. These shall be the "Approved Plans". The Approved Plans shall be completed by Landlord in conformity with this Exhibit C and all applicable permits, authorizations, building regulations, zoning laws and all other governmental rules, regulations, ordinances, statutes and laws. In addition, Landlord, at landlord's sole cost and expense, shall apply for and obtain all necessary permits from all government agencies required to complete Landlord's Work. Such plans shall also indicate the work to be done by Landlord at Landlord's expense, as provided in Section I hereof ("Landlord's Work"), the work to be done by Landlord at Tenant's expense and the work to be done by Tenant at Tenant's expense (any work that is not Landlord's Work as provided in Section I hereof, shall be referred to as "Tenant's Work"). Any engineering services required for Tenant's Work or any re-engineering services required of Landlord's Work because of Tenant's Work shall be at the expense of Tenant.

Unless provided otherwise in this Exhibit C, Tenant shall complete or arrange for the completion of Tenant's Work, at Tenant's expense, in accordance with the Approved Plans. Tenant agrees and acknowledges that any and all contractors, subcontractors and materialmen utilized, directly or indirectly, by Tenant or any agent of Tenant shall at all times comply with all applicable laws, ordinances and regulations, including, without limitation, compliance with State Industrial Insurance System and State Contractors Board requirements. Tenant shall obtain Landlord's prior written approval of the contractor and any subcontractor or subtrade who is to perform the construction work, or any portion thereof. Tenant and/or its contractor shall diligently and aggressively pursue, obtain and pay for all required inspections, licenses, authorizations, building permits, fees and occupancy certificates required for Tenant's Work or for Tenant to open for business after all work has been completed. Tenant may not enter upon the Leased Property until plans and specifications have been adopted as hereinafter provided and Landlord notifies Tenant that the Leased Property is ready for Tenant to perform its work. Tenant shall not conduct its work in such a manner as to interfere with Landlord performing Landlord's Work hereunder. Tenant may request that Landlord complete all or any part of Tenant's Work at Tenant's expense, subject to Landlord's acceptance of the job and the terms and conditions thereof and that Tenant's request specifically state in writing the scope of Tenant's Work to be undertaken by Landlord at Tenant's expense.

In the event that, based on the final plans and specifications, Tenant desires that Landlord not undertake a specific element of Landlord's Work, Landlord will provide Tenant a credit to Tenant for that portion of Landlord's Work not performed by Landlord. Such credit shall not exceed the actual cost to Landlord had Landlord provided that omitted portion of Landlord's Work. Any credits provided in this Exhibit C shall be paid to Tenant upon the Commencement date of the Lease.

Landlord has agreed to modify the exterior store front design of the Leased Property, removing all windows and allowing for a larger exterior door. Any further modifications by Tenant must be previously approved by Landlord in writing.

Any additional charges, expenses (including architectural and engineering fees) or costs arising by

reason of any subsequent change, modification or alteration in said Approved Plans and specifications made at the request of Tenant shall be at the sole cost and expense of Tenant, and Landlord shall have the right to demand immediate payment for such change, modification or alteration prior to Landlord's performance of any work in the Leased Property to the extent that such request affects the work Landlord is to perform hereunder. No such changes, modifications or alterations in said Approved Plans and specifications can be made without the written consent of Landlord after the written request thereof by Tenant. No part of the cost of any trade fixture or personal property for Tenant shall be payable by Landlord.

The fact that Tenant may enter into possession of the Leased Property prior to the actual completion of the building for the purpose of installing trade fixtures and equipment shall not be deemed an acceptance by Tenant of completion by the Landlord until actual completion shall have taken place; provided, however, in such event, Tenant shall hold Landlord harmless and indemnify Landlord for any loss or damage to Tenant's fixtures, equipment and merchandise and for injury to any person.

Where the Approved Plans and specifications are in conflict with this Exhibit C, the provisions of this Exhibit C shall prevail.

#### I. WORK DONE BY LANDLORD AT LANDLORD'S EXPENSE

Landlord shall deliver to Tenant the Leased Property as agreed upon in this Exhibit C ("Landlord's Work") which shall include:

##### A. STRUCTURE

1. Frame, etc.: The building shall be of steel frame, reinforced concrete, masonry, wood, or bearing wall or any combination construction designed in accordance with governing building codes.
2. Exterior Walls: The exterior walls shall be of masonry or such other material or materials as selected by Landlord's architect or agent.
3. Clear Heights: Clear height between floor slab and Tenant's ceiling shall be no less than nine feet (9') and, no lower than the top of any window frame, and shall otherwise be governed by structural design.
4. Floor Construction: Floors shall be of concrete slab on grade, smooth finish, including restrooms
5. Roof: The roof shall be composition gravel, tile or as otherwise specified by Landlord's architect or agent.
6. Ceilings: Finished ceiling in restrooms, suspended t-bar acoustical ceiling over balance of ceiling area, including ceiling as required by code in the kitchen.
7. Insulation: Landlord shall furnish all insulation for walls and ceilings.
8. Demising Walls: Landlord shall provide the wood frame, metal frame or masonry fire wall, as required by code, separating the leased suites within the same building. Landlord shall also provide standard drywall unpainted and ready for tenant's décor, and insulation, as



required by code, for such demising walls. Landlord shall also install an interior partition of up to eighty (80) linear feet, not including restroom walls, separating the storage and kitchen area from the sales area.

9. Exits: Exits shall be in accordance with governing codes, however, the exact location shall be determined after reviewing Tenant's Interior Plans.
10. Dimensions: Frontage Dimension: Interior stores shall be measured from center line to center line of party walls; exterior stores shall be measured from center line of party walls to outside face of exterior walls. Depth shall be measured from outside face of exterior walls and window mullions.
11. Door Frames: Exterior door frames will be hollow metal construction or as otherwise specified by Landlord's architect or agent.
12. Doors: Exterior service doors will be hollow metal, which shall generally be located at the rear of the Leased Property.
13. Parapets, etc.: Landlord reserves the right to require a 12' neutral strip between stores, centered on the line defining Leased Property.

#### B. STORE FRONTS

1. Design: As agreed upon by the Landlord and Tenant.

#### C. UTILITIES

1. Water and Sewer: Landlord will furnish to designated points in the Leased Property, as determined by the Approved Plans, water and sewer service as required for two restrooms with three (3) stalls each and to all designated points for Tenant's bar per Approved Plans. All installation beyond these facilities shall not be part of the Landlord's responsibility. Landlord may install, at Tenant's expense, a check, sub or flow meter, as applicable, to monitor Tenant's water usage at the Leased Property.
2. Grease Trap: Landlord shall install, at Tenant's expense one (1) pre-cast type exterior grease interceptor(s) sized per requirements of applicable codes and in accordance with the size of Tenant's restaurant at location designated by Landlord's. Tenant, however, shall maintain said grease Interceptors and Landlord shall have no liability for said grease interceptor.
3. Gas: Landlord shall install and furnish such utility to designated points in the Leased Property per the Approved Plans. Cost of the gas meter shall be Tenant's responsibility based upon Tenant's credit with the gas company.
4. Electricity: Landlord will furnish panels, as well as, sufficient conduit and wiring to the Leased Property to a maximum 600 amp. meter socket. Any and all fixtures, panel, breakers or equipment and the distribution of electrical service throughout the Leased Property, in accordance with the mutually Approved Plans and specifications, shall be Landlord's responsibility at Landlord's expense. Landlord shall also provide forty five (45) light fixtures capped at a maximum of \$120.00 per light, up to fifty (50) wall or ceiling outlets and four (4) telephone boxes.
5. Telephone, Data and Cable: Landlord shall furnish a conduit and wiring for telephone, data and cable to designated points in the Leased Property per the Approved Plans. All conduit systems and wiring from the telephone, data and cable throughout the Leased Property shall

be undertaken by Landlord at Landlord's expense.

6. Exterior Signage: Landlord shall provide all j-boxes and other equipment necessary for the installation of Tenant's signage on three (3) sides of the building facia, at Landlord's sole cost and expense, per Tenant's mutually approved Signage Plan. Landlord shall provide signage criteria from Perlman Architects who handles the approvals.
7. HVAC: Landlord will furnish Tenant with air conditioning unit(s) at the rate of one (1) ton for every 200 square feet of floor space. The HVAC unit(s) will be placed on the roof, with a plenum duct into the Leased Property. All wiring and distribution of the HVAC, in accordance with the Approved Plans and specifications, shall be undertaken by Landlord, at Landlord's expense.

D. FIRE SPRINKLERS

Landlord will furnish fire sprinklers as required for the building shell only.

E. RESTROOMS

Landlord shall furnish two (2) restrooms, located per Tenant's Interior Plan. The men's' room shall contain: one (1) water closet, partitioned with a door, two (2) urinals, two (2) hot/cold water sinks, exhaust fan, light switch and fixture, and one mirror. The women's room shall contain: three (3) water closets, partitioned with doors; two cold/hot water sinks, exhaust fan, light switch and fixture and one mirror. Such restrooms shall meet the requirements of the Americans with Disabilities Act. Landlord shall be responsible for the water and sewer connection fees associated with said restroom.

F. ROUGH PLUMBING

Landlord shall provide one (1) mop sink, eight (8) flood drains per Approved Plans.

G. Permits: All required building permits and fees to build the building shall be Landlord's responsibility, however, the Certificate of Occupancy and permits and fees for Tenant's Work shall be paid by Tenant.

H. TENANT IMPROVEMENT ALLOWANCE:

Landlord shall, in addition to all work contemplated by this Section I of Exhibit C, also provide Tenant with an allowance of ten dollars (\$10.00) per square foot of the Leased Property, which may be used for additional tenant improvements on the Leased Property. Landlord shall pay this allowance to tenant thirty days following Tenant's opening of the business to the public upon invoice upon the Commencement Date of the Lease.

II. WORK DONE AT TENANT'S EXPENSE

All work provided for in the plans and specifications, as mutually agreed upon by Landlord and Tenant that is not specifically set forth as "Landlord's Work" in Section I of this Exhibit C ("Tenant's Work"). All Tenant's Work shall be in full compliance with any and all applicable federal, state or local laws, ordinances, regulations and rules. Tenant's Work shall include, without limitation, the cost of any architectural, permitting or engineering services or expenses required for any work beyond Landlord's Work and the following:

- A. Electrical Fixtures and Equipment: All meters, electric fixtures (lighting fixtures), equipment, except as provided in Section I (C) above, "Work Done by Landlord."
- B. Gas Connections: The cost of all gas meters.



- C. Water Connections: The cost of all water, check, sub or flow meters or valves, whichever is applicable, and any plumbing distribution throughout the Leased Property.
- D. Walls: All interior partitions and curtain walls within the Leased Property, except as set forth in Section I.
- E. Furniture and Fixtures: All store fixtures, cases, wood paneling, cornices, etc.
- F. Show Window Background, Floors, etc.: All show window finish floors, show window backgrounds, show window lighting fixtures and show window doors.
- G. Floor Coverings or Finishes: All floor coverings or finishes, including any additional preparation of floor slab for vinyl, tile or any special or other floor treatment.
- H. HVAC: Intentionally omitted.
- I. Alarm Systems, etc.: All alarm systems or other protective devices including any special wiring required for such devices.
- J. Special Plumbing: All extra plumbing, either roughing in or fixtures required for Tenant's special needs not included in the Approved Plans.
- K. Special Ventilation: Any required ventilation and related equipment including show window ventilation.
- L. Intentionally Omitted.
- M. Special Equipment: All special equipment such as conveyors, elevators, escalators, dumb waiters, etc., including installation and connection.
- N. Electric Floor Outlets and Point of Sale Stations. Intentionally omitted.
- O. Sewer: All sewer hookups, usage and service charges shall be paid by Tenant.
- P. Store Front: Any alterations to the standard storefront, except as provided for in Section I, must be approved by Landlord or Landlord's architect, and Tenant shall bear all additional costs.
- Q. Permits: Intentionally omitted.
- R. Roof: Tenant and/or Tenant's contractor shall not penetrate the roof of the Leased Property without the prior written approval of Landlord. Any penetration of the roof must be sealed by the original roofing contractor, at Tenant's expense.
- S. Fire Sprinkler: All fire sprinkler work, beyond the fire sprinkler work for the building shell performed by Landlord pursuant to Section I(D) above, required by government code and requirements due to Tenant's interior or exterior design.
- T. Wiring: Any other wiring and connections required by Tenant, except as provided by Landlord pursuant to Section I above.
- U. Restrooms: Intentionally omitted.
- V. Drywall: Other than as specifically provided in Section I, including all painting and staining.

W.     Insulation: Intentionally omitted.

X.     Other: Any other work required by Tenant not covered herein.

## EXHIBIT D

### RULES AND REGULATIONS

Tenant agrees as follows:

1. All loading and unloading of goods shall be done only at such times, in the areas, and through the entrances designated for such purposes by Landlord.
2. The delivery or shipping of merchandise, supplies and fixtures to and from the Leased Property shall be subject to such rules and regulations as, in the judgment of Landlord, are necessary for the proper operation of the Leased Property or the Center.
3. No radio or television or other similar device shall be installed within the Leased Property such that it can be heard or seen outside the Leased Property without first obtaining in each instance Landlord's consent in writing. No aerial shall be erected on the roof or exterior walls of the Leased Property or in the Center, without in each instance, the written consent of Landlord and the installation of such aerial shall be by the roofing contractor that installed the roof. Any aerial so installed without such written consent shall be subject to removal without notice at any time at Tenant's expense of removal, repair to the roof and restoration of the roof warranty.
4. Tenant shall not, without the written consent of Landlord first had and obtained, use in or about the Leased Property any advertising or promotional media such as search lights, loud speakers, phonographs, or other similar visual or audio media which can be seen or heard outside the Leased Property.
5. Tenant shall keep the Leased Property at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.
6. The exterior areas immediately adjoining the Leased Property shall be kept clean and free from dirt and rubbish by Tenant to the satisfaction of Landlord, and Tenant shall not place or permit any obstructions or merchandise in such areas.
7. Tenant and Tenant's employees shall park their cars only in those parking areas designated for that purpose by Landlord. Tenant shall furnish Landlord with automobile license numbers assigned to Tenant's car or cars, and cars of Tenant's employees, within five (5) days after taking possession of the Leased Property and shall thereafter notify Landlord of any changes within five (5) days after such changes occur. In the event that Tenant or its employees fail to park their cars in designated parking areas as aforesaid, then Landlord at its option, in addition to any other remedies, including, but not limited to, towing, may charge Tenant Twenty-Five Dollars (\$25.00) per day per car parked in any area other than those designated.
8. The plumbing facilities shall not be used for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Tenant who shall, or whose employees, agents, servants, customers or invitees shall, have caused it.
9. Tenant shall keep the Leased Property free from pests and vermin.
10. Tenant shall not burn any trash or garbage of any kind in or about the Leased Property or the Center.
11. Tenant shall not make noises, cause disturbances, or create odors that may be offensive to Landlord or to other tenants of the Center or their employees, agents, servants, customers or invitees.
12. No portion of the Leased Property or the Center shall be used for sale or display of any obscene, pornographic, so called "adult" or other offensive merchandise or activities.

13. Tenant shall not install or otherwise place on the Leased Property, without Landlord's written consent therefor first had and obtained, any sign or other object or thing visible to public view outside of the Leased Property, except that Tenant shall, at its expense, erect a sign on the exterior of the Leased Property of such size, shape, materials and design as may be prescribed by Landlord. Tenant shall not change or modify such sign without the written consent of Landlord. Tenant shall be required to properly maintain its sign, including prompt repairs of any nature. Tenant shall keep such sign lit during such hours as Landlord may designate. Upon expiration of the Lease, Tenant shall be responsible for promptly removing all signs placed in and around the Leased Property by Tenant. Tenant shall repair all damage caused to the building or Leased Property by such removal, including proper "capping off" of electrical wiring.

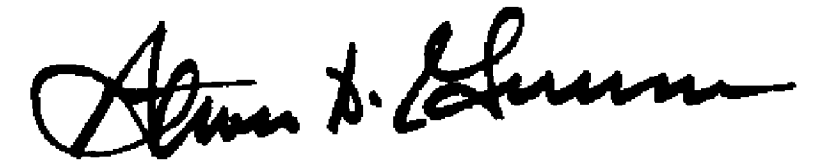
14. Tenant and Tenant's employees and agents shall not solicit business in the parking areas or other common areas, nor shall Tenant distribute any handbills or other advertising matter in automobiles parked in the parking area or in other common areas.

15. Tenant shall refrain from keeping, displaying or selling any merchandise or any object outside of the interior of the Leased Property or in any portion of any sidewalks, walkways or other part of the Center outside of the Leased Property.

16. Landlord may impose fines and penalties upon Tenant for failure to comply with the Rules and Regulations.

## EXHIBIT 2

## EXHIBIT 2



CLERK OF THE COURT

**ORDR**  
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

HIGCO, INC., a Nevada corporation,

Plaintiff,

vs.

BOCA PARK PARCELS, LLC, a revoked  
Nevada limited liability company; BOCA PARK  
MARKETPLACE LV, LLC, a Nevada limited  
liability company; BOCA PARK  
MARKETPLACE LV SYNDICATIONS  
GROUP MM, INC., a Nevada corporation;  
BOCA PARK MARKETPLACE  
SYNDICATIONS GROUP, LLC, a Nevada  
limited liability company; and DOES I-X, and  
ROE ENTITIES I-X, inclusive,

Defendants.

CASE NO. A-12-660548-B  
DEPT. XIII

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

This action having come on for hearing on June 25, 2012, on Plaintiff's Motion for Summary Judgment (the "Motion"), and again on September 24, 2012, following discovery and supplemental briefing, with Eric R. Olsen from the law firm of Gordon Silver appearing on behalf of Plaintiff Higco, Inc. (hereinafter referred to as "Higco"), and Steven C. Anderson of the law firm of Lionel Sawyer & Collins appearing on behalf of Defendants Boca Park Parcels, LLC, Boca Park Marketplace LV, LLC, Boca Park Marketplace LV Syndications Group MM, Inc., and Boca Park Marketplace Syndications Group, LLC (hereinafter collectively referred to as "Defendants"); the Court having had the opportunity to read and review Higco's Motion,

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DISTRICT COURT DEPT# 13

<input checked="" type="checkbox"/> Sum Jdgmt	<input type="checkbox"/> Non-Jury Trial
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<input type="checkbox"/> Default Jdgmt	
<input type="checkbox"/> Transferred	
<input type="checkbox"/> Voluntary Dis	
<input type="checkbox"/> Involuntary (stat) Dis	
<input type="checkbox"/> Jdgmt on Arb Award	
<input type="checkbox"/> Min to Dis (by deflt)	

1 Defendants Opposition to the Motion, Higco's Reply to the Opposition, Defendants  
2 Supplemental Opposition to the Motion, and Higco's Supplemental Reply to the Opposition,  
3 having heard the oral arguments of counsel for both parties, and having taken the matter under  
4 advisement for further review and consideration; with good cause appearing and there being no  
5 just reason for delay, the Court enters the following Order Granting Plaintiffs' Motion for  
6 Summary Judgment.

7 **I.**

8 **Procedural Facts**

9 On April 23, 2012, Higco filed its Complaint, seeking a "judicial determination of the  
10 interpretation of the Lease with respect to whether and to what extent the Lease contains an  
11 Exclusive Use provision . . . granting [Higco] an exclusive right [to] operate a tavern and an  
12 exclusive right to conduct gaming." (See Complaint at ¶ 21.)

13 Higco moved for Summary Judgment, on May 15, 2012, and on June 11, 2012,  
14 Defendants opposed Higco's Motion and requested relief to conduct additional discovery  
15 pursuant to N.R.C.P 56(f). Higco filed its reply to Defendants Opposition, on June 18, 2012.

16 At the hearing on June 25, 2012, the Court granted Defendants' request for leave  
17 pursuant to N.R.C.P. 56(f) and continued Higco's Motion until September 24, 2012, ordering  
18 supplemental briefing in the interim.

19 Defendants filed their Supplemental Opposition on September 12, 2012, and on  
20 September 20, 2012, Higco filed its Supplemental Reply.

21 On September 24, 2012, the Court held oral argument on Higco's Motion and the Court  
22 took the matter under advisement for further review of the pleadings and papers, issuing its  
23 decision on October 3, 2012

24 After considering all briefing and oral argument, the Court finds, concludes, and orders as  
25 set forth below.

26 . . .

27 . . .

28 . . .

1 II.

2 Findings of Fact

3 1. At the end of 2001, Higco and Defendants began discussing Higco's lease from  
4 Defendants of premises in Boca Park Phase I. Over the next year, Higco and Defendants  
5 negotiated the lease provisions. The parties understood that Higco intended to operate a tavern  
6 and to having gaming on the premises. Among those provisions was an "Exclusive Use" clause  
7 for Higco in Boca Park I.

8 2. Evidence shows that, on or about May 2, 2002, the parties first agreed upon a  
9 proposed Exclusive Use Clause, under which Defendants would:

10 . . . grant Higco an exclusive for Boca Park I for a tavern and gaming, except for  
11 any tenants currently located in the center which allow gaming (i.e. Vons, Longs).  
12 (the "Exclusive Use Clause") The Exclusive Use Clause would grant Higco the right to  
13 exclusively operate a tavern and a gaming operation in Boca Park I. The only exception to this  
14 exclusive was to be for existing tenants in Boca Park I that were taverns or offered gaming. The  
15 provision identified those tenants as Von's Grocery and Long's Drugs.

16 3. The parties' negotiations of the lease continued over the next five months. All  
17 proposed lease terms exchanged after May 2, 2002 included the Exclusive Use Clause as written  
18 in paragraph 2 above, and no evidence of subsequent negotiations concerning the Exclusive Use  
19 Clause was offered here.

20 4. For whatever reason, a version of the lease that Defendants contend was executed  
21 on November 5, 2002, contains a different exclusive use clause referring only to "tavern", but the  
22 record demonstrates that version of the lease erroneously omitted the Exclusive Use Clause  
23 above.

24 5. On January 20, 2003, Defendants sent Higco a corrected lease page 3 for Higco's  
25 initials. The body of the letter accompanying the corrected lease stated:

26 Please note the change to clarify the exclusive use and the new the (sic) site plan  
27 approximately reflecting the actual Leased Premises. Please initial the lease where  
28 indicated.

...



1 Defendants' letter does not use the words "amended", "proposed", or "offer". The accompanying  
2 corrected lease page contained the Exclusive Use Clause above, which was consistent with all  
3 written negotiations, and stated:

4 Landlord shall grant Higco an exclusive for Boca Park I for a tavern and gaming,  
5 except for any tenants currently located in the center, which allow gaming (i.e.  
Vons, Longs).

6 This Exclusive Use clause was initialed and dated by Defendants, and faxed to Higco.

7 6. On or after January 20, 2003, Defendants delivered a complete copy of the  
8 corrected lease, including the Exclusive Use Clause. That is evident, because the parties executed  
9 and initialed the complete copy of the corrected lease, which was attached to the Complaint in  
10 this action as Exhibit 1. That lease is the effective lease here.

11 7. In the lease, "gaming" was included as a category for which there would be  
12 exclusivity, and that category was central to contract formation. The Exclusive Use Clause is not  
13 ambiguous. The inclusion of an exception for "tenants currently located in the center which  
14 allow gaming" establishes that the Exclusive Use Clause was intended to extend beyond just  
15 taverns offering gaming. Von's Grocery and Long's Drugs were not taverns, but are included in  
16 the exception for current tenants offering gaming. Therefore, the Exclusive Use Clause was  
17 intended to give Higco an exclusive for all gaming in Boca Park I, regardless of the primary  
18 purpose of the business offering gaming, i.e. regardless of whether the primary purpose was a  
19 tavern.

### 20 III.

#### 21 Conclusions of Law

22 1. After viewing the evidence in a light most favorable to Defendants, the Court  
23 finds that there is an absence of a genuine issue of material facts.

24 2. The parties' unambiguous intent was for the Lease between Plaintiff and  
25 Defendants' Lease to contain an Exclusive Use Clause that states:

26 Landlord shall grant Higco an exclusive for Boca Park I for a tavern and gaming,  
27 except for any tenants currently located in the center which allow gaming (i.e.  
Vons, Longs).

28 . . .

1 The lease that Defendants contend was executed on November 5, 2002, contains a different  
2 exclusive use clause, but the record demonstrates that version of the lease erroneously omitted  
3 the Exclusive Use Clause.

4 3. Defendants admit and the record shows that the corrected page, reflecting the  
5 previously agreed exclusive language, was prepared by Defendants, initialed by Defendants, and  
6 described as "clarifying." Further, the record shows that Defendants did not present the corrected  
7 page as a proposal or offer. Thus, the Court concludes that Defendants were bound by it.

8 4. The Court concludes that when the parties executed the complete corrected lease,  
9 containing the corrected provisions faxed by Defendants on or about January 20, 2003, the  
10 corrected lease was signed by Defendants and Higco, and served to correct the erroneous  
11 omission of the other version, such that the operative lease between Higco and Defendants  
12 contains the Exclusive Use Clause above; that is, the Lease attached to Plaintiff's Complaint as  
13 Exhibit 1.

14 5. The Court concludes that Defendants arguments regarding consideration and  
15 equitable estoppel are unpersuasive, as the corrected lease was a clarification to correct an  
16 erroneous omission. In addition, Defendants signed the corrected page, and the complete Lease  
17 containing the corrected page.

18 6. The Court concludes Defendants' argument that the clarified lease is ambiguous  
19 is unpersuasive. The Exclusive Use Clause provides that Higco has an exclusive use within Boca  
20 Park I both for tavern and for gaming.

21 ORDER

22 IT IS HEREBY ORDERED that Plaintiffs Motion for Summary Judgment is Granted in  
23 FULL.

24 IT IS FURTHER ORDERED that the controlling lease between Higco and Defendants is  
25 the lease delivered by Defendants on or after January 20, 2003, attached to the Complaint as  
26 Exhibit 1, and containing the provision:

27 Landlord shall grant Higco an exclusive for Boca Park I for a tavern and gaming,  
28 except for any tenants currently located in the center which allow gaming (i.e.  
Vons, Longs).

1 IT IS FURTHER ORDERED that the controlling lease is unambiguous, and that Higco  
2 has a right to an exclusive use both for tavern and for gaming in Boca Park I, except for any  
3 tenants offering gaming in Boca Park I as of November 5, 2002, including Vons and Longs; and  
4 that the exclusive use applies to all businesses operating in Boca Park I, such that Defendants  
5 shall not allow any business in Boca Park I, other than Higco, to offer gaming, unless the  
6 business allowed gaming in Boca Park I, as of November 5, 2002.

7 IT IS FURTHER ORDERED that Defendants Countermotion for Summary Judgment is  
8 DENIED in FULL.


9 Dated this 6<sup>th</sup> day of November, 2012.

10  
11  
12   
DISTRICT COURT JUDGE

PB


13 Approved / Disapproved as to form:

14 LIONEL SAWYER & COLLINS

15  
16   
STEVEN C. ANDERSON  
17 1700 Bank of America Plaza  
18 300 South Fourth Street  
Las Vegas, NV 89101

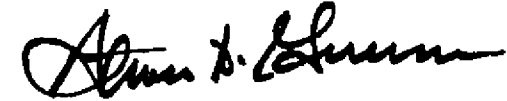
19 Respectfully Submitted,

20 GORDON SILVER

21   
22 ERIC R. OLSEN  
23 Nevada Bar No. 3127  
Email: [eolsen@gordonsilver.com](mailto:eolsen@gordonsilver.com)  
24 DYLAN T. CICILIANO  
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26 3960 Howard Hughes Pkwy., 9th Floor  
Las Vegas, Nevada 89169

## EXHIBIT 3

## EXHIBIT 3



CLERK OF THE COURT

**OPP**

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Steven C. Anderson (SBN #11901)  
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*Attorneys for Defendants Boca Park Parcels,  
LLC; Boca Park Marketplace, LLC; Boca  
Park Marketplace LV Syndications Group  
MM, LLC; and Boca Park Marketplace  
Syndications Group, LLC.*

DISTRICT COURT

CLARK COUNTY, NEVADA

HIGCO, INC a Nevada corporation

Plaintiff

v.

BOCA PARK PARCELS, LLC, a revoked  
Nevada limited liability company; BOCA  
PARK MARKETPLACE LV, LLC a Nevada  
limited liability company, BOCA PARK  
MARKETPLACE LV SYNDICATIONS  
GROUP MM, INC., a Nevada corporation;  
BOCA PARK MARKETPLACE  
SYNDICATIONS GOUP, LLC, a Nevada  
limited liability company; and DOES I-X, and  
ROE ENTITIES I-X, inclusive,

Defendants.

Case No. A660548  
Dept. No. XIII

**OPPOSITION TO PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

**I. INTRODUCTION**

On November 5, 2002, Boca Park Parcels, LLC ("Parcels" or "Landlord") (collectively with Boca Park Marketplace, LLC, Boca Park Marketplace LV Syndications Group MM, Inc., and Boca Park Marketplace Syndications Group, LLC, "Defendants") and Higco, Inc. ("Higco") entered into a lease wherein Higco would lease from Parcels, certain property located within the

1 Boca Park Marketplace shopping center (the "Lease"). Plaintiff argues that subsection (o)  
2 prevents any tenant who enters into a lease after Higco, from conducting gaming on their  
3 premises. There are, however, various executed versions of the lease, and Plaintiff ignores the  
4 conflicting language found in Section 7.17. This latter section provides "... Landlord shall not  
5 lease or operate within the Center any other directly competing business whose primary use is  
6 exclusively the Exclusive Use set forth in Lease Section (o)."

7  
8 Even if Plaintiff's rendition of the Exclusive is used, Section 7.17 and subsection (o), read  
9 together, are ambiguous. Plaintiff's motion should therefore be denied because the ambiguity  
10 presents a material question of fact. In addition, the parties have not conducted any discovery  
11 because they have not even held an Early Case Conference as required by N.R.C.P. 16.1 or had a  
12 Business Court Rule 16 Conference. At a minimum, Defendants need to depose Plaintiff on the  
13 circumstances surrounding the Lease's drafting and execution, obtain all written and email  
14 correspondence from the relevant time periods, and conduct discovery into the differences  
15 between Supper Club and Tavern licensing. As a consequence, summary judgment is not  
16 appropriate at this early stage.  
17

## 18 II. STATEMENT OF FACTS

19 Plaintiff and Defendant entered into the Lease on November 5, 2002. See Plaintiff's  
20 Exhibit 2 and Defendants' Exhibit 3. Under the Lease, Plaintiff leases commercial space within  
21 Boca Park Marketplace shopping center (the "Center"). See *id.* On or about March 14, 2002,  
22 while the parties were negotiating the Lease's terms, Plaintiff's agent, Richard W. Truesdell  
23 ("Truesdell") sent a letter to Jean Marc Joveidi ("Joveidi"), Executive Vice President of Triple  
24 Five Nevada Development Corporation ("Triple Five"). See Defendants' Exhibit 2. This letter  
25 proposes additional terms that Plaintiff wanted to include within the lease. *Id.* One of the  
26 additional terms is for an "Exclusive." This provision reads:  
27  
28

1 Landlord will grant Higco an exclusive for Boca Park I & II for a Tavern and  
2 gaming, except for any tenants currently located in the center which allow gaming  
3 (i.e. Vons, Longs). Landlord will grant Tenant a right of first refusal to [sic] for a  
similar restaurant location in Boca Park III.

4 The proposal for the Exclusive was not agreed upon as originally drafted by Plaintiff. *See, e.g.*,  
5 Plaintiff's **Exhibit 2** and Defendants' **Exhibit 3**.

6 Plaintiff's underlying motion attached a version of the lease wherein the Exclusive's  
7 language provides, "Landlord shall grant Tenant an exclusive for Boca Park Phase I for a tavern  
8 and gaming, except for any tenants currently located in the center, which allow gaming (i.e.  
9 Vons, Longs) (the "Exclusive Use"). *See* Plaintiff's **Exhibit 2**. Defendants', however, possess a  
10 fully executed lease where the Exclusive, subsection (o), provides, "Landlord shall grant Tenant  
11 an exclusive for Boca Park Phase I for a tavern (the "Exclusive")." *See* Defendants' **Exhibit 3**.  
12 Regardless, both versions of the lease contain a provision that provides "... Landlord shall not  
13 lease or operate within the Center any other directly competing business whose primary use is  
14 exclusively the Exclusive Use set forth in Lease Section (o)." *See* Plaintiff's **Exhibit 2**, Section  
15 7.17.  
16

17 Plaintiff operates Three Angry Wives under a Tavern license. *See* Declaration of Jeff  
18 Dragovich, **Exhibit 1** at ¶ 5. On or about April 29, 2011, Defendant Boca Park Marketplace LV  
19 Syndications Group, LLC entered into a lease with Wahoo's. *Id.* at ¶ 7. Wahoo's will operate  
20 under a Supper Club license. *Id.* Supper Clubs are subject to many restrictions not placed on  
21 Taverns such as dining and bar seating, minimum percentage of gross sales that must come from  
22 food sales, the sale of alcohol only in conjunction with meals, hours of bar operation coinciding  
23 with hours where food service is available, sales of alcohol for off-premises consumption, and  
24 number and location of slot machines that may be operated on the premises. *See id.* These  
25 differences demonstrate that even under Plaintiff's claimed Exclusive, Wahoo's will not directly  
26 compete with Three Angry Wives.  
27  
28

### III. LAW AND ARGUMENT

#### A. SUMMARY JUDGMENT STANDARD

Under N.R.C.P. 56(c) summary judgment is only appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." When considering a motion for summary judgment, the court must view the evidence, together with all inferences that can be reasonably drawn therefrom, in the light most favorable to the opposing party. *Wood v. Safeway, Inc.*, 121 Nev. 724, 732 121 P.3d 1026, 1031 (2005). In addition, the moving party bears the burden of showing the absence of any genuine issue of material fact. *Id.* at 731. This burden requires the movant to prove its case in a manner where "no reasonable trier of fact could find other than for the moving party." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007).

In defending a motion for summary judgment, the nonmoving party must only establish some facts, supported by the record, that demonstrate a "genuine issue of material fact." *Wood*, at 731. A fact is "material" if it affects the suit's outcome under the applicable law. *Id.* A fact is considered "genuinely" disputed when a reasonable jury could return a verdict in the nonmoving party's favor. *Id.* at 731.

In addition, under N.R.C.P. 56(f) when the nonmoving party "cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit . . . depositions to be taken or discovery to be had or may make such other order as is just." Rule 56(f) relief should be granted "when the movant expresses how further discovery will lead to the creation of a genuine issue of material fact." *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 118, 110 P.3d 59, 62 (2005). A district court may abuse its discretion by denying Rule 56(f) relief and granting



1 summary judgment in the "early stage[s] of the proceedings" and when the nonmoving party has  
2 not been dilatory. *Harrison v. Falcon Products, Inc.*, 103 Nev. 558, 560 746 P.2d 642, 642-43  
3 (1987).

4 **B. SUMMARY JUDGMENT SHOULD NOT BE GRANTED BECAUSE THE**  
5 **LEASE PROVISIONS RELATED TO THE "EXCLUSIVE" ARE**  
6 **AMBIGUOUS AND RULE 56(f) RELIEF IS NECESSARY.**

7 **1. THE LEASE PROVISIONS (o) and 7.17 CREATE AN**  
8 **AMBIGUITY.**

9 Summary Judgment should be denied because there are competing versions of the  
10 executed lease and even under Plaintiff's version, the lease is subject to more than one reasonable  
11 interpretation. A lease is a contract. *Anvui, LLC v. G.L. Dragon, LLC*, 123 Nev. 212, 163 P.3d  
12 405 (2007). In Nevada, when a contract is subject to more than one reasonable interpretation,  
13 courts will enforce the parties' intent, "which may be determined in light of the surrounding  
14 circumstances if not clear from the contract itself." *Id.* at 215. In addition, ambiguities are  
15 construed against the drafter. *Id.* at 215. Assessing the parties' intentions in the context of the  
16 surrounding circumstances presents a factual question. *Id.* at 216.

17 In *Anvui*, G.L. Dragon ("Dragon") leased commercial space to Anvui. *Id.* at 215. The  
18 lease contained provisions that dictated what actions Dragon could take if Anvui defaulted. *Id.*  
19 Anvui defaulted and Dragon issued a five-day notice to quit followed by an application for  
20 summary eviction.<sup>1</sup> *Id.* at 214. Anvui argued that the lease provisions relating to remedies upon  
21 default were ambiguous. *Id.* The district court granted Dragon summary eviction and Anvui  
22 appealed. On appeal the Nevada Supreme Court held that "the parties' lease agreement is  
23 ambiguous [because] . . . Section 14 of the lease agreement states that '[s]hould [Anvui] fail to  
24 cure any monetary default within ninety (90) days . . . [Anvui] and [Dragon] agree to cooperate in  
25 immediate sale of [Anvui's] operations at the highest and best price possible.'" *Id.* at 215. The  
26 Court concluded that the ambiguity created a "genuine issue of material fact" and reversed and

27 <sup>1</sup> Although *Anvui* is in the context of summary eviction, the Nevada Supreme Court  
28 concluded that review of a "district court order granting summary eviction" required the same  
standard used in a order granting summary judgment. *Id.* at 215.

1 remanded. *Id.*

2 Here, the Lease between Parcels and Higco is ambiguous because there are various  
3 executed versions and even under Plaintiff's version, the parties have competing interpretations  
4 of what the Exclusive means. Defendants do not possess a fully executed lease as presented by  
5 Plaintiff to this Court. Rather, the only executed lease in Defendants possession has different  
6 "Exclusive" language. Even under Higco's rendition, the Lease is ambiguous because Plaintiff  
7 does not read the contract as a whole, only looking to subsection (o).

8 Plaintiff argues that under subsection (o)'s language, no new establishment in the Center  
9 can have any gaming activity. Higco, however, ignores Section 7.17, which only restricts the  
10 Landlord from leasing or operating "within the Center any other *directly competing* business  
11 *whose primary use is exclusively* the Exclusive Use (emphasis added). Higco operates under a  
12 "Tavern" license while Wahoo's will operate under a "Supper Club" license. These licenses  
13 entitle their holders to different privileges. Supper Clubs are subject to many more restrictions  
14 than taverns, such as minimum percentage of gross sales that must come from food sales, a  
15 requirement that alcohol only be served if the patron also orders a meal, and various restrictions  
16 on slot machines. Wahoo's, therefore, will not be a "directly competing business" because  
17 Wahoo's will not be "exclusively" for a "tavern" or "gaming" or "a tavern and gaming."

18 Moreover, Higco drafted the original version of the Exclusive as contained in the Letter  
19 of Intent. *See* Defendants' Exhibit 2. As a consequence, the language should be construed  
20 against Plaintiff. At a minimum the contract should be deemed as drafted by both parties.  
21 Regardless, Wahoo's, operating under a Supper Club license, does not directly compete with  
22 Three Angry Wives because Wahoo's primary use is not exclusively the Exclusive Use. The  
23 Lease is thus ambiguous and resolving the issue on a summary basis is not appropriate.

24 **2. RULE 56(f) RELIEF IS APPROPRIATE BECAUSE THE PARTIES**  
25 **CANNOT EVEN START DISCOVERY AT THIS STAGE OF THE**  
26 **LITIGATION AND DISCOVERY IS NECESSARY TO RESOLVE**  
**THE AMBIGUITY.**

27 Under N.R.C.P. 56(f), Higco's motion should be denied because Defendants must depose  
28 Higco regarding the exclusivity provisions, conduct additional discovery into the facts and

1 circumstances surrounding the lease's drafting and execution, obtain all written correspondence  
2 between Plaintiff and Defendants, and further analyze the differences between "Tavern" and  
3 "Supper Club" licensing. Under N.R.C.P. 56(f) when the nonmoving party "cannot for reasons  
4 stated present by affidavit facts essential to justify the party's opposition, the court may refuse  
5 the application for judgment or may order a continuance to permit . . . depositions to be taken or  
6 discovery to be had or may make such other order as is just." Rule 56(f) relief is appropriate  
7 when the "movant expresses how further discovery will lead to the creation of a genuine issue of  
8 material fact." *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 118, 110 P.3d 59, 62  
9 (2005).

10 In *Harrison v. Falcon Products, Inc.*, the Nevada Supreme Court reversed the district  
11 court for denying Rule 56(f) relief after Harrison requested additional time to take depositions  
12 and to seek admissions. 103 Nev. 558, 560 746 P.2d 642, 642-43 (1987). In analyzing this rule  
13 the Nevada Supreme Court held that the district court abused its discretion in denying Rule 56(f)  
14 relief and granting summary judgment at such an "early stage of the proceedings" and where the  
15 nonmoving party had not been dilatory. *Id.*; see also *Halimi v. Blacketor*, 105 Nev. 105, 770  
16 P.2d 531 (1989).

18 In the present case, the parties have not conducted any discovery because they have not  
19 held an Early Case Conference or a Business Court Rule 16 Conference. Obviously, at such an  
20 early stage of the action, Defendant has not been dilatory in conducting discovery. As required  
21 by Rule 56(f), Defendants specifically identified some of the needed discovery that will likely  
22 uncover additional issues of material fact, i.e., deposing Plaintiff regarding the ambiguous  
23 contract language and various versions of the executed lease, obtaining all written and email  
24 correspondence between Higco and Parcels relating to the lease negotiations, and conducting  
25 additional discovery into the various licensing requirements, privileges, restrictions, and  
26 obligations. As a consequence, Plaintiff's motion should be denied.

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**IV. CONCLUSION**

The Lease is ambiguous, creating a factual issue that must be resolved. In addition, the parties have not conducted any discovery as they are prevented from doing so at this early stage under the Nevada Rules of Civil Procedure. As a consequence, this Court should deny Plaintiff's Motion for Summary Judgment.

DATED this 11 day of June, 2012.

LIONEL SAWYER & COLLINS

By: 

Charles H. McCrea, Jr. (SBN #104)  
Steven C. Anderson (SBN #11901)  
1700 Bank of America Plaza  
300 South Fourth Street  
Las Vegas, Nevada 89101

*Attorneys for Defendants*

**- EXHIBIT 1 -**

**- EXHIBIT 1 -**

1                   **JEFF DRAGOVICH'S DECLARATION IN SUPPORT OF DEFENDANTS'**  
2                   **OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

3                   I, Jeff Dragovich, depose and state as follow under penalty of perjury.

4                   1.       I am over the age of 18 and mentally competent. I am the Secretary of Boca Park  
5                   Marketplace LV Syndications Group MM, Inc., manager of Boca Park Marketplace LV  
6                   Syndications Group, LLC. I make this declaration in support of Defendants' Opposition to  
7                   Plaintiff's Motion for Summary Judgment, pending before this court in the action *Higco, Inc. v.*  
8                   *Boca Park Parcels, LLC, et al.*, A660548.

9                   2.       I have personal knowledge of the matters stated herein, unless otherwise stated  
10                  upon information and belief, and am competent to testify thereto. As to those statements made  
11                  upon information and belief, I believe them to be true.

12               3.       I am familiar with the documents referenced herein and/or attached to this  
13                  declaration. These documents were generated in the ordinary course of business by Defendants  
14                  or received and maintained in the ordinary course of business by Defendant.

15               4.       In or about early 2000, Boca Park Parcels, LLC ("Parcels") and Higco, Inc.  
16                  ("Higco"), began negotiating the terms of a lease. As part of the negotiations, Higco drafted a  
17                  Letter of Intent that included several terms Higco wanted incorporated into the lease. A true and  
18                  correct copy of the Letter of Intent is attached as Exhibit 2. One of these terms was for an  
19                  "Exclusive" provision *Id.*

20               5.       On November 5, 2002, Higco and Parcels executed a lease wherein Higco would  
21                  lease certain space to operate Three Angry Wives under a Tavern License (the "Lease"). A true  
22                  and correct copy of the Lease is attached as Exhibit 3.

23               6.       The Lease, as originally executed, contained an Exclusive in subsection (o) that  
24                  while not in the same form as the Exclusive contained in the Letter of Intent, was based upon  
25                  Higco's initial proposal. Thus while Parcels drafted much of the lease, Higco initially drafted the  
26                  Exclusive, and several other "key" Lease provisions.

27               7.       On or about April 29, 2011, Boca Park Marketplace LV Syndications Group, LLC  
28                  executed a lease with Wahoo's Fish Tacos ("Wahoo's") wherein Wahoo's would lease property to

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run its business. Wahoo's will operate under a Supper Club license. Supper Clubs and Taverns carry with them significantly different rights, restrictions, and obligations.

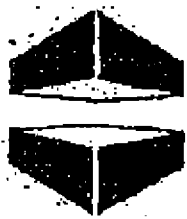
DATED this 11th day of June, 2012.

  
JEFF DRAGOVICH

**- EXHIBIT 2 -**

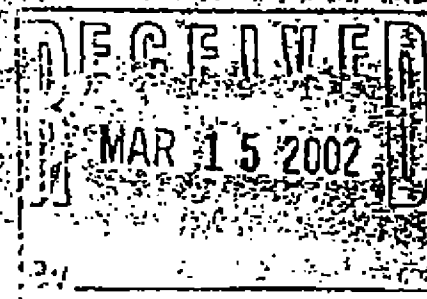
**- EXHIBIT 2 -**





# Cornerstone Company

Commercial Real Estate Services



March 14, 2002

Mr. Jean Marc Joveidi  
Executive Vice President  
Triple Five Nevada Development Corporation  
9510 West Sahara Avenue, Suite 200  
Las Vegas, Nevada 89117

RE: Proposed Restaurant/Tavern Site  
Boca Park  
Las Vegas, NV

Dear Mr. Joveidi:

On behalf of my client Higco, Inc., I would like to thank you for taking the time to meet with me to discuss Higco, Inc.'s ("Higco") interest in pursuing a lease for the above-referenced property. The following reflects the fundamental terms and conditions which we propose be incorporated into a lease document.

**Tenant:** Higco, Inc. or related entity ("Tenant").

**Landlord:** Boca Park Marketplace LLC ("Landlord").

**Size:** 4,700 square foot building with sufficient parking.  
Location of Premises shown on the attached site plan.

**Dimensions:** To be provided (see attached plan).

**Term:** Ten (10) year primary term with four (4), five (5) year options.

**Minimum Rent:** ~~\$2.50~~ per square foot per month. **\$ 3.25 + .50 CAM**

**Possession:** Upon completion of Landlord's work.

**Improvements:** Landlord will (at Landlord's sole cost and expense) complete the mutually agreed upon work to subdivide the existing Sundance space, which shall include, but not be limited to all electrical, plumbing and mechanical work, as required by Higco to operate the

location as a restaurant/sports bar, as well as contribute <sup>\$5</sup> \$15.00 PSF. The exact extent and nature of said work shall be determined prior to commencement of work.

**Signage:**

Higco will have the right to install signage, customary to like business, on the building fascia in the area shown on the attached elevation. All signage will comply with city code. Higco will also have the right to install a 1-ft. by 12-ft. sign panel on shopping center pylons on Rampart and on Charleston, at no cost to Tenant except for the fabrication and installation. Landlord shall provide all necessary electrical requirements to all signage.

**Use:**

As a restaurant and tavern with on-premises sale of liquor, beer and wine and a complete menu. The location may be open 24-hours a day at the discretion of Higco.

**Liquor License:**

Landlord agrees to cooperate with Higco in its application and efforts to obtain its liquor license for the on premise consumption of Hard Liquor, Beer and Wine.

**Exclusive:**

Landlord will grant Higco an exclusive for Boca Park I & II for a Tavern and gaming, except for any tenants currently located in the center which allow gaming (i.e. Vons, Longs). Landlord will grant Tenant a right of first refusal to for a similar restaurant location in Boca Park III.

**Real Estate  
Commission:**

To be paid by Landlord in the following manner:

Commission will be split equally and payable to Cornerstone Company, Ric Truesdell and CB Richard Ellis, Kevin Higgins, as agents for Higco, an amount equal to five percent (5%) of the first five years total rental, and three percent (3%) of the second five years total rental. Said commission shall be paid in the following manner:

- a) One-half (1/2) upon execution of the lease; and
- b) One-half (1/2) upon the commencement of rent.

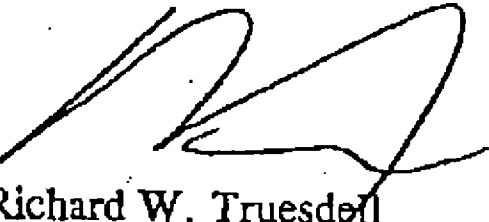
\$3 P.S.F.

Boca Park  
March 14, 2002  
Page 3 of 3

This letter is proposed to reflect the intention of the parties to enter into and document a business relationship. However, the parties agree that the terms and conditions set forth herein shall not constitute a final or binding agreement between them until a formal legal document has been prepared and executed by both parties. THIS LETTER IS NOT A CONTRACT BETWEEN PARTIES.

We look forward to finalizing this deal. If you have any questions, please do not hesitate to contact me.

Sincerely,



Richard W. Truesdell  
President/Broker

cc. Sean Higgins  
Kevin Higgins

Acknowledged this \_\_\_\_\_ day of, 2002.

LANDLORD:

By: Jean Hane Jovcidi  
Title: Executive Vice President

Acknowledged this \_\_\_\_\_ day of, 2002.

TENANT:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Boca Park  
March 14, 2002  
Page 3 of 3

This letter is proposed to reflect the intention of the parties to enter into and document a business relationship. However, the parties agree that the terms and conditions set forth herein shall not constitute a final or binding agreement between them until a formal legal document has been prepared and executed by both parties. **THIS LETTER IS NOT A CONTRACT BETWEEN PARTIES.**

We look forward to finalizing this deal. If you have any questions, please do not hesitate to contact me.

Sincerely,

Richard W. Truesdell  
President/Broker

cc. Sean Higgins  
Kevin Higgins

Acknowledged this \_\_\_\_\_ day of, 2002.

LANDLORD:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Acknowledged this 14<sup>th</sup> <sup>March</sup> day of, 2002.

TENANT:

By: Sean J. Higgins

Title: President

**- EXHIBIT 3 -**

**- EXHIBIT 3 -**

Original

LEASE

THIS LEASE is made and entered into as of this 5<sup>th</sup> day of November 2002, by and between Boca Park Parcels, LLC, a Nevada limited liability company ("Landlord"), and Higco, Inc., a Nevada corporation ("Tenant").

FUNDAMENTAL LEASE PROVISIONS

The following basic Lease provisions (the "Fundamental Lease Provisions") are an integral part of this Lease, are referred to in other sections of this Lease, and are presented in this Section for the convenience of the parties. They are not intended to constitute an exhaustive list of all charges that may become due and payable under this Lease or of all the material terms of the Lease.

(a) **Center:** Section 1.01

The Boca Park Marketplace shopping center, which Center is legally described on Exhibit A-1 attached hereto and incorporated herein by reference (the "Center").

(b) **Leased Property:** Section 1.01

Building J, Suite \_\_\_ in the Center, as shown by cross-hatching on Exhibit A-2 attached hereto and incorporated herein by reference, consisting of approximately 4,390 square feet (the "Leased Property").

(c) **Term of Lease:** Sections 2.01 and 2.04

(i) The term of this Lease shall be for a period of ten (10) years, unless terminated earlier as elsewhere herein provided; provided that if the Commencement Date is not the first day of a calendar month the term hereof shall be for ten (10) years plus the period between the Commencement Date and the first day of the next succeeding calendar month.

(ii) Renewal term: four (4) options of five (5) years each.

(d) **Commencement Date:** Section 2.02

The Commencement Date shall be ninety (90) days after Landlord notifies Tenant that the improvements to be installed by Landlord pursuant to Exhibit C hereof have been substantially completed or as soon as Tenant commences to do business in, upon or from the Leased Property, whichever first occurs.

(e) **Minimum Monthly Rent:** Section 3.01

Beginning on the Commencement Date, Tenant shall pay to Landlord minimum monthly rent in an amount calculated based upon the actual rentable square feet included within the interior portions of the Premises (which shall be determined by measurement of Landlord's architect upon completion of construction of the Premises by Landlord) in accordance with the following rent schedule:

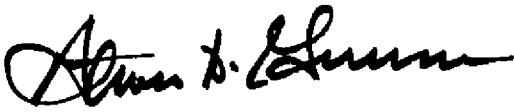
<i>Years</i>	<i>Rent Per Square Foot</i>	<i>Monthly Rent</i>
1-2	\$3.00	\$13,170.00
3-5	\$3.25	\$14,267.50
5-7	\$3.40	\$14,926.00
8-10	\$3.50	\$15,365.00

Thereafter, rent shall be adjusted for any renewal terms in accordance with Section 3.02. Tenant, concurrently with the execution hereof, shall deposit with Landlord the sum of Thirteen Thousand One Hundred Seventy and no/100ths Dollars (\$13,170.00), which sum shall be applied to the first full month's minimum monthly rent.

- (f) **Percentage Rent:** Section 3.06  
None.
- (g) **Payment of Percentage Rent:** Section 3.07  
Not Applicable.
- (h) **Security Deposit:** Section 5  
Fifteen Thousand Three Hundred Sixty Five and no/100ths Dollars (\$15,365.00) (the "Security Deposit").
- (i) **Use:** Section 7  
If available, for use as a Three Angry Wives restaurant and tavern with gaming and on-premises sale of liquor, beer and wine and a complete menu (the "Permitted Use").
- (j) **Trade Name:** Section 7  
Three Angry Wives or other name
- (k) **Common Area Maintenance Cost:** Section 10.02.1  
Six Dollars (\$6.00) per square foot of the Leased Property per year, adjusted annually.
- (l) **Notices Addresses:** Section 33.01  
**Tenant:** Higco, Inc.  
10273 Garden Glen Lane  
Las Vegas, Nevada 89135  
Attn: Sean T. Higgins  
Facsimile: (702) 798-8079  
Telephone: (702) 798-6400  
  
or at the Leased Property once open for business.  
  
**Landlord:** Boca Park Parcels, LLC  
9510 W. Sahara Avenue, Suite 200  
Las Vegas, Nevada 89117  
Attn: Leasing Department  
Facsimile: (702) 242-6941  
Telephone: (702) 242-6937  
  
**with a copy to:** Triple Five Nevada Development Corporation  
9510 W. Sahara Avenue, Suite 200  
Las Vegas, Nevada 89117  
Attn: Legal Department  
Facsimile: (702) 242-6941  
Telephone: (702) 242-6937
- (m) **Broker:** Section 34  
Richard W. Truesdell of Cornerstone Company and Kevin Higgins of CB Richard Ellis, pursuant to a separate agreement.
- (n) **Advertising and Promotional Services** Section 4  
One Dollar per square foot per annum.

# EXHIBIT B



  
CLERK OF THE COURT

GARMAN TURNER GORDON LLP  
ERIC R. OLSEN

Nevada Bar No. 3127  
Email: [eolsen@gtg.legal](mailto:eolsen@gtg.legal)

DYLAN T. CICILIANO  
Nevada Bar No. 12348

Email: [dciciliano@gtg.legal](mailto:dciciliano@gtg.legal)  
650 White Drive, Suite 100

Las Vegas, Nevada 89119

Tel: (725) 777-3000

Fax: (725) 777-3112

Attorneys for Plaintiff  
HIGCO, INC

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

HIGCO, INC., a Nevada corporation,

Plaintiff,

vs.

BOCA PARK PARCELS, LLC, a revoked  
Nevada limited liability company; BOCA PARK  
MARKETPLACE LV, LLC, a Nevada limited  
liability company; BOCA PARK  
MARKETPLACE LV SYNDICATIONS  
GROUP MM, INC., a Nevada corporation;  
BOCA PARK MARKETPLACE  
SYNDICATIONS GROUP, LLC, a Nevada  
limited liability company; and DOES I-X, and  
ROE ENTITIES I-X, inclusive,

Defendants.

CASE NO. A-14-710780-B  
DEPT. XI

**MOTION TO AMEND FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND  
JUDGMENT**

Plaintiffs HIGCO, INC., (“Plaintiffs”) by and through counsel, Eric R. Olsen, Esq. and Dylan T. Ciciliano, Esq., of Garman Turner Gordon, LLP, hereby requests pursuant to Nevada Rules of Civil Procedure (“NRCPP”) 52 and 59 that the Court amend its Findings of Fact, Conclusions of Law and Judgment (“FFCL”) to remove certain findings that were not supported by the evidence. This Motion is made and based on the following Memorandum of Points and

1 Authorities, the papers and pleadings on file with this Court, and any oral argument the Court  
2 may permit at the hearing of this matter.

3 Dated this 17<sup>th</sup> day of August, 2016.

4 GARMAN TURNER GORDON LLP

5 /s/ Dylan Ciciliano  
6 ERIC R. OLSEN  
7 Nevada Bar No. 3127  
8 DYLAN T. CICILIANO  
9 Nevada Bar No. 12348  
650 White Drive, Suite 100  
Las Vegas, Nevada 89119  
Tel: (725) 777-3000  
Attorneys for Plaintiff

10  
11  
12 **NOTICE OF HEARING**

13 YOU, AND EACH OF YOU, will please take notice that the undersigned will bring the  
14 above and foregoing Application on for hearing before this Court on the 23 day of  
15 September, 2016, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_.m. of said day, or as soon  
16 thereafter as counsel can be heard before Department XI.

17 Dated this 17<sup>th</sup> day of August, 2016.

18 GARMAN TURNER GORDON LLP

19 /s/ Dylan Ciciliano  
20 ERIC R. OLSEN  
21 Nevada Bar No. 3127  
22 DYLAN T. CICILIANO  
23 Nevada Bar No. 12348  
650 White Drive, Suite 100  
Las Vegas, Nevada 89119  
Tel: (725) 777-3000  
Attorneys for Plaintiff

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Boca Park Parcels, LLC, Boca Park Marketplace LV, LLC, Boca Park Marketplace LV  
5 Syndications Group, Inc., and Boca Park Marketplace Syndications Group, LLC (collectively,  
6 “Defendants”) submitted Defendant’s (sic) [Proposed] Findings of Fact, Conclusion of Law and  
7 Judgment (“Defendants’ Proposed Findings”), which included certain factual findings that were  
8 intended to introduce error into the Court’s decision.

9 Defendants conceded that they breached the lease with Plaintiff. Their only hope for  
10 avoiding liability was either to demonstrate at trial that Plaintiff was not injured—an assertion  
11 the Court rejected—or to succeed with an appeal on the issue of claim and issue preclusion, i.e.  
12 that Plaintiff was required to bring its claim for breach of contract when it sought a declaration  
13 from the Court as to which lease was controlling. This motion addresses the latter.  
14 Conspicuously added to Defendants’ Proposed Findings are the following statements:

- 15 • [Plaintiff’s original action sought] a judicial declaration that Boca Park  
16 breached the Lease;  
17 • The instant action seeking money damages for the same breach of the  
18 Lease forming the basis for the declaratory judgment entered in the First  
19 Action;  
20 • [Plaintiff] could have asserted its claims for breach of contract and breach  
21 of the implied covenant of good faith and fair dealing in the First Action  
22 but did not.

23 In melding the parties’ proposed findings each of these proposed findings were adopted by the  
24 Court in its FFCL, as part of other findings. However, none of these factual findings is supported  
25 by the record.

26 The complaint and orders in the original declaratory relief action stated that Plaintiff was  
27 attempting to determine what lease actually controlled—Defendants denied Plaintiff had an  
28 exclusive use for gaming. Higco’s original action did not seek a declaration that “Boca Park  
breached the lease” as Defendants contended in the present action. The only evidence of any  
kind adduced at trial here was that the first action was solely one for declaratory relief seeking to  
resolve which version of Plaintiff’s lease controlled. Defendants’ only non-expert witness

1 testified that at the time of the declaratory relief action Defendants did not have the lease  
2 advocated by Higco to be the correct lease, and the witness stated that Defendants did not believe  
3 Plaintiff had an exclusive for gaming. He offered no testimony that the first action sought a  
4 declaration of breach. Accordingly, based on the evidence, the original action did not seek a  
5 judicial declaration that Defendants breached Plaintiff's lease, nor did breach form the basis for  
6 the action.

7 Additionally, the Court did not receive any evidence or take argument as to whether  
8 Plaintiff "could have asserted" its present claims in the declaratory relief action. Indeed, during  
9 closing arguments, the Court said that the FFCL would make note that Defendants' were  
10 reserving the right to argue issue and claim preclusion at a later date, but that no argument from  
11 counsel was necessary. Defendants also failed to present any evidence at trial that Plaintiff could  
12 have brought its claims for breach of contract and breach of the implied covenant of good faith  
13 and fair dealing in the declaratory relief action. Thus, the finding is not substantiated by the  
14 record and the Court must amend the FFCL.

### 15 III.

#### 16 LEGAL ARGUMENT

17 "A motion to alter or amend the judgment [must] be filed no later than 10 days after  
18 service of written notice of entry of the judgment." AA Primo Builders, LLC v. Washington, 126  
19 Nev. 578, 581, 245 P.3d 1190, 1192 (2010)(quoting NRCP 59(e)). It must be "in writing, ... state  
20 with particularity [its] grounds [and] set forth the relief or order sought." Id. NRCP 59(e) does  
21 not impose limits on its scope, only that the motion "must request a substantive alteration of the  
22 judgment." Id. at 82; 245 P.3d at 1193. (

23 In bench trials, the Court is required to make findings of fact that "indicate the factual  
24 basis for the court's ultimate conclusions." Robison v. Robison, 100 Nev. 668, 673, 691 P.2d  
25 451, 455 (1984). Findings of fact must be supported by substantial evidence. Pandelis Const. Co.  
26 v. Jones-Viking Associates, 103 Nev. 129, 130, 734 P.2d 1236, 1237 (1987). "Substantial  
27 evidence is that which a reasonable mind might accept as adequate to support a conclusion."  
28 Gilman v. State Bd. of Veterinary Med. Exam'rs, 120 Nev. 263, 268, 89 P.3d 1000, 1003 (2004).

Moreover, upon a party's motion, "the court may amend its findings [of fact] or make additional findings and may amend the judgment accordingly." NRCP 52(b). "When findings of fact are made in actions tried without a jury, the sufficiency of the evidence supporting the findings may later be questioned whether or not in the district court the party raising the question objected to the findings, moved to amend them, or moved for partial findings." *Id.* Expressly, NRCP 52 may be used to allow a party to address proposed findings to which it did not have an opportunity to object or respond. *Foster v. Bank of Am. Nat. Trust & Sav. Ass'n*, 77 Nev. 365, 373, 365 P.2d 313, 318 (1961)( finding that NRCP 52 "contemplates ex parte findings subject to the right of the other party to move to amend the same").

**A. Three of the Court's findings are based on Defendants' Proposed Findings that are not supported by the record.**

Both Plaintiff and Defendants submitted sets of proposed findings of fact and conclusions of law. The Court seemingly melded the two sets, adopting and rejecting portions of Plaintiff and Defendants' proposed findings of fact and conclusion of law. This Motion requests that the Court amend the FFCL to remove the following three paragraphs taken from Defendants Proposed Findings:

On April 23, 2012, TAW filed a Complaint against Boca Park in Department XIII of this Court (the "First Action") seeking a **judicial declaration that Boca Park breached the Lease** by allowing Wahoo's to operate slot machines on its premises. (Defendants Proposed Findings, at par. 5 (Adopted in FFCL, at Finding of Fact 18))(emphasis added).

On December 5, 2014, TAW filed the instant action **seeking money damages for the same breach of the Lease forming the basis for the declaratory judgment entered in the First Action**. The Complaint in this action asserts two causes of action: Breach of contract and breach of the implied covenant of good faith and fair dealing.

(Defendants Proposed Findings, at par. 7 (Adopted as FFCL, at FN 2))(emphasis added).

In the instant action, TAW is asserting rights and seeking a remedy against Boca Park based on the transaction out of which the First Action arose. **TAW could have asserted its claims for breach of contract and breach of the implied covenant of good faith and fair dealing in the First Action but did not**.

(Defendants Proposed Findings, at par. 8 (Adopted as FFCL, at FN 2))(emphasis added).

1 Plaintiff respectfully submits that Defendants failed to present any evidence of the  
2 aforementioned findings of fact, and that the Court fails to set forth the factual basis to  
3 substantiate the aforementioned findings. Moreover, Defendants' clear intent in inserting the  
4 language into Defendants Proposed Findings is to create error, in order to appeal the Court's  
5 denial of Defendants' Motion to Dismiss.

6 **B. Footnote two should be clarified to reflect that it is not a finding of the Court.**

7 It is undisputed that "the trial focused solely on [Plaintiff's] damages, if any, resulting  
8 from Defendants' breach of the lease and from Wahoo's operation of slot machines on its  
9 premises." (FFCL at FN 1). Defendants included a similar statement in Defendants' Proposed  
10 Findings. (Defendants' Proposed Findings, at par. 12)("The Trial of this action was limited to the  
11 damages TAW has suffered, if any, from Wahoo's operation of slot machines on its premises."  
12 Yet, despite that recognition, Defendants included several other arguments in Defendants'  
13 Proposed Findings, not related to Plaintiff's damages, in an effort to bolster its case on appeal.

14 During trial, the Court stated it was preserving Defendants' argument for appeal that  
15 Plaintiff's claim was barred by principles of res judicata, but that it was not receiving argument  
16 on those issues. In reliance thereon, Plaintiff did not argue in closing the issues surrounding  
17 Defendants' argument that res judicata applied.

18 Nonetheless, in the FFCL, immediately preceding the Findings of Fact, the Court  
19 included footnote 2. Footnote 2 is taken directly from paragraphs 7 to 10 of Defendants'  
20 Proposed Findings, and contains statements that could be interpreted as findings of fact. It is  
21 believed that the Court intended to state Defendants' position, but was not making any specific  
22 findings of fact, including but not limited to:

23 TAW filed the instant action seeking money damages for the same breach of the  
24 Lease forming the basis for the declaratory judgment entered in the First Action.

25 or

26 TAW could have asserted its claims for breach of contract and breach of the  
implied covenant of good faith and fair dealing in the First Action but did not.

27 Accordingly, it is requested that the Court amend the FFCL to clarify that footnote 2 of the FFCL  
28 is not a finding of fact, but instead a statement of Defendants' position.

1     **C.     The original action for Declaratory Relief did not seek a declaration that Defendants**  
2     **breached Plaintiff’s lease.**

3             In Plaintiff’s complaint for Case No. A-12-660548 (the “Declaratory Relief Action”),  
4     Plaintiff brought a single cause of action for declaratory relief. (See Complaint, attached hereto  
5     as **Exhibit 1**). Defendants’ proposed findings—incorporated into the FFCL—assert that  
6     “[Plaintiff] filed a Complaint against Boca Park in Department XIII of this Court (the “First  
7     Action”) seeking a judicial declaration that Boca Park breached the Lease” and that “TAW filed  
8     the instant action seeking money damages for the same breach of the Lease forming the basis for  
9     the declaratory judgment entered in the First Action” are patently false.

10            The complaint in the Declaratory Relief Action states, “Defendants deny that Plaintiff has  
11     been granted an Exclusive Use provision in Boca Park Phase I with respect to gaming,” and it  
12     states that “Plaintiff desires a judicial determination of the interpretation of the Lease with  
13     respect to whether and to what extent the Lease contains an Exclusive Use provision in favor.”  
14     (Id. at p. 5). Plaintiff specifically prayed for one and only one form of relief, namely that the  
15     Court would enter declaratory relief “declaring that the Lease contains a restrictive covenant in  
16     Plaintiff’s favor granting Plaintiff the exclusive right to operate a tavern and right to offer  
17     gaming, with the exception of the Von’s . . . within Boca Park Phase I.” (Id.). In granting  
18     summary judgment in the Declaratory Relief Action, the court detailed that there were several  
19     versions of Plaintiff’s lease and that the originally executed version failed to include the  
20     exclusive use for gaming. (See Order Granting Summary Judgment, attached hereto as **Exhibit**  
21     **2**, at p. 3). The court then went on to find that Defendants sent Plaintiff a corrected lease in  
22     January 2003 that included an exclusive for gaming. (Id. at pp. 3-4). In granting declaratory  
23     relief, the Court found that “the controlling lease between Higco and Defendants is the lease  
24     delivered by Defendants on or after January 20, 2003.” (Id. at p. 4). There was never a request  
25     that the court declare that Defendants breached the lease. To the contrary, Plaintiff requested that  
26     the court merely declare which lease controlled.

27            The testimony at trial in this matter further contradicts Defendants’ Proposed Findings.  
28     Sean Higgins specifically testified that prior to filing the First Action, Defendants’ claimed a

1 “different lease” controlled the parties’ relationship. He then stated that, based on that  
2 disagreement, Plaintiff brought the Declaratory Relief Action asking that the Court resolve  
3 Plaintiff and Defendants’ disagreement as to which lease controlled.

4 Similarly, Defendants’ only non-expert witness confirmed that Defendants did not  
5 believe that Plaintiff had an exclusive use, and he testified that Defendants’ records did not  
6 include a copy of a lease containing an exclusive for gaming. This evidence is consistent with  
7 Defendants actions leading to the filing of, and its position in, the Declaratory Relief Action,  
8 wherein Defendants argued that “there are competing versions of the executed lease” and  
9 requested that the Court reject the lease proposed by Plaintiff. (See Opposition to Summary  
10 Judgment, attached hereto as **Exhibit 3**, at p. 5).

11 The record is clear that the Declaratory Relief Action only concerned a dispute over what  
12 lease and what exclusive language controlled. There is no evidence supporting the findings that  
13 “[Plaintiff] filed a Complaint against Boca Park . . . seeking a judicial declaration that Boca Park  
14 breached the Lease” or that “TAW filed the instant action seeking money damages for the same  
15 breach of the Lease forming the basis for the declaratory judgment entered in the First Action.”  
16 Thus, the Court must amend the FFCL to remove footnote 2, or to amend footnote 2 to exclude  
17 the aforementioned findings. Furthermore, the Court must amend the FFCL to remove paragraph  
18 18 of the findings of fact.

19 **D. Defendants failed to offer any evidence that Plaintiff could have brought its claims**  
20 **in the Declaratory Relief Action.**

21 Defendants Proposed Findings also included the allegation that “[Plaintiff] could have  
22 asserted its claims for breach of contract and breach of the implied covenant of good faith and  
23 fair dealing in the First Action but did not.” The Court incorporated that statement in footnote 2.  
24 Defendants, however, failed to offer any evidence that Plaintiff could have brought the claims in  
25 the Declaratory Relief Action, nor did Defendants argue for such a finding. Therefore, the record  
26 does not support such a finding.

27 On the contrary, Defendants themselves argued at trial that Plaintiff could not show it  
28 suffered any damages—a necessary element of Plaintiff’s claims—until it could show that



1 Wahoo's had a lasting effect on Plaintiff's business and that Plaintiff's customers actually visited  
2 Wahoo's. The Court similarly found that the "Exclusive Use," while valuable, was not assigned  
3 a specific value in negotiations or under the Lease and that the Lease did not contain a liquidated  
4 damages clause, thereby necessitating that Plaintiff demonstrate it had been injured.

5 Also important is the actual timeline of events relative to the Declaratory Relief Action.  
6 Plaintiff moved for summary judgment within days of Wahoo's offering gaming and Judge  
7 Denton entered summary judgment, on November 8, 2012, a few months after Wahoo's started  
8 to offer gaming. Based on this Court's own calculation of damages in this matter, i.e. factoring  
9 Wahoo's long-term performance, Plaintiff certainly could not have brought a claim for damages  
10 prior to obtaining summary judgment in the Declaratory Relief Action, as to whether Higco even  
11 had an exclusive for gaming. Moreover, during trial in this case, Defendants themselves  
12 emphasized that the Court must average Wahoo's earnings over a substantial period of time in  
13 order to derive Plaintiff's damages, and they specifically argued that the Court could not  
14 ascertain damages based on a year of gaming revenue—let alone a few months.

15 Plaintiff's expert also testified that the Court should not consider the first two years of  
16 Wahoo's revenues or performance given that they are not the most accurate indicators of the  
17 impact of Wahoo's on Plaintiff. In short, Defendants maintained, and the record reflects, that  
18 Plaintiff did not have ascertainable damages during the Declaratory Relief Action. That being the  
19 case Higco could not have "asserted its claims for breach of contract and breach of the implied  
20 covenant of good faith and fair dealing in the [Declaratory Relief Action]." Footnote 2 of the  
21 FFCL, therefore, should be amended to remove the reference or clarify that it is not a finding of  
22 the Court.

#### 23 IV.

#### 24 CONCLUSION

25 Based on the foregoing, Plaintiffs' respectfully requests that the Court amend the FFCL's  
26 as set forth above to:

- 27 1) Clarify that Footnote 2 is not a finding of fact of the Court;
- 28 2) To remove references in Footnote 2 and finding of fact 18 that the Declaratory Relief

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Action sought a declaration that Defendants breached the lease; and/or  
3) To remove references in Footnote 2 that Plaintiff could have brought its claims for  
breach of contract and breach of the covenant of good faith and fair dealing in the  
Declaratory Relief Action.

Dated this 17<sup>th</sup> day of August, 2016.

GARMAN TURNER GORDON LLP

/s/ Dylan Ciciliano  
ERIC R. OLSEN  
Nevada Bar No. 3127  
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Attorneys for Plaintiff



## EXHIBIT 1

## EXHIBIT 1

## CIVIL COVER SHEET

A - 1 2 - 6 6 0 5 4 8 - B

X I I I

Clark County, Nevada

Case No. \_\_\_\_\_  
(Assigned by Clerk's Office)**I. Party Information**

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

**Higco, Inc.**

Attorney (name/address/phone):

**Eric R. Olsen**

Gordon Silver

3960 Howard Hughes Pkwy., 9<sup>th</sup> Floor

Las Vegas, NV 89169

(702) 796-5555

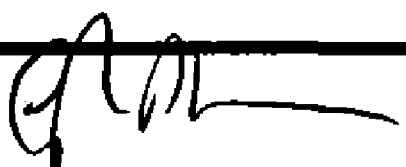
Defendant(s) (name/address/phone):

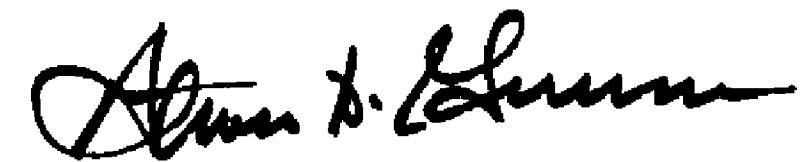
**BOCA PARK PARCELS, LLC, a revoked Nevada limited liability company; BOCA PARK MARKETPLACE LV, LLC, a Nevada limited liability company; BOCA PARK MARKETPLACE LV SYNDICATIONS GROUP MM, INC., a Nevada corporation; BOCA PARK MARKETPLACE SYNDICATIONS GROUP, LLC, a Nevada limited liability company; and DOES I-X, and ROE ENTITIES I-X, inclusive,****II Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Negligence	Torts
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> <b>Negligence – Auto</b> <input type="checkbox"/> <b>Negligence – Medical/Dental</b> <input type="checkbox"/> <b>Negligence – Premises Liability</b> (Slip/Fall) <input type="checkbox"/> <b>Negligence - Other</b>	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> <b>Intentional Misconduct</b> <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <input type="checkbox"/> Anti Trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
<input type="checkbox"/> <b>Summary Administration</b> <input type="checkbox"/> <b>General Administration</b> <input type="checkbox"/> <b>Special Administration</b> <input type="checkbox"/> <b>Set Aside Estates</b> <input type="checkbox"/> <b>Trust/Conservatorships</b> <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> <b>Other Probate</b>	<input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> <b>Breach of Contract</b> <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> <b>Civil Petition for Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> <b>Civil Writ</b> <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> NRS Chapters 78-88   | <input type="checkbox"/> Investments (NRS 104 Art. 8)        | <input type="checkbox"/> Enhanced Case Mgmt/Business             |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input checked="" type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90)  | <input type="checkbox"/> Trademarks (NRS 600A)               |  |

4/20/12  
Date  
Signature of initiating party or representative



CLERK OF THE COURT

**COMP**  
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ERIC R. OLSEN  
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Fax: (702) 369-2666  
*Attorneys for Plaintiff, Higco, Inc.*

DISTRICT COURT

CLARK COUNTY, NEVADA

HIGCO, INC, a Nevada corporation,

Plaintiff,

vs.

BOCA PARK PARCELS, LLC, a revoked  
Nevada limited liability company; BOCA PARK  
MARKETPLACE LV, LLC, a Nevada limited  
liability company; BOCA PARK  
MARKETPLACE LV SYNDICATIONS  
GROUP MM, INC., a Nevada corporation;  
BOCA PARK MARKETPLACE  
SYNDICATIONS GROUP, LLC, a Nevada  
limited liability company; and DOES I-X, and  
ROE ENTITIES I-X, inclusive,

Defendants.

CASE NO. A - 1 2 - 6 6 0 5 4 8 - B  
DEPT. X I I I

**COMPLAINT**

**ARBITRATION EXEMPT:**  
**Declaratory Relief Requested**

***Business Court Requested***

COMES NOW Plaintiff, HIGCO, Inc. ("Plaintiff"), a Nevada corporation, by and  
through its counsel, the law firm of Gordon Silver, and hereby alleges against Defendants,  
BOCA PARK PARCELS, LLC, a revoked Nevada limited liability company; BOCA PARK  
MARKETPLACE LV, LLC, a Nevada limited liability company; BOCA PARK  
MARKETPLACE LV SYNDICATIONS GROUP MM, INC., a Nevada corporation; BOCA  
PARK MARKETPLACE SYNDICATIONS GROUP, LLC, a Nevada limited liability company;  
as follows:

...

...

I.

**THE PARTIES, JURISDICTION AND VENUE**

1. At all times herein mentioned, Plaintiff was and is a Nevada corporation with its principal place of business in the City of Las Vegas, Clark County, State of Nevada.

2. Plaintiff is informed and believes and thereupon alleges that at times herein mentioned, Defendant Boca Park Parcels, LLC ("Boca Park Parcels") was Nevada limited liability company organized and existing under the laws of the State of Nevada, but that Boca Park Parcels has been revoked.

3. Plaintiff is informed and believes and thereupon alleges that at all times herein mentioned, Defendant Boca Park Marketplace LV, LLC ("Boca Park Successor-in-Interest") was and is now a Nevada limited liability company organized and existing under the laws of the State of Nevada.

4. Plaintiff is informed and believes and thereupon alleges that at all times herein mentioned, Defendant Boca Park Marketplace LV Syndications Group MM, Inc. ("Boca Park Parent Corp.") was and is now a Nevada corporation organized and existing under the laws of the State of Nevada.

5. Plaintiff is informed and believes and thereupon alleges that at all times herein mentioned, Defendant Boca Park Marketplace Syndications Group, LLC ("Boca Park Manager") was and is now a Nevada limited liability company organized and existing under the laws of the State of Nevada.

6. The true names and capacities, whether individual, corporate, associate or otherwise of Defendants DOES I-X, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the Defendants designated herein as a fictitiously named Defendant may have rights or duties arising from or related to the contract at issue in this case, or is in some manner responsible for the events and happenings herein referred to, or is an affiliate, subsidiary, parent entity, or successor in interest to one of the herein named defendants. When Plaintiff ascertains the true names and capacities of DOES I-X, inclusive, it will ask leave of this Court to amend its

1 Complaint by setting forth the same.

2 7. The true names and capacities, whether individual, corporate, associate or  
3 otherwise of Defendants ROE ENTITIES I-X, inclusive, are unknown to Plaintiff, who therefore  
4 sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon  
5 alleges that each of the Defendants designated herein as a fictitiously named Defendant may  
6 have rights or duties arising from or related to the contract at issue in this case, or is in some  
7 manner responsible for the events and happenings herein referred to, or is an affiliate, subsidiary,  
8 parent entity, or successor in interest to one of the herein named defendants. When Plaintiff  
9 ascertains the true names and capacities of ROE ENTITIES I-X, inclusive, it will ask leave of  
10 this Court to amend its Complaint by setting forth the same.

11 8. This Court has original jurisdiction pursuant to NRS 30.030.

12 9. Venue is proper in this district pursuant to NRS 13.010.

13 **II.**

14 **GENERAL ALLEGATIONS**

15 ***Plaintiff is Granted an Exclusive Use for Gaming in Boca Park Phase I***

16 7. On or about November 5, 2002, Plaintiff and Defendant Boca Park Parcels  
17 entered into a lease for a property in Boca Park Phase I ("Lease"). (See Lease, attached hereto as  
18 Exhibit 1.)

19 8. Pursuant to the Lease, Defendant Boca Park Parcels was to provide Plaintiff with  
20 a suite "consisting of approximately 4,390 square feet" in Building J of the Boca Park  
21 Marketplace, as further described by Exhibit A-2 of the Lease. (See Ex. 1, at p.1, sec. b; Exhibit  
22 A-2.)

23 9. Defendant Boca Park Parcels also granted Plaintiff an exclusive use for "Boca  
24 Park Phase I for a tavern and gaming, except for any tenants currently located in the center,  
25 which allow gaming (i.e., Vons, Longs)" (hereinafter, the "Exclusive Use Provision"). (See *id.* at  
26 p.3, sec. o (emphasis added).)

27 ...



1     ***The Three Angry Wives is a Restaurant and Tavern That Offers Gaming***

2           10.     As valuable consideration, Plaintiff was to pay Defendant Boca Park Parcels rent  
3 based on a per square foot amount, adjusted periodically during the term of the lease. (*See Ex. 1*  
4 at p.1, sec. e.)

5           11.     In addition, Plaintiff agreed that the permitted use would be “for use as a Three  
6 Angry Wives restaurant and tavern with gaming and on-premises sale of liquor, beer and wine  
7 and a complete menu.” (*See id.* at p.2, sec i.)

8           12.     Plaintiff and Defendants operated under this agreement successfully from  
9 November 5, 2002 until present.

10          13.     Plaintiff is informed and believes, and thereupon alleges, that on June 23, 2005,  
11 Defendant Boca Park Parcels transferred the property upon which the Three Angry Wives is  
12 situated to its successor-in-interest, Defendant Boca Park Successor-in-Interest.

13     ***Defendants Violate Plaintiff's Bargained-For Exclusive Use Provision***

14          14.     Plaintiff is informed and believes that one or more of Defendants Boca Park  
15 Successor-in-Interest, Boca Park Manager and/or Boca Park Parent Corp. recently entered into a  
16 lease agreement with Wahoo's Fish Taco that allows gaming on the Wahoo's Fish Taco leased  
17 premises. This location is within Boca Park Phase I, and is within less than 660 feet of Three  
18 Angry Wives.

19          15.     An application has been made for a gaming license at the Wahoo's Fish Taco  
20 leased premises, is currently in the final stages of licensing approval, and is expected to be  
21 granted on April 19, 2012.

22          16.     Prior to that date, a demand was made by Plaintiff that Defendants not allow  
23 gaming on the Wahoo's Fish Taco leased premises in violation of the Exclusive Lease Provision  
24 of the Lease, but Defendants have made it clear by their actions, and have stated through their  
25 representatives, that they do not believe that Plaintiff has an Exclusive Use provision in its  
26 Lease, and that the Defendants are free to allow other tenants in Boca Park Phase I to offer  
27 gaming, notwithstanding the express language of the Lease.

28     ...

17. Plaintiff and Defendants have differing interpretations of the Lease, and a judicial determination is necessary with respect to the Exclusive Use provision contained in the Lease.

### III.

## CLAIMS FOR RELIEF

## FIRST CLAIM FOR RELIEF (Declaratory Relief)

18. Plaintiff repeats and realleges the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

19. A dispute has arisen and an actual controversy now exists between Plaintiff on the one hand, and Defendants on the other hand, in that Plaintiff contends that the Lease contains a restrictive covenant granting Plaintiff the exclusive right in Boca Park Phase I to offer gaming to its patrons. The only exception to this covenant is the express exception for gaming at the Von's supermarket. Plaintiff also has the exclusive right to own and operate a tavern in Boca Park Phase I. The terms "tavern" and "gaming" are to be read separately, such that Plaintiff has an exclusive related to each category. This restrictive covenant is contained in the Lease, Fundamental Lease Provisions, (o).

20. Defendants deny that Plaintiff has been granted an Exclusive Use provision in Boca Park Phase I with respect to gaming, despite the express language of the Lease.

21. Plaintiff desires a judicial determination of the interpretation of the Lease with respect to whether and to what extent the Lease contains an Exclusive Use provision in Plaintiff's favor, granting Plaintiff an exclusive right operate a tavern and an exclusive right to conduct gaming. Judicial determination is necessary and appropriate at this time so that Plaintiff and Defendants may ascertain the rights and duties between them to the extent they relate to the Lease and occurrences alleged herein.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For declaratory relief declaring that the Lease contains a restrictive covenant in Plaintiff's favor granting Plaintiff the exclusive right to operate a tavern and right to offer gaming, with the exception of the Von's, (interpreted as two separate

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exclusives) within Boca Park Phase I; and

2. For such other and further relief as the Court may deem just and proper.

Dated this 20th day of April, 2012.

GORDON SILVER



---

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*Attorneys for Plaintiff, Higco, Inc.*

EXHIBIT 1

EXHIBIT 1

LEASE

THIS LEASE is made and entered into as of this 5<sup>th</sup> day of November 2002, by and between Boca Park Parcels, LLC, a Nevada limited liability company ("Landlord"), and Higco, Inc., a Nevada corporation ("Tenant").

FUNDAMENTAL LEASE PROVISIONS

The following basic Lease provisions (the "Fundamental Lease Provisions") are an integral part of this Lease, are referred to in other sections of this Lease, and are presented in this Section for the convenience of the parties. They are not intended to constitute an exhaustive list of all charges that may become due and payable under this Lease or of all the material terms of the Lease.

(a) **Center:** Section 1.01

The Boca Park Marketplace shopping center, which Center is legally described on Exhibit A-1 attached hereto and incorporated herein by reference (the "Center").

(b) **Leased Property:** Section 1.01

Building J, Suite \_\_\_ in the Center, as shown by cross-hatching on Exhibit A-2 attached hereto and incorporated herein by reference, consisting of approximately 4,390 square feet (the "Leased Property").

(c) **Term of Lease:** Sections 2.01 and 2.04

(i) The term of this Lease shall be for a period of ten (10) years, unless terminated earlier as elsewhere herein provided; provided that if the Commencement Date is not the first day of a calendar month the term hereof shall be for ten (10) years plus the period between the Commencement Date and the first day of the next succeeding calendar month.

(ii) Renewal term: four (4) options of five (5) years each.

(d) **Commencement Date:** Section 2.02

The Commencement Date shall be ninety (90) days after Landlord notifies Tenant that the improvements to be installed by Landlord pursuant to Exhibit C hereof have been substantially completed or as soon as Tenant commences to do business in, upon or from the Leased Property, whichever first occurs.

(e) **Minimum Monthly Rent:** Section 3.01

Beginning on the Commencement Date, Tenant shall pay to Landlord minimum monthly rent in an amount calculated based upon the actual rentable square feet included within the interior portions of the Premises (which shall be determined by measurement of Landlord's architect upon completion of construction of the Premises by Landlord) in accordance with the following rent schedule:

<i>Years</i>	<i>Rent Per Square Foot</i>	<i>Monthly Rent</i>
1-2	\$3.00	\$13,170.00
3-5	\$3.25	\$14,267.50
5-7	\$3.40	\$14,926.00
8-10	\$3.50	\$15,365.00

Thereafter, rent shall be adjusted for any renewal terms in accordance with Section 3.02. Tenant, concurrently with the execution hereof, shall deposit with Landlord the sum of Thirteen Thousand One Hundred Seventy and no/100ths Dollars (\$13,170.00), which sum shall be applied to the first full month's minimum monthly rent.

- (f) **Percentage Rent:** **Section 3.06**  
None.
- (g) **Payment of Percentage Rent:** **Section 3.07**  
Not Applicable.
- (h) **Security Deposit:** **Section 5**  
Fifteen Thousand Three Hundred Sixty Five and no/100ths Dollars (\$15,365.00) (the "Security Deposit").
- (i) **Use:** **Section 7**  
If available, for use as a Three Angry Wives restaurant and tavern with gaming and on-premises sale of liquor, beer and wine and a complete menu (the "Permitted Use").
- (j) **Trade Name:** **Section 7**  
Three Angry Wives or other name
- (k) **Common Area Maintenance Cost:** **Section 10.02.1**  
Six Dollars (\$6.00) per square foot of the Leased Property per year, adjusted annually.
- (l) **Notices Addresses:** **Section 33.01**  
     Tenant: Higeo, Inc.  
               10273 Garden Glen Lane  
               Las Vegas, Nevada 89135  
               Attn: Sean T. Higgins  
               Facsimile: (702) 798-8079  
               Telephone: (702) 798-6400  
               or at the Leased Property once open for business.  
     Landlord: Boca Park Parcels, LLC  
               9510 W. Sahara Avenue, Suite 200  
               Las Vegas, Nevada 89117  
               Attn: Leasing Department  
               Facsimile: (702) 242-6941  
               Telephone: (702) 242-6937  
     with a copy to: Triple Five Nevada Development Corporation  
                       9510 W. Sahara Avenue, Suite 200  
                       Las Vegas, Nevada 89117  
                       Attn: Legal Department  
                       Facsimile: (702) 242-6941  
                       Telephone: (702) 242-6937
- (m) **Broker:** **Section 34**  
Richard W. Truesdell of Cornerstone Company and Kevin Higgins of CB Richard Ellis, pursuant to a separate agreement.
- (n) **Advertising and Promotional Services** **Section 4**  
One Dollar per square foot per annum.

(o) **Exclusive Use**

**Section 7.17**

Landlord shall grant Tenant an exclusive for Boca Park Phase I for a tavern and gaming, except for any tenants currently located in the center, which allow gaming (i.e., Vons, Longs) (the "Exclusive Use").

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## SECTION 1 DEMISED PREMISES

1.01. Upon the conditions, limitations, covenants and agreements set forth below, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Leased Property. The actual square footage of the Leased Property shall be based upon measurements taken by Landlord's architect or engineer once the foundation and walls are complete. Interior stores shall be measured from centerline to centerline of party walls; exterior stores shall be measured from centerline of party walls to outside face of exterior walls; depth shall be measured from outside face of exterior walls. This Lease confers no rights on Tenant with respect to the Center or any improvements thereon except to the extent specifically provided herein.

1.02. Landlord reserves to itself the use of the roof, exterior walls (other than storefronts) and the area above and below the Leased Property together with the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires and structural elements now or in the future leading through the Leased Property and which serve other parts of the Center. Landlord shall have the sole and exclusive right to designate and from time to time redesignate the name, address, or other designation of the Center. Landlord shall have the right to prohibit any advertising by any tenant which, in Landlord's reasonable opinion, tends to impair the reputation of the Center or its desirability as a location for retail shops, and upon written notice from Landlord Tenant shall refrain from or discontinue such advertising.

## SECTION 2 TERM

2.01. The term of this Lease shall be for the period of time set forth in Section (c)(i) of the Fundamental Lease Provisions above. At such time as the Commencement Date shall have been established, Landlord shall deliver to Tenant a written notice substantially in the form attached hereto as Exhibit B setting forth such date, which date shall be conclusively deemed to be the Commencement Date. In the event that Tenant fails or refuses to open the Leased Property for, and to commence the conduct of, its business within sixty (60) days after the Commencement Date, then, at the option of Landlord, Landlord may treat such failure or refusal as an event of default. Should Landlord not terminate this Lease, Landlord may, without waiving its right to thereafter terminate this Lease for such failure to open, collect all rents due hereunder together with additional rent of one-twentieth (1/20) of the minimum monthly rent per day in lieu of percentage rental if percentage rental is included in this Lease.

2.02. The Commencement Date shall be as set forth in Section (d) in the Fundamental Lease Provisions above. However, should Landlord be unable to complete its Exhibit C work because of any special requirements of Tenant, notwithstanding any other provision hereof, including, but not limited to, Section 31 hereof, the Commencement Date shall be thirty (30) days after Landlord notifies Tenant in writing that Landlord cannot proceed further with its Exhibit C work until such special requirement of Tenant is completed, installed or otherwise satisfied, or as soon as Tenant commences to do business in, upon or from the Leased Property, whichever first occurs. Any other provision hereof to the contrary notwithstanding, should Tenant not fully and timely comply with the provisions of Exhibit C or should Tenant make any change in the plans and specifications for the Leased Property as approved and/or modified by Landlord or Landlord's architect pursuant to said Exhibit C, the Commencement Date shall be thirty (30) days after Landlord notifies Tenant in writing that the Leased Property is ready for construction and installation of the Exhibit C improvements.

2.03. Should Tenant hold possession of the Leased Property with the consent of Landlord after the expiration of the stated term of this Lease, such holding over shall create a tenancy from month to month only, upon the same terms and conditions as are hereinafter set forth, except that minimum rent shall be one hundred fifty percent (150%) of the adjusted minimum rent as determined in Section 3 hereof.

2.04. So long as Tenant is in compliance with the terms hereof, Tenant shall have the right to extend the term of this Lease for the number of additional, consecutive periods set forth in Section (c)(ii) of the Fundamental Lease Provisions above, the first of which shall commence as of the day after the last day of the initial term hereof. Tenant shall notify Landlord of its intention to exercise such option in writing no earlier than nine (9) months and no later than



six (6) months before the end of the preceding lease term. The terms, conditions, and obligations of Landlord and Tenant herein contained shall apply to the extended term, including as said terms relate to the amount of rent to be paid.

### SECTION 3 RENT

3.01. Subject to adjustments as hereinafter provided, beginning on the Commencement Date, Tenant shall pay to Landlord minimum monthly rent in the amount set forth in Section (e) of the Fundamental Lease Provisions above; provided that if the Lease term includes a fractional month, for that fractional month Tenant shall pay on the Commencement Date as minimum rent that proportion of the minimum monthly rent due which the number of days in said fractional month bears to the total number of days in said month.

3.02. During any extension of the initial Lease Term, the minimum rent shall be adjusted to equal one hundred four percent (104%) of the rent due for the previous Lease year.

3.03. Intentionally omitted.

3.04. The minimum rent shall be paid to Landlord in advance not later than the first day of each month during the term of this Lease and any extensions thereof. Rent for any fractional month shall be paid on the Commencement Date.

3.05. If applicable, as used in this Lease, the following terms shall have the following meanings:

(a) "Gross sales" means the aggregate selling price of all merchandise and services sold in, upon or from the Leased Property by Tenant, its subtenants, licensees and concessionaires, personally or from any computer (whether on the Internet or any other sales from any computer), vending or coin-operated or token-operated device, whether for check, cash, on credit or otherwise.

All gross income of Tenant or any other person, firm or corporation from any operations in, at or upon the Leased Property which are not specifically excluded by this Section shall be included in gross sales. All sales originating at, upon or from the Leased Property shall be considered as made and completed thereon and shall be included in Tenant's gross sales even though bookkeeping and payment of the account therefor may be transferred to another place for collection and even though actual filling of the sale or order or actual delivery of the merchandise may be made from a place other than the Leased Property. No credit shall be allowed for uncollected or uncollectable credit accounts. Each sale upon installment or credit shall be treated as a sale for the full price in the month during which such sale is made, regardless of the time when or whether Tenant shall receive payment therefor. In the event that Tenant or any person, firm, entity or corporation which controls, is controlled by or is otherwise affiliated with Tenant owns, operates, or becomes financially interested in a business similar to that conducted on the Leased Property within a radius of three (3) miles in any direction from the perimeter of the Center, the gross sales from such business shall be included in the gross sales made in, upon or from the Leased Property for the purpose of computing the percentage rent payable to Landlord under this Lease to the same extent as if such other premises were part of the Leased Property.

(b) "Lease year" shall mean the twelve (12) month period beginning on the Commencement Date, except that in the event the Commencement Date occurs on a date other than the first day of a month, the Lease year shall commence on the first day of the month following the Commencement Date.

3.06. In addition to the minimum rent, Tenant shall pay Landlord at the time and in the manner herein set forth as percentage rental for each calendar quarter throughout the term hereof the Percentage Rent Rate of Tenant's gross sales made during the particular calendar quarter in question, less the total of the minimum rent paid by Tenant to Landlord for such calendar quarter. If the Leased Property is ready for occupancy on any date other than the first day of a calendar quarter, for that fractional calendar quarter Tenant shall pay the percentage rent in the manner provided herein for payment of percentage rent for a full calendar quarter.

3.07. On or before the 15<sup>th</sup> day of each calendar month during the term of this Lease (including the calendar month next succeeding the last month of the term hereof), Tenant shall deliver to Landlord a written statement signed and certified by Tenant or an officer of Tenant as being true and correct, setting forth the amount of Tenant's gross sales during the calendar month immediately preceding. On or before the Payment Date, Tenant shall deliver to Landlord a written statement signed and certified by Tenant or an officer of Tenant as being true and correct, setting forth the amount of Tenant's gross sales during the calendar quarter immediately preceding, and on the same date shall pay Landlord the percentage rental for the immediately preceding calendar quarter. Within thirty (30) days after the end of each calendar year during the term of this Lease (or within thirty (30) days after the end of the term or the termination hereof), Tenant shall deliver to Landlord a written statement, signed and certified by a Certified Public Accountant or an officer, general partner or similar representative of Tenant, to be true and correct, setting forth the total amount of Tenant's gross sales made during each calendar quarter of the immediately preceding year, and Tenant shall, concurrently therewith, pay Landlord the full balance of the percentage rental due hereunder for such year. The authorized deductions from percentage rental shall be non-cumulative and a computation of payment of the percentage rental shall be made separately for each calendar quarter throughout the term of this Lease without regard to Tenant's gross sales, percentage rental or authorized deductions therefrom in connection with any other calendar quarter.

3.08. All rents and other monies required to be paid by Tenant hereunder shall be paid to Landlord without deduction or offset, prior notice or demand, in lawful money of the United States of America, at such place as Landlord may, from time to time, designate in writing.

3.09. If Tenant shall fail to pay, when the same is due and payable, any rent, percentage rent or any additional rent, or any other amount or charges to be paid by Tenant hereunder, after three (3) business days Tenant shall pay, as additional rent, ten percent (10%) of the amount due (the "Default Rate").

#### SECTION 4 PROMOTIONAL SERVICES

Tenant shall, at Landlord's option, participate in Landlord's marketing fund (the "Marketing Fund"). Landlord shall control and administer the Marketing Fund, if established, in its sole discretion. Tenant shall contribute the sum set forth in Section (n) of the Fundamental Lease Provisions per year.

#### SECTION 5 SECURITY DEPOSIT

Tenant, concurrently with the execution of this Lease, shall deposit with Landlord the Security Deposit as set forth in Section (h) of the Fundamental Lease Provisions. The Security Deposit shall be held by Landlord as security for the full and faithful performance by Tenant of all the terms, covenants and conditions of this Lease by Tenant to be kept and performed during the term hereof, provided that Tenant shall not be excused from the payment of any rent herein reserved or any other charge herein provided. If Tenant defaults with respect to any provision of this Lease, Landlord may, but shall not be required to, use or retain all or any part of the Security Deposit for the payment of any rent, to repair damages to the Leased Property, to clean the Leased Property or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant shall, within five (5) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount.

Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. Should Tenant comply with all of said terms, covenants and conditions and promptly pay all the rental herein provided for as it falls due, and all other sums payable by Tenant to Landlord hereunder, then the Security Deposit shall be returned to Tenant within thirty (30) days after the end of the term of this Lease or after the last payment due from Tenant to Landlord, whichever last occurs. In the event of sale or transfer of the Center or of any portion thereof containing the Leased Property, if Landlord transfers the Security Deposit to the vendee or transferee for the benefit of Tenant, or if such vendee or transferee assumes all liability with respect to the Security Deposit, Landlord shall be considered released by Tenant from all liability for the return of the Security Deposit, and Tenant agrees to look solely to the new landlord for the return of the Security Deposit, and it is

agreed that this Section 5 shall apply to every transfer or assignment to a new landlord. The Security Deposit shall not be assigned, transferred or encumbered by Tenant, and any attempt to do so by Tenant shall not be binding upon Landlord.

## SECTION 6 POSSESSION AND SURRENDER OF LEASED PROPERTY

6.01. Tenant shall by entering upon and occupying the Leased Property, be deemed to have accepted the Leased Property as is and Landlord shall not be liable for any latent or patent defect therein; provided, however, that upon delivery of the Leased Property to Tenant, Landlord and Tenant shall conduct a walk through of the Leased Property and Tenant shall have fifteen (15) days thereafter to prepare and deliver to Landlord a punchlist of correction items, which Landlord shall have a reasonable time thereafter to complete or repair. Tenant will be deemed to have accepted the Leased Property upon completion of repairs by Landlord of such punchlist items. Landlord shall transfer, upon request, any warranties for Landlord's Work to Tenant for up to one (1) year after Lease execution.

6.02. Upon the expiration or sooner termination of the term of this Lease, if Tenant has fully and faithfully performed all of the terms, conditions and covenants of this Lease to be performed by Tenant, but not otherwise, Tenant shall, at its sole cost and expense, remove all personal property and trade fixtures which Tenant has installed or placed on the Leased Property (all of which are hereinafter referred to as "Tenant's Property") from the Leased Property and repair all damage thereto resulting from such removal and Tenant shall thereupon surrender the Leased Property in the same condition as on the date when the Leased Property was ready for occupancy, reasonable wear and tear excepted. If Tenant has not fully and faithfully performed all of the terms, conditions and covenants of this Lease to be performed by Tenant, Tenant shall nevertheless remove Tenant's Property from the Leased Property in the manner aforesaid within fifteen (15) days after receipt of written direction to do so from Landlord. In the event Tenant shall fail to remove any of Tenant's Property as provided herein, Landlord may, at its option, retain all or any portion thereof as abandoned by Tenant, or Landlord may, but is not obligated to, at Tenant's expense, remove all of such property not so removed and repair all damage to the Leased Property resulting from such removal, and Landlord shall have no responsibility to Tenant for any loss or damage to said property caused by or resulting from such removal or otherwise. If the Leased Property is not surrendered at the end of the Lease term, Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in so surrendering the Leased Property including, without limitation, any claims made by any succeeding tenant or prospective tenant founded on such delay. Without limiting the foregoing, lighting fixtures, bulbs and tubes and all partitions, whether removable or not, shall be deemed part of the Leased Property, not Tenant's Property.

## SECTION 7 USE OF LEASED PROPERTY

7.01. The Leased Property is leased to Tenant solely for the Permitted Use set forth in **Section (i)** of the Fundamental Lease Provisions and for no other use whatsoever. Subject to licensing by the City of Las Vegas (or any other required governmental agency), which licensing Tenant shall procure and maintain at its sole cost and expense, and subject to the receipt by Tenant of all required consents and approvals under the Declaration (as defined below), Tenant may sell liquor, beer and wine at the Leased Property for on-premises consumption only and the operation of a restricted gaming facility. Tenant shall not use or suffer to be used the Leased Property, or any portion thereof, for any other purpose or purposes whatsoever, without Landlord's written consent therefor first had and obtained, which consent may be withheld in Landlord's sole and absolute discretion. Tenant shall conduct business under the trade name set forth in **Section (j)** of the Fundamental Lease Provisions above and no other without prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion.

7.02. Tenant shall not, without prior written consent of all insurance companies which have issued any insurance of any kind whatsoever with respect to the Leased Property or the Center, sell, or suffer to be kept, used or sold in, upon or about the Leased Property any gasoline, distillate or other petroleum products or any other substance or material of an explosive, inflammable or radiological nature, in such quantities as may be prohibited by any such insurance policy, or which may endanger any part of the Center or its occupants, business patrons or invitees. Tenant will not use any method of heating or air conditioning other than that supplied by Landlord.



7.03. Tenant shall not, without Landlord's prior written approval, operate or permit to be operated on the Leased Property any coin or token operated vending machines or similar device for the sale or leasing to the public of any goods, wares, merchandise, food, beverages, and/or service, including, without limitation, pay telephones, ATMs, pay lockers, pay toilets and scales, however, foregoing notwithstanding Tenant may operate an ATM and pay telephone with the appropriate approvals and subject to the Declaration.

7.04. Tenant shall not, without Landlord's prior written approval, conduct or permit any fire, bankruptcy or auction sale in, on or about the Leased Property.

7.05. Tenant shall not, without Landlord's prior written approval which shall not be unreasonably withheld, cover, obstruct or place any sign or object on or by any windows, glass doors, lights, skylights, or other apertures that reflect or admit light into the Leased Property.

7.06. Tenant shall refrain from keeping or permitting the keeping of any animals of any kind in, about or upon the Leased Property without Landlord's prior written consent.

7.07. Tenant shall not use the Leased Property for storage or warehouse purposes beyond such use as is reasonably required to keep Tenant's store adequately stocked for retail sales in, at or from the Leased Property.

7.08. No cooking shall be done or permitted by any Tenant on the Leased Property nor shall they be used for the manufacture of merchandise; provided, however, that if the business conducted by Tenant on the Leased Property includes sale of prepared food, Tenant may conduct such cooking on the Leased Property as is normally incident to such business.

7.09. Except as provided for elsewhere herein, Tenant shall keep and maintain in first class order, condition and repair (including any such replacement and restoration as is required for that purpose) the Leased Property and every part thereof and any and all appurtenances thereto wherever located, including, but without limitation, the exterior and interior portion of all doors, door checks, windows, plate glass, storefront, all grease traps, oven and stove exhausts, oven and stove exhaust filters, all plumbing and sewage facilities within the Leased Property fixtures, heating and air conditioning and electrical systems (whether or not located in the Leased Property), sprinkler system, walls, floors and ceilings, and any work performed by or on behalf of Tenant hereunder. Any such work shall be subject to such requirements as Landlord may, in its sole discretion, deem reasonable, including, but not limited to, the requirement that Landlord approve the contractors, materials, mechanics and/or materialmen utilized for such purposes. Landlord agrees to assign to Tenant any warranties Landlord may have pertaining to those parts of the Leased Property Tenant is responsible for maintaining hereunder.

7.10. Tenant shall store all trash and garbage in metal containers located where designated by Landlord and so as not to be visible or create a nuisance to customers and business invitees in the Center, and so as not to create or permit any health or fire hazard, and arrange for the prompt and regular removal thereof.

7.11. Tenant shall at all times during the term of the Lease comply with all governmental rules, regulations, ordinances, statutes and laws, and the orders and regulations of the Insurance Services Office or any other body now or hereafter exercising similar functions, now or hereafter in effect pertaining to the Center, the Leased Property or Tenant's use thereof.

7.12. Tenant hereby covenants and agrees that it, its agents, employees, servants, contractors, subtenants and licensees shall abide by the Rules and Regulations attached hereto as Exhibit D and incorporated herein by reference as well as those provided herein and such additional rules and regulations hereafter adopted and amendments and modifications of any of the foregoing as Landlord may, from time to time, adopt for the safety, care and cleanliness of the Leased Property or the Center or for the preservation of good order thereon.

7.13. Tenant shall operate all of the Leased Property during the entire lease term with sound business practice, due diligence and efficiency so as to provide the maximum gross receipts that may be produced by such manner of

operation. Tenant shall provide, install and at all times maintain in the Leased Property all suitable furniture, fixtures, equipment and other personal property necessary for the conduct of Tenant's business therein, in a businesslike manner, shall carry at all times in the Leased Property a stock of merchandise of such size, character and quality as shall be reasonably designed to produce the maximum return to Tenant (and Landlord if percentage rent is included in this Lease), and shall staff the Leased Property at all times with sufficient sales personnel to serve its customers. Tenant shall conduct its business in the Leased Property during those days, nights and hours as shall be determined by Landlord, which shall not be less than ten (10) hours per day on weekdays, six (6) hours on Saturday and five (5) hours on Sunday. Subject to the Declaration, Tenant may also operate and open for twenty four (24) hours per day. In the event of breach by Tenant of any of the conditions of this Section, Landlord shall have, in addition to any and all remedies herein provided, the right, at its option, to collect not only the minimum rent herein provided, but additional rent at the rate of one-thirtieth (1/30) of the minimum monthly rent herein provided for each and every day that Tenant is not open for business as herein provided. Said additional rent shall be due on demand during such period of Tenant's failure to conduct its business as herein provided.

7.14. Tenant shall keep all merchandise display cases in the Leased Property suitably lighted during such hours as Landlord may reasonably require, including periods other than or in addition to the business hours of Tenant.

7.15. 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, odor, vibration, 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.

7.16. If Tenant's permitted use of the Leased Property involves the sale of food, then Tenant shall maintain a health department rating of "A" (or such other highest health department or similar rating as is available) at all times during the term of this Lease. If Tenant receives any lower rating, then Tenant shall immediately notify Landlord of such rating, shall correct all deficiencies noted by the health department and shall have the Leased Property reinspected. Should the Leased Property be rated lower than an "A" (or such other highest health department or similar rating as is available) more than three times in any twelve (12) month period including any extensions, such shall be an incurable event of default not subject to the notice and cure provisions of Section 26 hereof that will give rise to Landlord's rights pursuant to the terms hereof.

7.17. During the term of the Lease, and so long as the Leased Property is continuously used for the purposes stated herein and Tenant has not been in default under any term or provision of the Lease, Landlord shall not lease or operate within the Center any other directly competing business whose primary use is exclusively the Exclusive Use set forth in Lease Section (o). Notwithstanding anything contained in this Section to the contrary, the exclusive rights granted Tenant hereunder shall not be deemed to restrict the activities of any Major Tenant and that the foregoing shall not apply to existing tenants or occupants in the Center as of the date of this lease to the extent that any such tenant's lease permits such use. "Major Tenant" is defined as any occupant in the Center in excess of 12,000 square feet. Tenant covenants and agrees to indemnify and hold Landlord harmless from any claims, actions, damages, expenses, injuries, costs, including reasonable attorney's fees, arising from any claim resulting in litigation brought by an independent, third party seeking space at the Center that the granting of the foregoing exclusive in favor of Tenant violates any state or federal law, regulation or common law protection or right; provided, however, that Tenant may, at Tenant's option, waive its exclusive rights and avoid this indemnification obligation.

## SECTION 8 ALTERATIONS AND IMPROVEMENTS

8.01. Landlord shall install those improvements required to be installed by it pursuant to Exhibit C attached hereto and incorporated herein by reference. Such improvements shall be constructed substantially in accordance with the plans and specifications adopted pursuant to Exhibit C.

It is understood and agreed by Tenant that any minor changes from any plans or specifications that may hereafter be made during construction shall not affect or change this Lease or invalidate the same. Tenant shall pay to Landlord any expense incurred by Landlord as a result of changes requested by Tenant which affect Landlord's work. Tenant agrees to furnish Landlord, within the time periods required in Exhibit C, with a complete and detailed set of plans and specifications, in compliance with Exhibit C, drawn by a registered architect, which architect shall be previously approved in writing by Landlord. Landlord may require Tenant, at Tenant's sole cost and expense, to furnish a bond or other security satisfactory to Landlord to assure diligent and faithful performance of any work to be performed by Tenant. It is understood and agreed that in the event any disagreement or dispute arises between Landlord and Tenant with reference to the work to be performed with respect to the Leased Property pursuant hereto or with respect to whether or not the Leased Property is available for Tenant's work or Tenant's occupancy, the certification of Landlord's supervising architect or agent shall be conclusive and binding upon Landlord and Tenant.

8.02. Tenant shall observe and perform all of its obligations under this Lease (except its obligations to pay minimum rent, percentage rent (if applicable), and additional rent) from the date upon which the Leased Property is turned over to Tenant or is made available for Tenant's work until the Commencement Date in the same manner as though the Lease term began when the Leased Property was so made available to Tenant.

8.03. Tenant shall not make any additions, alterations, improvements or changes (collectively, "Improvements") in or to the Leased Property without the prior written reasonable approval of Landlord, including, without limitation, any penetration of the roof from the interior or exterior of the Leased Property (which must be performed by the contractor that installed the roof, or such other contractor acceptable to Landlord in its sole and absolute discretion). Any request to make Improvements shall be accompanied by a set of plans drawn by a licensed architect and a proposed timeline for the completion of the work. Except as provided in Exhibit C hereof, any Improvements shall be at the sole cost and expense of Tenant. Any Improvements shall be made promptly and in a good and workmanlike manner and in compliance with all insurance requirements and with all applicable permits, authorizations, building regulations, zoning laws and all other governmental rules, regulations, ordinances, statutes and laws, now or hereafter in effect pertaining to the Leased Property or Tenant's use thereof. Prior to the commencement of such work, Tenant shall give evidence to Landlord that appropriate insurance satisfactory to Landlord has been obtained for the protection of Landlord and its tenants and invitees from damage or injury resulting from the making of such Improvements. In addition, prior to the commencement of such work, Tenant, if required by Landlord, shall secure, at Tenant's expense, performance, labor and materials bonds for the full cost of such work satisfactory to Landlord. Landlord will direct electricians as to where and how telephone wires are to be introduced. No boring or cutting for wires will be allowed without the consent of Landlord. The location of telephones, call boxes and other office equipment affixed to the Leased Property shall be subject to the reasonable approval of Landlord. Tenant shall not lay linoleum, tile, carpet or other similar floor coverings and the same shall not be affixed to the floor of the Leased Property in any manner except as approved by Landlord. The expense of repairing any damage resulting from a violation of this rule or removal of any floor covering shall be borne by the tenant (including Tenant, if applicable) by whom, or by whose contractors, employees or invitees, the damage shall have been caused. Any Improvements made by Tenant shall at Landlord's option become the property of Landlord upon the expiration or sooner termination of this Lease. However, Landlord shall have the right to require Tenant to remove such Improvements, at Tenant's sole cost and expense, upon such termination of this Lease and to surrender the Leased Property in the same condition as it was prior to the making of any or all such Improvements, ordinary wear and tear excepted.

8.04. Tenant will not create or permit to be created or to remain, and will discharge, any lien, encumbrance or charge upon fixtures, equipment, or personal property located within the Leased Property. Tenant, however, foregoing notwithstanding, is permitted to finance its fixturing without violating this paragraph, if Tenant in good faith contests the payment to a contractor, subcontractor or materialman which results in a lien, in such event the Tenant shall not be required to remove the lien, provided that Tenant shall post a bond or other reasonable security in Landlord's favor, pending the Tenant's resolution of the Tenant's dispute.

8.05. Landlord's approval of any drawing, plans or specifications shall not constitute any assumption of any liability for the accuracy or sufficiency thereof.



8.06. If available, a panel identifying Tenant's business shall be installed on the Center's pylon signs, ("Pylon"), at Tenant's sole cost at a position and cost to be determined by Landlord. Tenant's panel shall conform to the Center's signage criteria and shall conform with all governmental and association regulations applicable to the Center. Tenant must use Landlord's sign company for the manufacture and installation of the panel.

8.07. If permitted, Tenant may place a sign identifying Tenant's business on three (3) sides of the Leased Property, which signs shall conform to the Center's signage criteria and shall conform with all governmental and association regulations applicable to the Center.

## SECTION 9 LANDLORD'S REPAIRS

Landlord agrees to keep in good order, condition and repair the foundations, exterior walls and roof structure of the Leased Property (but excluding the exterior and interior of all windows, doors, plate glass and showcases) except for reasonable wear and tear and except for any damage thereto caused by any act or negligence of Tenant or its agents, employees, servants, contractors, subtenants, licensees, customers or business invitees. It is an express condition precedent to all obligations of Landlord to repair and maintain that Tenant shall have notified Landlord in writing of the need for such repairs or maintenance. The cost of such repairs shall be included in the Center's Operating Cost, as such term is hereinafter defined in Section 10.

## SECTION 10 PARKING AND COMMON AREAS

10.01.1. Tenant, its agents, employees, servants, contractors, subtenants, licensees, customers and business invitees shall have the nonexclusive right, in common with Landlord and all others to whom Landlord has or may hereafter grant rights, to use such areas of the Center (including, but not limited to, the parking areas, walkways and sidewalks) as designated from time to time by Landlord, subject to such rules and regulations as Landlord may from time to time impose and subject to the provisions of that Declaration of Restrictions and Operation and Easement Agreement, recorded Book No. 981022 as Instrument No. 10589, Official Records, Office of the County Recorder, Clark County, Nevada, and all amendments thereto (the "Declaration"). Tenant agrees that it, its agents, employees, servants, contractors, subtenants and licensees shall abide by such rules and regulations and all the terms and conditions of the Declaration. Landlord may at any time close any common area to make repairs or changes, to prevent the acquisition of public rights in such areas, or to discourage noncustomer parking. Landlord reserves the right to dedicate all or portions of such common areas and other portions of the Center for public utility purposes. Landlord may do such other acts in and to the common areas as in its judgment may be desirable. Tenant shall not at anytime interfere with the rights of Landlord, other owners of portions of the Center, other tenants, its and their agents, employees, servants, contractors, subtenants, licensees, customers and business invitees to use any part of the parking areas or other common areas.

10.01.2. All parking areas and common areas that Tenant may be permitted to use are to be used under a revocable license, and if any such license is revoked, or if the amount of such area is diminished, Landlord shall not be subject to any liability, nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall revocation or diminution of such areas be deemed constructive or actual eviction.

10.02.1 Beginning on the earlier of (i) the Commencement Date or (ii) the date of opening, Tenant will pay to Landlord monthly in advance in addition to the rent specified in Section 3 hereof, as additional rent, an amount fixed for the first calendar year or portion thereof in the amount set forth in Section (k) of the Fundamental Lease Provisions above annually to cover the "Center's Operating Cost" as defined below. Such annual amount shall be increased as of January 1 of each year by the greater of i.) one hundred four percent (104%) or ii.) the percentage increase, if any, of the U.S. City Average Consumer Price Index for Urban Wage Earners and Clerical Workers for all items (1982-84=100), published by the Bureau of Labor Statistics of the U.S. Department of Labor ("CPI"), plus the actual increase in Impositions as determined by Landlord. In no event shall Center's Operating Cost be decreased. The first CPI increase shall be the percentage increase in the CPI from the month in which the Commencement Date occurs to the

next November after the Commencement Date. Thereafter, the increases shall be based on the percent increase in CPI from each November to November of the next year. If at the time required for the determination the CPI is no longer published or issued, Landlord shall use such index reasonably determined by Landlord. Landlord reserves the right to adjust the Center's Operating Cost during the first ninety (90) days of the renewal term.

10.02.2. For the purpose of this Section 10, the term "Center's Operating Cost" is hereby defined to mean the total cost and expense incurred in insuring, managing, operating, equipping, lighting, repairing, replacing and maintaining the Center, and may include sums due pursuant to the terms of the Declaration.

10.02.3. The additional rent provided to be paid in this Section 10 shall be paid in advance by Tenant on the first day of each month without further demand or any deduction or set off whatsoever.

## SECTION 11 INTENTIONALLY OMITTED

## SECTION 12 TAXES

12.01. Tenant shall be liable for and shall pay before delinquency (and, upon demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of the payment thereof) all taxes (including entertainment taxes), fees and assessments of whatsoever kind or nature, and penalties and interest thereon, if any, levied against Tenant's property or any other personal property of whatsoever kind and to whomsoever belonging situate or installed in or upon the Leased Property whether or not affixed to the realty. If at any time during the term of this Lease any such taxes on personal property are assessed as part of the tax on the real property of which the Leased Property is a part, then in such event Tenant shall pay to Landlord on demand the amount of such additional taxes as may be levied against the real property by reason thereof.

12.02. Impositions shall be included in Center's Operating Cost.

12.03. For the purposes of this Lease "Impositions" means:

(a) Any real estate taxes, fees, assessments or other charges assessed against the Center or any improvements thereon, and the reasonable costs incurred by Landlord in contesting same.

(b) All personal property taxes on personal property used in connection with the Center and related structures other than taxes payable by Tenant under Section 12.01 hereof and taxes of the same kind as those described in said Section 12.01 payable by other tenants on the Center pursuant to corresponding provisions of their leases.

(c) Any and all taxes, assessments, license fees, and public charges levied, assessed, or imposed and which become payable during the term hereof upon all leasehold improvements, over and above the building shell, whether installed by Landlord or Tenant.

(d) Any and all environmental levies or charges now in force affecting the Center or any portion thereof, or which may hereafter become effective, including, but not limited to, parking taxes, levies, or charges, employer parking regulations, and any other parking or vehicular regulations, levies, or charges imposed by any municipal, state or federal agency or authority.

(e) Any other taxes levied or assessed in addition to or in lieu of such real or personal property taxes.

12.04. If at any time during the term of this Lease, under the laws of the United States, Nevada or any political subdivision thereof, a tax or excise on rents or other tax (except income tax), however described, is levied or assessed by the United States, Nevada or said political subdivision against Landlord on account of any rent reserved under this Lease, the Leased Property or any use thereof, all such tax or excise on rents or other taxes shall be paid by Tenant.



Whenever Landlord shall receive any statement or bill for any such tax or shall otherwise be required to make any payment on account thereof, Tenant shall pay the amount due hereunder within ten (10) days after demand therefor accompanied by delivery to Tenant of a copy of such tax statement, if any.

### SECTION 13 UTILITIES

Tenant shall pay all charges for water, gas, heat, electricity, power, garbage service, air conditioning, telephone service, sewer service charges and sewer rentals charged or attributable to the Leased Property, and all other services or utilities used in, upon or about the Leased Property by Tenant or any of its subtenants, licensees or concessionaires during the term hereof. Within ten (10) days after delivery of the Leased Property to Tenant, as evidenced by the notice in Section 2.02, Tenant shall transfer into the name of Tenant the service for all utilities directly servicing the Leased Property, excluding water, sewer and garbage. Landlord shall estimate in advance and Tenant shall pay as additional rent and in the manner specified in Section 10 hereof all charges for water, gas, heat, electricity, power, garbage service, air conditioning, telephone service, sewer service charges and sewer rentals charged or attributable to the Leased Property, and all other services or utilities used in, upon or about the Leased Property by Tenant or any of its subtenants, licensees or concessionaires during the term hereof not metered separately to Tenant and paid by Landlord. Landlord may require that Tenant, at Tenant's cost, provide a separate check or sub meter for one or more utility lines from a main line into the Leased Property. Landlord may charge an administrative fee of the lesser of ten percent (10%) or Five Dollars (\$5.00) of the monthly water cost billed by Landlord.

### SECTION 14 INSURANCE

14.01. Tenant shall not use or occupy, or permit the Leased Property to be used or occupied in a manner which will increase the rates of insurance for the Leased Property or the Center (or any portion thereof), which will make void or voidable any insurance then in force with respect thereto, which would constitute a defense to any action thereon, or which will make it impossible to obtain any insurance with respect thereto. If by reason of the failure of Tenant to comply herewith, any insurance rates for the Leased Property or the Center (or any portion thereof) become higher than they otherwise would be, Tenant shall reimburse Landlord, on the first day of the calendar month next succeeding notice by Landlord to Tenant of said increase, for that part of all insurance premiums thereafter paid by Landlord which shall have been charged because of such failure of Tenant. Any policy of insurance maintained by Tenant insuring against any risk in, upon, about or in any way connected with the Leased Property or Tenant's use thereof shall contain an express waiver of any and all rights of subrogation thereunder whatsoever against Landlord, its officers, agents and employees.

14.02. Tenant shall, at all times during the term hereof and beginning upon Tenant's occupying the Leased Property for any reason or for the construction of Tenant's Improvements, at its sole cost and expense, procure and maintain in full force and effect a policy of commercial public liability insurance issued by an insurance carrier approved by Landlord assuring against loss, damage or liability for injury or death to persons and loss or damage to property occurring from any cause whatsoever in connection with the Leased Property or Tenant's use thereof. Such liability insurance shall be in amounts of not less than One Million Dollars (\$1,000,000.00) per occurrence. All such insurance shall specifically insure the performance by Tenant of the indemnity agreement as to liability for injury to or death of persons and loss of or damage to property contained in Section 16.01 hereof. Tenant, Landlord and Landlord's lender shall be named as the insured and additional insureds, respectively, (and at Landlord's option, any other persons, firms or corporations designated by Landlord shall also be named additional insureds) under each such policy of insurance which shall provide that Landlord, although named as an additional insured, shall nevertheless be entitled to recovery thereunder for any loss suffered by it, its agents, servants and employees by reason of Tenant's negligence.

14.03.01. Tenant shall, at all times during the term hereof, at its sole cost and expense, procure and maintain in full force and effect special form insurance covering Tenant's Property and its merchandise (including Tenant's improvements and betterments), and the personal property of others in Tenant's possession in, upon or about the Leased Property. Such insurance shall be in an amount equal to the then current replacement value of the property required to be insured. Tenant, Landlord and Landlord's lender, as their interests may appear, shall be the named insured and

additional insureds, respectively, (and at Landlord's option, any other persons, firms or corporations designated by Landlord shall be additionally named additional insureds) under each such policy of insurance.

14.03.02. Landlord may procure and maintain in full force and effect a policy of rental insurance in an amount up to twelve (12) times the monthly rent then due hereunder, the premiums for which shall be a part of Center's Operating Cost.

14.03.03. Intentionally omitted.

14.03.04. Landlord shall procure and maintain in full force and effect standard form of fire with extended coverage insurance covering the Leased Property and the building or buildings on the Parcel.

14.04. Intentionally omitted.

14.05. A certificate issued by the insurance carrier for each policy of insurance required to be maintained by Tenant hereunder shall be delivered to Landlord, Landlord's lender and all other named insureds and additional insureds on or before the Commencement Date and thereafter, as to policy renewals, within thirty (30) days prior to the expiration of the terms of each such policy. Each of said certificates of insurance and each such policy of insurance required to be maintained by Tenant hereunder shall be from an insurer and in form and substance satisfactory to Landlord and shall expressly evidence insurance coverage as required by this Lease and shall contain an endorsement or provision requiring not less than thirty (30) days written notice to Landlord and all other named insureds and additional insureds prior to the cancellation, diminution in the perils insured against, or reduction of the amount of coverage of the particular policy in question.

14.06. Tenant hereby waives any and all rights of recovery from Landlord, its officers, agents and employees for any loss or damage, including consequential loss or damage, caused by any peril or perils (including negligent acts) enumerated in each form of insurance policy required to be maintained by Tenant hereunder.

14.07. Each policy of insurance provided for in this Section 14 shall contain an express waiver of any and all rights of subrogation thereunder whatsoever against Landlord, its officers, agents and employees. All such policies shall be written as primary policies and not contributing with or in excess of the coverage, if any, which Landlord may carry. Any other provision contained in this Section 14 or elsewhere in this Lease notwithstanding, the amounts of all insurance required hereunder to be paid by Tenant shall be not less than an amount sufficient to prevent Landlord or Tenant from becoming a co-insurer.

14.08. Tenant shall replace or self insure, at the expense of Tenant, any and all plate and other glass damaged or broken from any cause whatsoever in and about the Leased Property. Tenant shall insure, and keep insured, at Tenant's expense, all plate and other glass in the Leased Property for and in the name of Tenant and Landlord.

## SECTION 15 LIENS

Tenant shall at all times indemnify, save and hold Landlord, the Leased Property and the leasehold created by this Lease free, clear and harmless from any and all claims, liens, demands, charges, encumbrances, litigation and judgments arising directly or indirectly out of any use, occupancy or activity of Tenant, or out of any work performed, material furnished, or obligations incurred by Tenant in, upon or otherwise in connection with the Leased Property. Tenant shall give Landlord written notice at least ten (10) business days prior to the commencement of any such work on the Leased Property to afford Landlord the opportunity of filing appropriate notices of nonresponsibility. Tenant shall, at its sole cost and expense, within fifteen (15) days after filing of any lien of record, obtain the discharge and release thereof. Nothing contained herein shall prevent Landlord, at the cost and for the account of Tenant, from obtaining said discharge and release in the event Tenant fails or refuses to do the same within said fifteen (15) day period.

## SECTION 16 INDEMNIFICATION

16.01. Tenant hereby covenants and agrees to indemnify, save and hold Landlord, the Leased Property and the leasehold estate created by this Lease free, clear and harmless from any and all liability, loss, damages, costs, expenses, including reasonable attorneys' fees, judgments, claims, liens and demands of any kind whatsoever in connection with, arising out of, or by reason of any act, omission or negligence of Tenant, its agents, employees, servants, contractors, subtenants, licensees, customers or business invitees while in, upon, about or in any way connected with the Leased Property or the Center or arising from any accident, injury or damage, howsoever and by whomsoever caused, to any person or property whatsoever, occurring in, upon, about or in any way connected with the Leased Property or any portion thereof other than as a result of Landlord's gross negligence or willful acts. The foregoing obligation to indemnify shall include, but is not limited to, Landlord's reasonable attorneys' fees, investigation costs and all other of Landlord's costs, expenses and liabilities reasonably incurred in connection therewith from the first notice that any claim or demand is to be made or may be made. Tenant further agrees that if, by reason of any act or omission of Tenant, Landlord is made a party defendant in any legal proceeding concerning this Lease or the Leased Property, Tenant shall indemnify and hold Landlord harmless from all costs, expenses, and liabilities (including attorneys' fees and court costs) it may incur by reason thereof.

16.02. Landlord shall not be liable to Tenant or to any other person whatsoever for any damage occasioned by falling plaster, electricity, plumbing, gas, water, steam, sprinkler or other pipe and sewage system, by the bursting, running or leaking of any tank, washstand, closet, waste or other pipes, or by water being upon or coming through the roof, skylight, vent, trap door or otherwise for any reason whatsoever or for any damage arising from any acts or neglect of co-tenants or occupants of the Center or of adjacent property or of the public, including, but not limited to, breach of any lease or rules and regulations, nor shall Landlord be liable in damages or otherwise for any failure to furnish, or interruption of, service of any utility.

## SECTION 17 SUBORDINATION

17.01. Tenant agrees upon request of Landlord to subordinate this Lease and its rights hereunder to the lien of any mortgage, deed of trust or other encumbrance, (including, but not limited to, sale-lease back transactions), together with any renewals, extensions or replacements thereof, hereafter placed, charged or enforced against the Leased Property, or any portion thereof, or any property of which the Leased Property is a part, and to execute and deliver at any time, and from time to time, upon demand by Landlord, such documents as may be required to effectuate such subordination, and in the event that Tenant shall fail, neglect or refuse to execute and deliver any such documents to be executed by it, Tenant hereby appoints Landlord, its successors and assigns, the attorney-in-fact of Tenant irrevocably to execute and deliver any and all such documents for and on behalf of Tenant.

17.02. In the event that the mortgagee, beneficiary of any mortgage or deed of trust, or ground lessor (collectively, "Mortgagee") elects to have this Lease a prior lien to its mortgage, deed of trust, or ground lease, then and in such event, upon such Mortgagee's giving written notice to Tenant to that effect, this Lease shall be deemed prior in lien to such mortgage, deed of trust, or ground lease whether this Lease is dated prior to or subsequent to the date of recordation of such mortgage, deed of trust, or ground lease.

17.03. Tenant shall, in the event any proceedings are brought for the foreclosure of the Leased Property or in the event of exercise of the power of sale under any deed of trust made by Landlord covering the Leased Property, or termination of any ground lease, attorn to the purchaser upon any such foreclosure or sale, or ground lessor, as the case may be, and recognize such purchaser or lessor as the landlord under this Lease.

17.04. Tenant hereby agrees not to look to any Mortgagee for accountability for any security deposit required by Landlord hereunder, unless said sums have been actually received by said Mortgagee as security for Tenant's performance of this Lease.



## SECTION 18 ASSIGNMENT AND SUBLETTING

18.01. Tenant shall not assign, mortgage, pledge, hypothecate or encumber this Lease nor the leasehold estate hereby created or any interest herein, whether by agreement, operation of law or otherwise, or sublet the Leased Property or any portion thereof, or license the use of all or any portion of the Leased Property without the prior written consent of Landlord. If this Lease be assigned, or if the Leased Property or any part thereof be sublet or occupied by anybody other than Tenant, Landlord may collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this Section, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. If Tenant is a corporation or a partnership, the issuance of any additional stock or equity interests and/or the transfer, assignment or hypothecation of any stock or interest in such corporation or partnership in the aggregate in excess of forty-nine percent (49%) of such interests, as the same may be constituted as of the date of this Lease, whether directly or indirectly, shall be deemed an assignment within the meaning of this Section 18.

18.02. In the absence of an express agreement in writing to the contrary, executed by Landlord, no assignment, mortgage, pledge, hypothecation, encumbrance, subletting or license hereof or hereunder shall act as a release of Tenant or any guarantor from any of the terms, covenants and conditions of this Lease on the part of Tenant to be kept and performed. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver of any of the provisions of this Lease or a consent to the assignment or subletting of the Leased Property.

18.03. Each assignee or transferee shall assume and be deemed to have assumed this Lease and shall be and remain liable jointly and severally with Tenant for the payment of all rents due hereunder, and for the due performance during the term of this Lease of all the covenants and conditions herein set forth by Tenant to be kept and performed. No assignment or transfer shall be effective or binding on Landlord unless said assignee or transferee shall concurrently deliver to Landlord a recordable instrument which contains a covenant of assumption by said assignee or transferee; provided that a failure or refusal to so execute said instrument shall not release or discharge the assignee or transferee from its liability aforesaid.

18.04. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation hereof, or the termination of this Lease by Landlord pursuant to any provision contained herein, shall not work a merger, but at the option of Landlord, shall either terminate any or all existing subleases or subtenancies, or operate as an assignment to the Landlord of any and all such subleases or subtenancies.

## SECTION 19 INSOLVENCY AND DEATH

19.01. It is understood and agreed that neither this Lease nor any interest herein or hereunder, nor any estate hereby created in favor of Tenant, shall pass by operation of law under any state or federal insolvency, bankruptcy or inheritance act, or any similar law now or hereafter in effect, to any trustee, receiver, assignee for the benefit of creditors, heir, legatee, devisee, or any other person whomsoever without the express written consent of Landlord first had and obtained therefor.

19.02. Landlord and Tenant hereby acknowledge and recognize that Section 365 of Title 11 of the United States Code (the "Bankruptcy Code") provides that a debtor-in-possession or a trustee, with court approval, may assume or reject an unexpired lease and that in a case under Chapter 11 of the Bankruptcy Code, the court, on request of a party to such unexpired lease, may order the trustee or debtor-in-possession to determine within a specified period of time whether to assume or reject such unexpired lease. Because of the fact that time is of the essence to this Lease, Tenant expressly covenants, agrees and bargains to file or cause to be filed a motion either to assume or to reject this Lease within forty-five (45) days of the filing of a voluntary petition under the Bankruptcy Code or the entry of an order for relief in the event of the filing of an involuntary petition.

19.03. Landlord and Tenant further recognize that Section 365 of the Bankruptcy Code provides for the assumption and assignment, subject to court approval, of unexpired leases. Court approval of such assumption and assignment is pre-conditioned on, among other things, the provision of adequate assurance of future performance. In view of the foregoing, Landlord and Tenant do hereby bargain, covenant and agree that the following, and each of them, specifically and without limiting Tenant's obligations to continue to perform all of the terms of this Lease, are conditions and covenants the fulfillment of which are necessary to provide Landlord with adequate assurance of future performance:

(a) The assumption and assignment of this Lease will not breach any provision, such as a radius, location use or exclusive use provision, in any other lease, financing agreement or master agreement (including the Declaration and any other covenants, conditions and restrictions encumbering the Center) relating to the Center;

(b) The proposed assignee will not increase the burden on the common area and will not use the Leased Property in violation of the terms of this Lease and any restrictive covenant applicable to the Center then in force;

(c) The proposed assignee will, in Landlord's reasonable opinion, be a suitable tenant for a first class shopping center; and

(d) The proposed assignee has adequate financial resources to pay all rent and other consideration due under this Lease and to assume all other obligations of Tenant under this Lease.

## SECTION 20 CONDEMNATION

20.01. Should the whole or any part of the Leased Property be condemned or taken by a competent authority for any public or quasi-public purpose, all awards payable on account of such condemnation and taking shall be payable to Landlord, and Tenant hereby waives any and all interest therein. Tenant, however, may make a separate claim for the taking of its trade fixtures, furniture, and or leasehold improvements, as well as any special damages, such as Tenant's moving expenses.

20.02. If the whole of the Leased Property shall be so condemned and taken, then this Lease shall terminate upon such taking. If greater than one-third (1/3) of the floor space of the Leased Property is condemned or taken, and if the remaining portion thereof will not be reasonably adequate for the operation of Tenant's business after Landlord completes such repairs or alterations as Landlord elects to make, either Landlord or Tenant shall have the option to terminate this Lease by notifying the other party hereto of such election in writing within twenty (20) days after such taking. If by such condemnation and taking one-third (1/3) or less of the Leased Property has been taken, or if only a part of the Leased Property is taken and the remaining part thereof is suitable for the purposes for which Tenant has leased the Leased Property, this Lease shall continue in full force and effect, but the minimum rent shall be reduced in an amount equal to that proportion of the minimum rent which the floor space of the portion taken bears to the total floor space of the Leased Property. In the event a partial taking does not terminate this Lease, Tenant, at Tenant's expense, shall make repairs and restorations to the remaining premises of the nature of Tenant's work required by Exhibit C and shall also repair or replace its stock in trade, fixtures, furniture, furnishings, floor coverings and equipment and if Tenant has closed shall promptly reopen for business. If any part of the Center other than the Leased Property shall be so taken or appropriated, Landlord shall have the right, at its option to terminate this Lease by notifying Tenant within six (6) months of such taking.

20.03. Tenant shall in no case be entitled to compensation from Landlord for damage on account of any annoyance or inconvenience in making repairs hereunder. If this Lease is terminated pursuant to this Section 20 and Tenant is not in default hereunder, rent shall be prorated as of the date of termination, any security deposited with Landlord shall be returned to Tenant and all rights and obligations hereunder shall cease and terminate. Except to the extent provided for in this Section 20, neither the rent payable by Tenant nor any of Tenant's other obligations under any provision of this Lease shall be affected by any condemnation or taking of the Leased Property or the Center or any portion of either.

20.04. For the purposes hereof, a deed in lieu of condemnation shall be deemed a taking. A change in grade of street adjoining the Center shall also be deemed a taking.

## SECTION 21 DESTRUCTION OF LEASED PROPERTY

21.01. In the case of total destruction of the Leased Property, or any portion thereof substantially interfering with Tenant's use of the Leased Property, whether by fire or other casualty, not caused by the fault or negligence of Tenant, its agents, employees, servants, contractors, subtenants, licensees, customers or business invitees, this Lease shall terminate except as herein provided. If Landlord notifies Tenant in writing within forty-five (45) days of such destruction of Landlord's election to repair said damage, and if Landlord proceeds to and does repair such damage with reasonable dispatch, this Lease shall not terminate, but shall continue in full force and effect, except that Tenant shall be entitled to a reduction in the minimum rent in an amount equal to that proportion of the minimum rent which the number of square feet of floor space in the unusable portion bears to the total number of square feet of floor space in the Leased Property. Said reduction shall be prorated so that the rent shall only be reduced for those days any given area is actually unusable. In determining what constitutes reasonable dispatch, consideration shall be given to delays caused by labor disputes, civil commotion, war, warlike operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or control, fire or other casualty, inability to obtain any materials or services, acts of God and other causes beyond Landlord's control. If this Lease is terminated pursuant to this Section 21 and if Tenant is not in default hereunder, rent shall be prorated as of the date of termination, any security deposited with Landlord shall be returned to Tenant, and all rights and obligations hereunder shall cease and terminate.

21.02. Notwithstanding the foregoing provisions, in the event the Leased Property, or any portion thereof, shall be damaged by fire or other casualty due to the fault or negligence of Tenant, its agents, employees, servants, contractors, subtenants, licensees, customers or business invitees, then, without prejudice to any other rights and remedies of Landlord, this Lease shall not terminate, the damage shall be repaired by Tenant, and there shall be no apportionment or abatement of any rent.

21.03. In the event of any damage not limited to, or not including, the Leased Property, such that the building of which the Leased Property is a part is damaged to the extent of twenty-five (25%) percent or more of the cost of replacement, or the buildings (taken in the aggregate) of the Center owned by Landlord shall be damaged to the extent of more than twenty-five percent (25%) of the aggregate cost of replacement, Landlord may elect to terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the occurrence of the event causing the damage.

21.04. The provisions of this Section 21 with respect to Landlord shall be limited to such repair as is necessary to place the Leased Property in the condition specified for Landlord's work by Exhibit C and when placed in such condition the Leased Property shall be deemed restored and rendered tenantable promptly following which time Tenant, at Tenant's expense shall perform Tenant's Work required by Exhibit C and Tenant shall also repair or replace its stock in trade, fixtures, furniture, furnishings, floor coverings and equipment, and if Tenant has closed, Tenant shall promptly reopen for business.

21.05. All insurance proceeds payable under any fire and/or rental insurance shall be payable solely to Landlord and Tenant shall have no interest therein. Tenant shall in no case be entitled to compensation for damages on account of any annoyance or inconvenience in making repairs under any provision of this Lease. Except to the extent provided for in this Section 21, neither the rent payable by Tenant nor any of Tenant's other obligations under any provision of this Lease shall be affected by any damage to or destruction of the Leased Property or any portion thereof by any cause whatsoever.



## SECTION 22 RECORDS AND BOOKS OF ACCOUNT

22.01. Tenant, its subtenants, licensees, concessionaires and any other person, firm or corporation selling merchandise or services in, upon or from the Leased Property or any part thereof shall keep and maintain at the Leased Property complete, accurate and customary records and books of account of all sales, whether for cash or on credit, and all business transactions made in, upon or from the Leased Property during each year, and the same shall be retained intact for a period of not less than three (3) years after the end of the year to which said records and books of account pertain. Landlord shall be entitled at all times during business hours, at the Leased Property, through Landlord's duly authorized agents, attorneys or accountants, to inspect and make copies of any and all such records and books of account, including copies of any sales tax or information returns required by or furnished to any governmental authority, together with any and all other records and documents in any way bearing on Tenant's gross sales as herein defined.

22.02. If percentage rent is included in the Lease, Landlord shall be entitled at any time to cause an audit to be made by any person authorized by Landlord of all records and books of account required to be kept hereunder together with any other records and data which Landlord believes would be of assistance in such audit, and if such audit discloses that Tenant's gross sales as previously reported for the period audited were understated, Tenant shall immediately pay to Landlord the additional percentage rental due for the period audited, together with interest at twelve percent (12%) per annum on such shortage of rental from the time such rental became due. If such shortage was in excess of two percent (2%) of the actual percentage rental due as disclosed by such audit, Tenant shall immediately pay to Landlord the cost of such audit. If such shortage was in excess of five percent (5%) of said actual percentage rental due, in addition to the monies due as provided herein, said shortage shall, at the option of the Landlord, terminate this Lease.

## SECTION 23 RIGHT OF ACCESS

23.01. Landlord and its authorized agents and representatives shall be entitled to enter the Leased Property at any reasonable time for the purpose of observing, posting or keeping posted thereon notices provided for hereunder, and such other notices as Landlord may deem necessary or appropriate for protection of Landlord, its interest or the Leased Property; for the purpose of inspecting the Leased Property or any portion thereof; and for the purpose of making repairs to the Leased Property or any other portion of the Center and performing any work therein or thereon which Landlord may elect or be required to make hereunder, or which may be necessary to comply with any laws, ordinances, rules, regulations or requirements of any public authority or any applicable standards that may, from time to time, be established by the insurance services office or any similar body, or which Landlord may deem necessary or appropriate to prevent waste, loss, damage or deterioration to or in connection with the Leased Property or any other portion of the Center or for any other lawful purpose. Landlord shall have the right to use any means that Landlord may deem proper to open all doors in the Leased Property in an emergency. Entry into the Leased Property obtained by Landlord by any such means shall not be deemed to be forcible or unlawful entry into, or a detainer of, the Leased Property, or an eviction of Tenant from the Leased Property or any portion thereof. Nothing contained herein shall impose any duty on the part of Landlord to do any work or repair, maintenance, reconstruction or restoration, which under any provision of this Lease is required to be done by Tenant; and the performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to do the same.

23.02. Landlord may, during the progress of any work on the Leased Property, keep and store upon the Leased Property all necessary materials, tools and equipment and may erect scaffolding and other similar structures. Landlord shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business or quiet enjoyment, or other damage or loss to Tenant by reason of making any such repairs or performing any such work upon the Leased Property, or on account of bringing materials, supplies and equipment into, upon or through the Leased Property during the course thereof or erecting such structures, and the obligations of Tenant under this Lease shall not thereby be affected in any manner whatsoever. Landlord shall, however, in connection with the performance of such work, cause as little inconvenience, disturbance or other damage or loss to Tenant as may be reasonably possible under the circumstances.

23.03. Landlord, and/or its authorized agents and representatives, shall be entitled to enter the Leased Property at all reasonable times for the purpose of exhibiting the same to prospective purchasers and lenders and, during the final six (6) months of the term of this Lease, Landlord shall be entitled to exhibit the Leased Property for lease and post signs therein announcing the same.

#### SECTION 24 EXPENDITURES BY LANDLORD

Whenever under any provision of this Lease Tenant shall be obligated to make any payment or expenditure, or to do any act or thing, or to incur any liability whatsoever, and Tenant fails, refuses or neglects to perform as herein required, Landlord shall be entitled, but shall not be obligated, to make any such payment or to do any such act or thing, or to incur any such liability, all on behalf of and at the cost and for the account of Tenant. In such event, the amount thereof, together with the greater of (i) ten percent (10%) of the amount due and (ii) interest thereon at the rate of fifteen percent (15%) per annum, shall constitute and be collectable as additional rent on demand.

#### SECTION 25 OFFSET STATEMENT

Tenant agrees that within five (5) days of any demand therefor by Landlord, Tenant will execute and deliver to Landlord and/or Landlord's designee a recordable certificate stating that this Lease is unmodified and in full force and effect, such defenses or offsets as are claimed by Tenant, if any, the date to which all rentals have been paid, and such other information including financial statements, concerning the Lease, the Leased Property and Tenant as Landlord or said designee may request.

#### SECTION 26 DEFAULT

26.01.1. Tenant's compliance with each and every covenant and obligation hereof on its part to be performed hereunder is a condition precedent to each and every covenant and obligation of Landlord hereunder.

26.01.2. Landlord shall have all the rights and remedies provided in this Section or elsewhere herein, in the event that:

(a) Tenant shall default in the payment of any sum of money required to be paid hereunder and such default continues for ten (10) days after written notice thereof from Landlord to Tenant; or

(b) Tenant shall default in the performance of any other term, covenant or condition of this Lease on the part of Tenant to be kept and performed and Tenant fails to cure such default as soon as reasonably possible under the circumstances, not to exceed fifteen (15) days; provided, however, that if the default complained of in such notice is of such a nature that the same can be rectified or cured, but cannot with reasonable diligence be done within said fifteen (15) day period, then such default shall be deemed to be rectified or cured if Tenant shall, as soon as reasonably possible within said fifteen (15) day period, commence to rectify and cure the same and shall thereafter complete such rectification and cure with all due diligence, and in any event, within sixty (60) days from the date of giving of such notice; or

(c) Tenant should vacate or abandon the Leased Property during the term of this Lease. Tenant shall be deemed to have "vacated" or "abandoned" the Leased Property if Tenant fails to open its business to the public for three (3) consecutive days, except, with Landlord's prior written consent, closure due to renovation, remodeling, force majeure, or damage or destruction as set forth in Section 21 above; or

(d) Tenant should default under any other agreement with, or for the benefit of, Landlord; or

(e) There is commenced any case in bankruptcy against the original named Tenant, any assignee or sublessee of the original named Tenant, any then occupant of the Leased Property or any guarantor of all or any of



Tenant's obligations hereunder (collectively "Key Persons") or an order for relief is entered with respect to any Key Person or there is appointed a receiver or trustee to take possession of any of the assets of any Key Person or the Leased Property or any Key Person applies for or consents to such appointment, or there is a general assignment by any Key Person for the benefit of creditors, or any action is taken by or against any Key Person under any state or federal insolvency or bankruptcy act, or any similar law now or hereafter in effect or any property of any Key Person is taken or seized under levy of execution or attachment, or any Key Person admits in writing its inability to pay its debts as they mature; provided, however, that the filing of a petition in bankruptcy or any other action taken against any Key Person without the Key Person's consent by an independent third party adverse in interest to the Key Person, except seizure under levy of execution or attachment, shall not be a default hereunder unless the same shall continue in effect for sixty (60) days.

26.01.3. All cure periods provided herein shall run concurrently with any periods provided by law.

26.02. In the event of default as designated in this Section or elsewhere herein, in addition to any other rights or remedies provided for herein or at law or in equity, Landlord, at its sole option, shall have the following rights:

(a) The right to declare the term of this Lease ended and to reenter the Leased Property and take possession thereof, and to terminate all of the rights of Tenant in and to the Leased Property;

(b) The right, without declaring the term of this Lease ended, to reenter the Leased Property and to occupy and/or relet the same, or any portion thereof, for and on account of Tenant as hereinafter provided, and Tenant shall be liable for and pay to Landlord on demand all such expenses as Landlord may have paid, assumed or incurred in recovering possession of the Leased Property, including costs, expenses, attorneys' fees, and expenditures placing the same in good order and condition, or preparing or altering the same for reletting, and all other expenses, commissions and charges paid, assumed or incurred by Landlord in or in connection with reletting the Leased Property. Any such reletting as provided for herein may be for the remainder of the term of this Lease or for a longer or shorter period. Such reletting shall be for such rent and on such other terms and conditions as Landlord, in its sole discretion, deems appropriate. Landlord may execute any lease made pursuant to the terms hereof either in Landlord's own name or in the name of Tenant, or assume Tenant's interest in and to any existing subleases to any tenant of the Leased Property, as Landlord may see fit, and Tenant shall have no right or authority whatsoever to collect any rent from such tenants, subtenants, licensees or concessionaires on the Leased Property. In any case, and whether or not the Leased Property or any part thereof be relet, Tenant, until the end of what would have been the term of this Lease in the absence of such default and whether or not the Leased Property or any part thereof shall have been relet, shall be liable to Landlord and shall pay to Landlord monthly an amount equal to the amount due as rent hereunder, less the net proceeds for said month, if any, of any reletting effected for the account of Tenant pursuant to the provisions of this paragraph, after deducting from said proceeds all of Landlord's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorneys' fees, expenses of employees, alteration costs, and expenses of preparation for such reletting (all said costs are cumulative and shall be applied against proceeds of reletting until paid in full). Landlord reserves the right to bring such actions for the recovery of any deficits remaining unpaid by Tenant to Landlord hereunder as Landlord may deem advisable from time to time without being obligated to await the end of the term hereof for a final determination of Tenant's account and the commencement or maintenance of one or more actions by Landlord in this connection shall not bar Landlord from bringing any subsequent actions for further accruals pursuant to the provisions of this Section 26. In no event shall Tenant be entitled to any excess rental received by Landlord over and above that which Tenant is obligated to pay hereunder. Notwithstanding anything herein to the contrary, in the event Landlord takes possession of the Leased Property as permitted by this paragraph, then Tenant shall not remove any of Tenant's property from the Leased Property, including, without limitation, Tenant's trade fixtures, unless Landlord requires Tenant to remove such property;

(c) The right, even though it may have relet all or any portion of the Leased Property in accordance with the provisions of subparagraph (b) of this Section, to thereafter at any time elect to terminate this Lease for such previous default on the part of Tenant, and to terminate all of the rights of Tenant in and to the Leased Property;

(d) The right to recover or obtain rental compensation for any periods of free rent, including, but not limited to, any Tenant fixturing or Tenant improvement period; and

(e) The right to take any action on behalf of Tenant and to charge to Tenant the cost of such action.

26.03. Pursuant to the rights of re-entry provided above, Landlord may remove all persons from the Leased Property and may, but shall not be obligated to, remove all property therefrom, and may, but shall not be obligated to, enforce any rights Landlord may have against said property or store the same in any public or private warehouse or elsewhere at the cost and for the account of Tenant or the owner or owners thereof. Tenant agrees to hold Landlord free and harmless from any liability whatsoever for the removal and/or storage of any such property, whether of Tenant or any third party whomsoever. Anything contained herein to the contrary notwithstanding, Landlord shall not be deemed to have terminated this Lease or the liability of Tenant to pay any rent or other sum of money thereafter to accrue hereunder, or Tenant's liability for damages under any of the provisions hereof, by any such reentry, or by any action in unlawful detainer or otherwise to obtain possession of the Leased Property, unless Landlord shall have specifically, with reference to this Section, notified Tenant in writing that it has so elected to terminate this Lease. Tenant covenants and agrees that the service by Landlord of any notice pursuant to the unlawful detainer statutes of the State of Nevada and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of, or at any time subsequent to, the service of such notice to Tenant) be deemed to be a termination of this Lease, or the termination of any liability of Tenant hereunder to Landlord.

26.04. Intentionally omitted.

26.05. Intentionally omitted.

26.06. In any action brought by Landlord to enforce any of its rights under or arising from this Lease, Landlord shall be entitled to receive its costs and legal expenses including reasonable attorneys' fees, whether such action is prosecuted to judgment or not. If Landlord shall engage the services of an attorney for the purpose of collecting any rental due from Tenant, Tenant shall pay the reasonable fees of such attorney for his or her services regardless of the fact that no legal proceeding or action may have been filed or commenced. The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with the Lease, the relationship of landlord and tenant, Tenant's use of occupancy of the Leased Property, and/or any claim of injury or damage. In the event Landlord commences any proceedings for nonpayment of any rent, Tenant will not interpose any counterclaim of whatever nature or description in any such proceedings. This shall not, however, be construed as a waiver of the Tenant's right to assert such claims in any separate action or actions brought by Tenant.

26.07. The waiver by Landlord of any default or breach of any of the terms, covenants or conditions hereof on the part of Tenant to be kept and performed shall not be a waiver of any preceding or subsequent breach of the same or any other term, covenant or condition contained herein. The subsequent acceptance of rent or any other payment hereunder by Tenant to Landlord shall not be construed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease other than the failure of Tenant to pay the particular rental or other payment or portion thereof so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rental or other payment. No payment by Tenant or receipt by Landlord of a lesser amount than the rent herein provided shall be deemed to be other than on account of the earliest rent due and payable hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and a satisfaction, and Landlord may accept any such check or payment without prejudice to Landlord's rights to recover the balance of such rent or pursue any other remedy in or under this Lease. The consent by Landlord to any matter or event requiring Landlord's consent shall not constitute a waiver of the necessity for such consent to any subsequent matter or event. This Section 26.07 may not be waived.

26.08. Nothing contained herein shall constitute a waiver of Landlord's right to recover damages by reason of Landlord's efforts to mitigate the damage to it caused by Tenant's default; nor shall anything in this Section adversely affect Landlord's right, as in this Lease elsewhere provided, to indemnification against liability for injury or damage to persons or property occurring prior to a termination of this Lease.

26.09. In the event of termination of this Lease pursuant to this Section, Landlord may recover from Tenant:

(a) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(b) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

As used in subparagraphs (a) and (b) above, the "worth at the time of award" is computed by allowing interest at the Default Rate per annum. As used in subparagraph (c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

## SECTION 27 HAZARDOUS WASTE

27.01. As used in this Section, the term "Hazardous Waste" means:

(a) Those substances defined as "hazardous substances," "hazardous materials," "toxic substances," "regulated substances," or "solid waste" in the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq., as now amended or hereafter amended, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as now amended or hereafter amended, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., as now amended or hereafter amended, The Federal Hazardous Substances Act, 15 U.S.C. § 1261 et seq., as now amended or hereafter amended, the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., as now amended or hereafter amended, the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., as now amended or hereafter amended, and the rules and regulations now in effect or promulgated hereafter pursuant to each law referenced above;

(b) Those substances defined as "hazardous waste," "hazardous material," or "regulated substances" in Chapters 363, 459 and 598 of the Nevada Revised Statutes ("NRS"), or in the regulations now existing or hereafter promulgated pursuant thereto, or in the Uniform Fire Code, 1988 edition;

(c) Those substances listed in the United States Department of Transportation table (49 CFR §172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); and

(d) Such other substances, mixtures, materials and waste which are regulated under applicable local, state or federal law, or which are classified as hazardous or toxic under federal, state or local laws or regulations (all laws, rules and regulations referenced in paragraphs (a), (b), (c) and (d) are collectively referred to as "Environmental Laws").

27.02. Tenant does not intend to and Tenant will not, nor will Tenant allow any other person (including partnerships, corporations and joint ventures) to, during the term of this Lease, manufacture, process, store, distribute, use, discharge or dispose any Hazardous Waste in, under or on the Leased Property, the common areas, the Center or any property adjacent thereto.



(a) Tenant shall notify Landlord promptly in the event of any spill or release of Hazardous Waste into, on or onto the Leased Property, the common areas or the Center regardless of the source of spill or release, whenever Tenant knows or suspects that such a release occurred.

(b) Tenant will not be involved in operations at or near the Leased Property which could lead to the imposition on the Tenant or the Landlord of liability or the creation of a lien on the Leased Property or the Center under the Environmental Laws.

(c) Tenant shall, upon twenty-four (24) hour prior notice by Landlord, permit Landlord or Landlord's agent access to the Leased Property to conduct an environmental site assessment with respect to the Leased Property.

27.03. Tenant for itself and its successors and assigns undertakes to protect, indemnify, save and defend Landlord, its agents, employees, directors, officers, shareholders, affiliates, consultants, independent contractors, successors and assigns (collectively, the "Indemnitees") harmless from any and all liability, loss, damage and expense, including attorneys' fees, claims, suits and judgments that Landlord or any other Indemnitee, whether as Landlord or otherwise, may suffer as a result of, or with respect to:

(a) Any Environmental Law, including the assertion of any lien thereunder and any suit brought or judgment rendered regardless of whether the action was commenced by a citizen (as authorized under the Environmental Laws) or by a government agency;

(b) Any spill or release of or the presence of any Hazardous Waste affecting the Leased Property, the common areas or the Center, whether or not the same originates or emanates from the Leased Property or any contiguous real estate, including any loss of value of the Leased Property, the common areas or the Center as a result of a spill or release of or the presence of any Hazardous Waste;

(c) Any other matter affecting the Leased Property, the common areas or the Center within the jurisdiction of the United States Environmental Protection Agency, the Nevada State Environmental Commission, the Nevada Department of Conservation and Natural Resources, or the Nevada Department of Commerce, including costs of investigations, remedial action, or other response costs whether such costs are incurred by the United States Government, the State of Nevada, or any Indemnitee;

(d) Liability for clean-up costs, fines, damages or penalties incurred pursuant to the provisions of any applicable Environmental Law; and

(e) Liability for personal injury or property damage arising under any statutory or common-law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance, or for the carrying of an abnormally dangerous activity, and response costs.

27.04. In the event of any spill or release of or the presence of any Hazardous Waste affecting the Leased Property, the common areas or the Center caused by Tenant, whether or not the same originates or emanates from the Leased Property or any contiguous real estate, and/or if Tenant shall fail to comply with any of the requirements of any Environmental Law, Landlord may, without notice to Tenant, at its election, but without obligation so to do, give such notices and/or cause such work to be performed at the Leased Property, the common areas or the Center, as the case may be, and/or take any and all other actions as Landlord shall deem necessary or advisable in order to remedy said spill or release of Hazardous Waste or cure said failure of compliance and any amounts paid as a result thereof, together with interest at the rate of fifteen percent (15%) per annum, from the date of payment by Landlord, shall be immediately due and payable by Tenant to Landlord.

27.05. Landlord upon giving Tenant ten (10) days prior notice, shall have the right in good faith to pay, settle or compromise, or litigate any claim, demand, loss, liability, cost, charge, suit, order, judgment or adjudication under the belief that it is liable therefor, whether liable or not, without the consent or approval of Tenant unless Tenant within said ten (10) day period shall protest in writing and simultaneously with such protest deposit with Landlord collateral

satisfactory to Landlord sufficient to pay and satisfy any penalty and/or interest which may accrue as a result of such protest and any judgment or judgments as may result, together with attorney's fees and expenses, including, but not limited to, environmental consultants.

#### SECTION 28 QUIET POSSESSION

Tenant, upon paying the rentals and other payments herein required from Tenant, and upon Tenant's performance of all of the terms, covenants and conditions of this Lease on its part to be kept and performed, may quietly have, hold and enjoy the Leased Property during the term of this Lease without any disturbance from Landlord or from any other person claiming through Landlord.

#### SECTION 29 SALE BY LANDLORD

In the event of any sale, transfer or exchange of the Leased Property by Landlord, Landlord shall be and is hereby 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, occurrence or omission relating to the Leased Property occurring after consummation of such sale or exchange. Tenant agrees to attorn to such purchaser or grantee.

#### SECTION 30 DEFAULT BY LANDLORD

In the event Landlord fails or refuses to perform any of the provisions, covenants or conditions of this Lease on Landlord's part to be kept or performed, Tenant, prior to exercising any right or remedy Tenant may have against Landlord on account of such default, shall give written notice to Landlord of such default, specifying in said notice the default with which Landlord is charged and Landlord shall not be deemed in default if the same is cured within thirty (30) days of receipt of said notice. Notwithstanding any other provision hereof, Tenant agrees that if the default complained of in the notice provided for by this Section 30 is of such a nature that the same can be rectified or cured by Landlord, but cannot with reasonable diligence be rectified or cured within said thirty (30) day period, then such default shall be deemed to be rectified or cured if Landlord within said thirty (30) day period shall commence the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing to proceed.

#### SECTION 31 FORCE MAJEURE

Whenever a day is appointed herein on which, or a period of time is appointed in which, either party is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days on or during which such party is prevented from, or is reasonably interfered with, the doing or completion of such act, matter or thing because of labor disputes, civil commotion, war, warlike operation, sabotage, governmental regulations or control, fire or other casualty, inability to obtain any materials, or to obtain fuel or energy, weather or other acts of God, or other causes beyond such party's reasonable control (financial inability excepted); provided, however, that nothing contained herein shall excuse Tenant from the prompt payment of any rent or charge required of Tenant hereunder.

#### SECTION 32 NO PARTNERSHIP

Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant. Neither the method of computation of rent nor any other provisions contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

### SECTION 33 SERVICE OF NOTICES

33.01. Any and all notices and demands by either party hereto to the other party, required or desired to be given hereunder, shall be in writing and shall be validly given only if personally delivered, deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, or if made by Federal Express or similar delivery service which keeps records of deliveries and attempted deliveries, or if made by facsimile machine with electronic confirmation of receipt (receipt of which is acknowledged or if a copy thereof is promptly delivered by certified mail or a delivery service which keeps records of deliveries and attempted deliveries). Service shall be conclusively deemed made on the first business day delivery is attempted or upon receipt, whichever is sooner, and addressed to the addresses set forth in Section (l) of the Fundamental Lease Provisions above.

33.02. Any party hereto may change its address for the purpose of receiving notices or demands as herein provided by a written notice given in the manner aforesaid to the other party hereto, which notice of change of address shall not become effective, however, until the actual receipt thereof by the other party.

### SECTION 34 BROKERS

34.01. Landlord and Tenant hereby acknowledge and agree that, in connection with the transactions contemplated by this Agreement, the brokers listed in Section (m) of the Fundamental Lease Provisions above shall receive a commission pursuant to a separate agreement, payable within thirty (30) days after Tenant opens for business to the public from the Leased Property.

34.02. Landlord represents and warrants to Tenant, and Tenant represents and warrants to Landlord, that no broker or finder, other than those brokers set forth in Section (m) of the Fundamental Lease Provisions above, if any, has been engaged by them in connection with any of the transactions contemplated by this Agreement. Landlord and Tenant will indemnify, save harmless and defend the other from any liability, cost or expense arising out of or connected with any claim for any commission or compensation made by any person or entity claiming to have been retained or contacted by them in connection with this transaction, other than those brokers set forth in Section 34.01.

### SECTION 35 MISCELLANEOUS

35.01. The captions appearing at the commencement of the sections hereof are descriptive only and for convenience in reference to this Lease and in no way whatsoever define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

35.02. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein which the context requires such substitution or substitutions.

35.03. The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Lease. The parties hereto agree that the venue for any disagreement, dispute or litigation shall be the State of Nevada, County of Clark, and City of Las Vegas.

35.04. Whenever in this Lease any words of obligation or duty are used in connection with either party, such words shall have the same force and effect as though framed in the form of express covenants on the part of the party obligated.

35.05. In the event Tenant now or hereafter shall consist of more than one person, firm or corporation, then and in such event, all such persons, firms or corporations shall be jointly and severally liable as Tenant hereunder.



35.06. The submission of this Lease for examination and/or execution hereof by Tenant does not constitute a reservation of or option for the Leased Property and this Lease becomes effective as a Lease only upon execution and delivery thereof by Landlord and Tenant.

35.07. Should any claim or lien be filed against the Leased Property, or any action or proceeding is instituted affecting the title to the Leased Property, Tenant shall give Landlord written notice thereof as soon as Tenant obtains actual or constructive knowledge thereof.

35.08. This Lease shall not be construed either for or against Landlord or Tenant, but shall be interpreted in accordance with the general tenor of its language and as if drafted mutually.

35.09. Notwithstanding any other provision of this Lease, in the event the term of this Lease shall not have commenced within twenty-one (21) years from the date of execution hereof, this Lease shall become null and void, and Landlord and Tenant shall thereupon be released from any and all obligations with respect thereto.

35.10. Tenant shall pay all costs, expenses and reasonable attorneys' fees that may be incurred or paid by Landlord in processing, documenting or administering any request of Tenant for Landlord's consent required pursuant to this Lease, including, without limitation, requests to assign or sublet the Lease.

35.11. If Tenant hereunder is a corporation, the parties executing this Lease on behalf of Tenant represent and warrant to Landlord: that Tenant is a valid and existing corporation; all things necessary to qualify Tenant to do business in Nevada have been accomplished prior to the date of this Lease; that all franchise and other corporate taxes have been paid to the date of this Lease; that all forms, reports, fees, and taxes required to be filed or paid by said corporation in compliance with applicable laws will be filed and paid when due.

35.12. Landlord reserves the absolute right to effect such other tenancies in the Center as Landlord, in the exercise of its own business judgment, shall determine. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or number of tenants shall, during the term of this Lease or any extension thereof, occupy any space in the Center. There are no other representations or warranties between the parties hereto, and all reliance with respect to representations is solely on such representations and agreements as are contained in this Lease.

35.13. The various rights, options, elections and remedies of Landlord contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law and not expressly waived in this Lease.

35.14. The obligations of Landlord under this Lease do not constitute personal obligations of the individual members, managers, partners, directors, officers, shareholders or similar positions of Landlord, and Tenant shall not seek recourse against the individual partners, directors, officers, members, managers or shareholders of Landlord or any of their personal assets for satisfaction of any liability in respect to this Lease.

35.15. The terms, provisions, covenants and conditions contained in this Lease shall apply to, bind and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns (where assignment is permitted) of Landlord and Tenant, respectively.

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

35.17. Time is of the essence of this Lease and all of the terms, covenants and conditions hereof.

35.18. This Lease contains the entire agreement between the parties and cannot be changed or terminated orally.

- C. Water Connections: The cost of all water, check, sub or flow meters or valves, whichever is applicable, and any plumbing distribution throughout the Leased Property.
- D. Walls: All interior partitions and curtain walls within the Leased Property, except as set forth in Section I.
- E. Furniture and Fixtures: All store fixtures, cases, wood paneling, cornices, etc.
- F. Show Window Background, Floors, etc.: All show window finish floors, show window backgrounds, show window lighting fixtures and show window doors.
- G. Floor Coverings or Finishes: All floor coverings or finishes, including any additional preparation of floor slab for vinyl, tile or any special or other floor treatment.
- H. HVAC: Intentionally omitted.
- I. Alarm Systems, etc.: All alarm systems or other protective devices including any special wiring required for such devices.
- J. Special Plumbing: All extra plumbing, either roughing in or fixtures required for Tenant's special needs not included in the Approved Plans.
- K. Special Ventilation: Any required ventilation and related equipment including show window ventilation.
- L. Intentionally Omitted.
- M. Special Equipment: All special equipment such as conveyors, elevators, escalators, dumb waiters, etc., including installation and connection.
- N. Electric Floor Outlets and Point of Sale Stations: Intentionally omitted.
- O. Sewer: All sewer hookups, usage and service charges shall be paid by Tenant.
- P. Store Front: Any alterations to the standard storefront, except as provided for in Section I, must be approved by Landlord or Landlord's architect, and Tenant shall bear all additional costs.
- Q. Permits: Intentionally omitted.
- R. Roof: Tenant and/or Tenant's contractor shall not penetrate the roof of the Leased Property without the prior written approval of Landlord. Any penetration of the roof must be sealed by the original roofing contractor, at Tenant's expense.
- S. Fire Sprinkler: All fire sprinkler work, beyond the fire sprinkler work for the building shell performed by Landlord pursuant to Section I(D) above, required by government code and requirements due to Tenant's interior or exterior design.
- T. Wiring: Any other wiring and connections required by Tenant, except as provided by Landlord pursuant to Section I above.
- U. Restrooms: Intentionally omitted.
- V. Drywall: Other than as specifically provided in Section I, including all painting and staining.



W. Insulation: Intentionally omitted.

X. Other: Any other work required by Tenant not covered herein.

## EXHIBIT D

### RULES AND REGULATIONS

Tenant agrees as follows:

1. All loading and unloading of goods shall be done only at such times, in the areas, and through the entrances designated for such purposes by Landlord.
2. The delivery or shipping of merchandise, supplies and fixtures to and from the Leased Property shall be subject to such rules and regulations as, in the judgment of Landlord, are necessary for the proper operation of the Leased Property or the Center.
3. No radio or television or other similar device shall be installed within the Leased Property such that it can be heard or seen outside the Leased Property without first obtaining in each instance Landlord's consent in writing. No aerial shall be erected on the roof or exterior walls of the Leased Property or in the Center, without in each instance, the written consent of Landlord and the installation of such aerial shall be by the roofing contractor that installed the roof. Any aerial so installed without such written consent shall be subject to removal without notice at any time at Tenant's expense of removal, repair to the roof and restoration of the roof warranty.
4. Tenant shall not, without the written consent of Landlord first had and obtained, use in or about the Leased Property any advertising or promotional media such as search lights, loud speakers, phonographs, or other similar visual or audio media which can be seen or heard outside the Leased Property.
5. Tenant shall keep the Leased Property at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.
6. The exterior areas immediately adjoining the Leased Property shall be kept clean and free from dirt and rubbish by Tenant to the satisfaction of Landlord, and Tenant shall not place or permit any obstructions or merchandise in such areas.
7. Tenant and Tenant's employees shall park their cars only in those parking areas designated for that purpose by Landlord. Tenant shall furnish Landlord with automobile license numbers assigned to Tenant's car or cars, and cars of Tenant's employees, within five (5) days after taking possession of the Leased Property and shall thereafter notify Landlord of any changes within five (5) days after such changes occur. In the event that Tenant or its employees fail to park their cars in designated parking areas as aforesaid, then Landlord at its option, in addition to any other remedies, including, but not limited to, towing, may charge Tenant Twenty-Five Dollars (\$25.00) per day per car parked in any area other than those designated.
8. The plumbing facilities shall not be used for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Tenant who shall, or whose employees, agents, servants, customers or invitees shall, have caused it.
9. Tenant shall keep the Leased Property free from pests and vermin.
10. Tenant shall not burn any trash or garbage of any kind in or about the Leased Property or the Center.
11. Tenant shall not make noises, cause disturbances, or create odors that may be offensive to Landlord or to other tenants of the Center or their employees, agents, servants, customers or invitees.
12. No portion of the Leased Property or the Center shall be used for sale or display of any obscene, pornographic, so called "adult" or other offensive merchandise or activities.

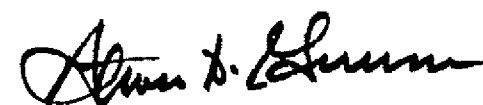
13. Tenant shall not install or otherwise place on the Leased Property, without Landlord's written consent therefor first had and obtained, any sign or other object or thing visible to public view outside of the Leased Property, except that Tenant shall, at its expense, erect a sign on the exterior of the Leased Property of such size, shape, materials and design as may be prescribed by Landlord. Tenant shall not change or modify such sign without the written consent of Landlord. Tenant shall be required to properly maintain its sign, including prompt repairs of any nature. Tenant shall keep such sign lit during such hours as Landlord may designate. Upon expiration of the Lease, Tenant shall be responsible for promptly removing all signs placed in and around the Leased Property by Tenant. Tenant shall repair all damage caused to the building or Leased Property by such removal, including proper "capping off" of electrical wiring.

14. Tenant and Tenant's employees and agents shall not solicit business in the parking areas or other common areas, nor shall Tenant distribute any handbills or other advertising matter in automobiles parked in the parking area or in other common areas.

15. Tenant shall refrain from keeping, displaying or selling any merchandise or any object outside of the interior of the Leased Property or in any portion of any sidewalks, walkways or other part of the Center outside of the Leased Property.

16. Landlord may impose fines and penalties upon Tenant for failure to comply with the Rules and Regulations.

# **EXHIBIT 3**



CLERK OF THE COURT

1 **COMP**  
2 GORDON SILVER  
3 ERIC R. OLSEN  
4 Nevada Bar No. 3127  
5 E-mail: eolsen@gordonsilver.com  
6 FRANCESCA V. VAN BUREN  
7 Nevada Bar No. 10260  
8 E-mail: fvanburen@gordonsilver.com  
9 3960 Howard Hughes Pkwy., 9th Floor  
10 Las Vegas, Nevada 89169  
11 Tel: (702) 796-5555  
12 Fax: (702) 369-2666  
13 *Attorneys for Plaintiff, Higco, Inc.*

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 HIGCO, INC, a Nevada corporation,  
11 Plaintiff,

12 vs.

13 BOCA PARK PARCELS, LLC, a revoked  
14 Nevada limited liability company; BOCA PARK  
15 MARKETPLACE LV, LLC, a Nevada limited  
16 liability company; BOCA PARK  
17 MARKETPLACE LV SYNDICATIONS  
18 GROUP MM, INC., a Nevada corporation;  
19 BOCA PARK MARKETPLACE  
20 SYNDICATIONS GROUP, LLC, a Nevada  
21 limited liability company; and DOES I-X, and  
22 ROE ENTITIES I-X, inclusive,

23 Defendants.

CASE NO. A - 12 - 660548 - B  
DEPT. XIIII

**COMPLAINT**

**ARBITRATION EXEMPT:  
Declaratory Relief Requested**

*Business Court Requested*

24 COMES NOW Plaintiff, HIGCO, Inc. ("Plaintiff"), a Nevada corporation, by and  
25 through its counsel, the law firm of Gordon Silver, and hereby alleges against Defendants,  
26 BOCA PARK PARCELS, LLC, a revoked Nevada limited liability company; BOCA PARK  
27 MARKETPLACE LV, LLC, a Nevada limited liability company; BOCA PARK  
28 MARKETPLACE LV SYNDICATIONS GROUP MM, INC., a Nevada corporation; BOCA  
29 PARK MARKETPLACE SYNDICATIONS GROUP, LLC, a Nevada limited liability company;  
30 as follows:

31 ...

32 ...

I.

**THE PARTIES, JURISDICTION AND VENUE**

1. At all times herein mentioned, Plaintiff was and is a Nevada corporation with its principal place of business in the City of Las Vegas, Clark County, State of Nevada.

2. Plaintiff is informed and believes and thereupon alleges that at times herein mentioned, Defendant Boca Park Parcels, LLC ("Boca Park Parcels") was Nevada limited liability company organized and existing under the laws of the State of Nevada, but that Boca Park Parcels has been revoked.

3. Plaintiff is informed and believes and thereupon alleges that at all times herein mentioned, Defendant Boca Park Marketplace LV, LLC ("Boca Park Successor-in-Interest") was and is now a Nevada limited liability company organized and existing under the laws of the State of Nevada.

4. Plaintiff is informed and believes and thereupon alleges that at all times herein mentioned, Defendant Boca Park Marketplace LV Syndications Group MM, Inc. ("Boca Park Parent Corp.") was and is now a Nevada corporation organized and existing under the laws of the State of Nevada.

5. Plaintiff is informed and believes and thereupon alleges that at all times herein mentioned, Defendant Boca Park Marketplace Syndications Group, LLC ("Boca Park Manager") was and is now a Nevada limited liability company organized and existing under the laws of the State of Nevada.

6. The true names and capacities, whether individual, corporate, associate or otherwise of Defendants DOES I-X, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the Defendants designated herein as a fictitiously named Defendant may have rights or duties arising from or related to the contract at issue in this case, or is in some manner responsible for the events and happenings herein referred to, or is an affiliate, subsidiary, parent entity, or successor in interest to one of the herein named defendants. When Plaintiff ascertains the true names and capacities of DOES I-X, inclusive, it will ask leave of this Court to amend its

1 Complaint by setting forth the same.

2 7. The true names and capacities, whether individual, corporate, associate or  
3 otherwise of Defendants ROE ENTITIES I-X, inclusive, are unknown to Plaintiff, who therefore  
4 sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon  
5 alleges that each of the Defendants designated herein as a fictitiously named Defendant may  
6 have rights or duties arising from or related to the contract at issue in this case, or is in some  
7 manner responsible for the events and happenings herein referred to, or is an affiliate, subsidiary,  
8 parent entity, or successor in interest to one of the herein named defendants. When Plaintiff  
9 ascertains the true names and capacities of ROE ENTITIES I-X, inclusive, it will ask leave of  
10 this Court to amend its Complaint by setting forth the same.

11 8. This Court has original jurisdiction pursuant to NRS 30.030.

12 9. Venue is proper in this district pursuant to NRS 13.010.

13 II.

14 GENERAL ALLEGATIONS

15 *Plaintiff is Granted an Exclusive Use for Gaming in Boca Park Phase I*

16 7. On or about November 5, 2002, Plaintiff and Defendant Boca Park Parcels  
17 entered into a lease for a property in Boca Park Phase I ("Lease"). (See Lease, attached hereto as  
18 Exhibit 1.)

19 8. Pursuant to the Lease, Defendant Boca Park Parcels was to provide Plaintiff with  
20 a suite "consisting of approximately 4,390 square feet" in Building J of the Boca Park  
21 Marketplace, as further described by Exhibit A-2 of the Lease. (See Ex. 1, at p.1, sec. b; Exhibit  
22 A-2.)

23 9. Defendant Boca Park Parcels also granted Plaintiff an exclusive use for "Boca  
24 Park Phase I for a tavern and gaming, except for any tenants currently located in the center,  
25 which allow gaming (i.e., Vons, Longs)" (hereinafter, the "Exclusive Use Provision"). (See *id.* at  
26 p.3, sec. o (emphasis added).)

27 ...

28

1 ***The Three Angry Wives is a Restaurant and Tavern That Offers Gaming***

2 10. As valuable consideration, Plaintiff was to pay Defendant Boca Park Parcels rent  
3 based on a per square foot amount, adjusted periodically during the term of the lease. (See Ex. 1  
4 at p.1, sec. e.)

5 11. In addition, Plaintiff agreed that the permitted use would be "for use as a Three  
6 Angry Wives restaurant and tavern with gaming and on-premises sale of liquor, beer and wine  
7 and a complete menu." (See *id.* at p.2, sec i.)

8 12. Plaintiff and Defendants operated under this agreement successfully from  
9 November 5, 2002 until present.

10 13. Plaintiff is informed and believes, and thereupon alleges, that on June 23, 2005,  
11 Defendant Boca Park Parcels transferred the property upon which the Three Angry Wives is  
12 situated to its successor-in-interest, Defendant Boca Park Successor-in-Interest.

13 ***Defendants Violate Plaintiff's Bargained-For Exclusive Use Provision***

14 14. Plaintiff is informed and believes that one or more of Defendants Boca Park  
15 Successor-in-Interest, Boca Park Manager and/or Boca Park Parent Corp. recently entered into a  
16 lease agreement with Wahoo's Fish Taco that allows gaming on the Wahoo's Fish Taco leased  
17 premises. This location is within Boca Park Phase I, and is within less than 660 feet of Three  
18 Angry Wives.

19 15. An application has been made for a gaming license at the Wahoo's Fish Taco  
20 leased premises, is currently in the final stages of licensing approval, and is expected to be  
21 granted on April 19, 2012.

22 16. Prior to that date, a demand was made by Plaintiff that Defendants not allow  
23 gaming on the Wahoo's Fish Taco leased premises in violation of the Exclusive Lease Provision  
24 of the Lease, but Defendants have made it clear by their actions, and have stated through their  
25 representatives, that they do not believe that Plaintiff has an Exclusive Use provision in its  
26 Lease, and that the Defendants are free to allow other tenants in Boca Park Phase I to offer  
27 gaming, notwithstanding the express language of the Lease.

28 . . .



17. Plaintiff and Defendants have differing interpretations of the Lease, and a judicial determination is necessary with respect to the Exclusive Use provision contained in the Lease.

### III.

## CLAIMS FOR RELIEF

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

18. Plaintiff repeats and realleges the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

19. A dispute has arisen and an actual controversy now exists between Plaintiff on the one hand, and Defendants on the other hand, in that Plaintiff contends that the Lease contains a restrictive covenant granting Plaintiff the exclusive right in Boca Park Phase I to offer gaming to its patrons. The only exception to this covenant is the express exception for gaming at the Von's supermarket. Plaintiff also has the exclusive right to own and operate a tavern in Boca Park Phase I. The terms "tavern" and "gaming" are to be read separately, such that Plaintiff has an exclusive related to each category. This restrictive covenant is contained in the Lease, Fundamental Lease Provisions, (o).

20. Defendants deny that Plaintiff has been granted an Exclusive Use provision in Boca Park Phase I with respect to gaming, despite the express language of the Lease.

21. Plaintiff desires a judicial determination of the interpretation of the Lease with respect to whether and to what extent the Lease contains an Exclusive Use provision in Plaintiff's favor, granting Plaintiff an exclusive right operate a tavern and an exclusive right to conduct gaming. Judicial determination is necessary and appropriate at this time so that Plaintiff and Defendants may ascertain the rights and duties between them to the extent they relate to the Lease and occurrences alleged herein.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For declaratory relief declaring that the Lease contains a restrictive covenant in Plaintiff's favor granting Plaintiff the exclusive right to operate a tavern and right to offer gaming, with the exception of the Von's, (interpreted as two separate

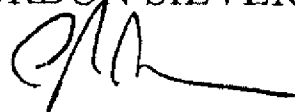
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exclusives) within Boca Park Phase I; and

2. For such other and further relief as the Court may deem just and proper.

Dated this 20th day of April, 2012.

GORDON SILVER



---

ERIC R. OLSEN

Nevada Bar No. 3127

E-mail: colsen@gordonsilver.com

FRANCESCA VAN BUREN

Nevada Bar No. 10260

E-mail: fvanburen@gordonsilver.com

3960 Howard Hughes Pkwy., 9th Floor

Las Vegas, Nevada 89169

Tel: (702) 796-5555

Fax: (702) 369-2666

*Attorneys for Plaintiff, Higco, Inc.*

# EXHIBIT 1

# EXHIBIT 1

LEASE

THIS LEASE is made and entered into as of this 5<sup>th</sup> day of November 2002, by and between Boca Park Parcels, LLC, a Nevada limited liability company ("Landlord"), and Higco, Inc., a Nevada corporation ("Tenant").

FUNDAMENTAL LEASE PROVISIONS

The following basic Lease provisions (the "Fundamental Lease Provisions") are an integral part of this Lease, are referred to in other sections of this Lease, and are presented in this Section for the convenience of the parties. They are not intended to constitute an exhaustive list of all charges that may become due and payable under this Lease or of all the material terms of the Lease.

(a) **Center:** Section 1.01

The Boca Park Marketplace shopping center, which Center is legally described on Exhibit A-1 attached hereto and incorporated herein by reference (the "Center").

(b) **Leased Property:** Section 1.01

Building J, Suite \_\_\_\_ in the Center, as shown by cross-hatching on Exhibit A-2 attached hereto and incorporated herein by reference, consisting of approximately 4,390 square feet (the "Leased Property").

(c) **Term of Lease:** Sections 2.01 and 2.04

(i) The term of this Lease shall be for a period of ten (10) years, unless terminated earlier as elsewhere herein provided; provided that if the Commencement Date is not the first day of a calendar month the term hereof shall be for ten (10) years plus the period between the Commencement Date and the first day of the next succeeding calendar month.

(ii) Renewal term: four (4) options of five (5) years each.

(d) **Commencement Date:** Section 2.02

The Commencement Date shall be ninety (90) days after Landlord notifies Tenant that the improvements to be installed by Landlord pursuant to Exhibit C hereof have been substantially completed or as soon as Tenant commences to do business in, upon or from the Leased Property, whichever first occurs.

(e) **Minimum Monthly Rent:** Section 3.01

Beginning on the Commencement Date, Tenant shall pay to Landlord minimum monthly rent in an amount calculated based upon the actual rentable square feet included within the interior portions of the Premises (which shall be determined by measurement of Landlord's architect upon completion of construction of the Premises by Landlord) in accordance with the following rent schedule:

<i>Years</i>	<i>Rent Per Square Foot</i>	<i>Monthly Rent</i>
1-2	\$3.00	\$13,170.00
3-5	\$3.25	\$14,267.50
5-7	\$3.40	\$14,926.00
8-10	\$3.50	\$15,365.00

Thereafter, rent shall be adjusted for any renewal terms in accordance with Section 3.02. Tenant, concurrently with the execution hereof, shall deposit with Landlord the sum of Thirteen Thousand One Hundred Seventy and no/100ths Dollars (\$13,170.00), which sum shall be applied to the first full month's minimum monthly rent.

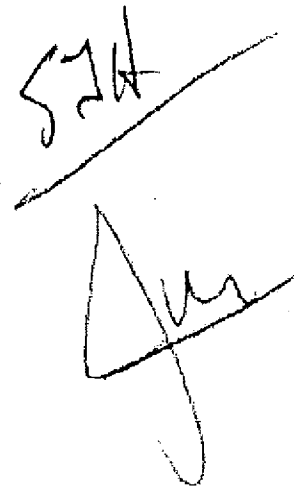
- (f) **Percentage Rent:** Section 3.06  
None.
- (g) **Payment of Percentage Rent:** Section 3.07  
Not Applicable.
- (h) **Security Deposit:** Section 5  
Fifteen Thousand Three Hundred Sixty Five and no/100ths Dollars (\$15,365.00) (the "Security Deposit").
- (i) **Use:** Section 7  
If available, for use as a Three Angry Wives restaurant and tavern with gaming and on-premises sale of liquor, beer and wine and a complete menu (the "Permitted Use").
- (j) **Trade Name:** Section 7  
Three Angry Wives or other name
- (k) **Common Area Maintenance Cost:** Section 10.02.1  
Six Dollars (\$6.00) per square foot of the Leased Property per year, adjusted annually.
- (l) **Notices Addresses:** Section 33.01  
     Tenant: Higeo, Inc.  
             10273 Garden Glen Lane  
             Las Vegas, Nevada 89135  
             Attn: Sean T. Higgins  
             Facsimile: (702) 798-8079  
             Telephone: (702) 798-6400  
             or at the Leased Property once open for business.  
     Landlord: Boca Park Parcels, LLC  
             9510 W. Sahara Avenue, Suite 200  
             Las Vegas, Nevada 89117  
             Attn: Leasing Department  
             Facsimile: (702) 242-6941  
             Telephone: (702) 242-6937  
     with a copy to: Triple Five Nevada Development Corporation  
             9510 W. Sahara Avenue, Suite 200  
             Las Vegas, Nevada 89117  
             Attn: Legal Department  
             Facsimile: (702) 242-6941  
             Telephone: (702) 242-6937
- (m) **Broker:** Section 34  
Richard W. Truesdell of Cornerstone Company and Kevin Higgins of CB Richard Ellis, pursuant to a separate agreement.
- (n) **Advertising and Promotional Services** Section 4  
One Dollar per square foot per annum.

(o) **Exclusive Use**

**Section 7.17**

Landlord shall grant Tenant an exclusive for Boca Park Phase I for a tavern and gaming, except for any tenants currently located in the center, which allow gaming (i.e., Vons, Longs) (the "Exclusive Use").

(remainder of page intentionally blank)

Handwritten signature and initials, possibly "SJA" and "Jm", written in black ink.

## SECTION 1 DEMISED PREMISES

1.01. Upon the conditions, limitations, covenants and agreements set forth below, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Leased Property. The actual square footage of the Leased Property shall be based upon measurements taken by Landlord's architect or engineer once the foundation and walls are complete. Interior stores shall be measured from centerline to centerline of party walls; exterior stores shall be measured from centerline of party walls to outside face of exterior walls; depth shall be measured from outside face of exterior walls. This Lease confers no rights on Tenant with respect to the Center or any improvements thereon except to the extent specifically provided herein.

1.02. Landlord reserves to itself the use of the roof, exterior walls (other than storefronts) and the area above and below the Leased Property together with the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires and structural elements now or in the future leading through the Leased Property and which serve other parts of the Center. Landlord shall have the sole and exclusive right to designate and from time to time redesignate the name, address, or other designation of the Center. Landlord shall have the right to prohibit any advertising by any tenant which, in Landlord's reasonable opinion, tends to impair the reputation of the Center or its desirability as a location for retail shops, and upon written notice from Landlord Tenant shall refrain from or discontinue such advertising.

## SECTION 2 TERM

2.01. The term of this Lease shall be for the period of time set forth in Section (c)(i) of the Fundamental Lease Provisions above. At such time as the Commencement Date shall have been established, Landlord shall deliver to Tenant a written notice substantially in the form attached hereto as Exhibit B setting forth such date, which date shall be conclusively deemed to be the Commencement Date. In the event that Tenant fails or refuses to open the Leased Property for, and to commence the conduct of, its business within sixty (60) days after the Commencement Date, then, at the option of Landlord, Landlord may treat such failure or refusal as an event of default. Should Landlord not terminate this Lease, Landlord may, without waiving its right to thereafter terminate this Lease for such failure to open, collect all rents due hereunder together with additional rent of one-twentieth (1/20) of the minimum monthly rent per day in lieu of percentage rental if percentage rental is included in this Lease.

2.02. The Commencement Date shall be as set forth in Section (d) in the Fundamental Lease Provisions above. However, should Landlord be unable to complete its Exhibit C work because of any special requirements of Tenant, notwithstanding any other provision hereof, including, but not limited to, Section 31 hereof, the Commencement Date shall be thirty (30) days after Landlord notifies Tenant in writing that Landlord cannot proceed further with its Exhibit C work until such special requirement of Tenant is completed, installed or otherwise satisfied, or as soon as Tenant commences to do business in, upon or from the Leased Property, whichever first occurs. Any other provision hereof to the contrary notwithstanding, should Tenant not fully and timely comply with the provisions of Exhibit C or should Tenant make any change in the plans and specifications for the Leased Property as approved and/or modified by Landlord or Landlord's architect pursuant to said Exhibit C, the Commencement Date shall be thirty (30) days after Landlord notifies Tenant in writing that the Leased Property is ready for construction and installation of the Exhibit C improvements.

2.03. Should Tenant hold possession of the Leased Property with the consent of Landlord after the expiration of the stated term of this Lease, such holding over shall create a tenancy from month to month only, upon the same terms and conditions as are hereinafter set forth, except that minimum rent shall be one hundred fifty percent (150%) of the adjusted minimum rent as determined in Section 3 hereof.

2.04. So long as Tenant is in compliance with the terms hereof, Tenant shall have the right to extend the term of this Lease for the number of additional, consecutive periods set forth in Section (e)(ii) of the Fundamental Lease Provisions above, the first of which shall commence as of the day after the last day of the initial term hereof. Tenant shall notify Landlord of its intention to exercise such option in writing no earlier than nine (9) months and no later than

six (6) months before the end of the preceding lease term. The terms, conditions, and obligations of Landlord and Tenant herein contained shall apply to the extended term, including as said terms relate to the amount of rent to be paid.

### SECTION 3 RENT

3.01. Subject to adjustments as hereinafter provided, beginning on the Commencement Date, Tenant shall pay to Landlord minimum monthly rent in the amount set forth in Section (e) of the Fundamental Lease Provisions above; provided that if the Lease term includes a fractional month, for that fractional month Tenant shall pay on the Commencement Date as minimum rent that proportion of the minimum monthly rent due which the number of days in said fractional month bears to the total number of days in said month.

3.02. During any extension of the initial Lease Term, the minimum rent shall be adjusted to equal one hundred four percent (104%) of the rent due for the previous Lease year.

3.03. Intentionally omitted.

3.04. The minimum rent shall be paid to Landlord in advance not later than the first day of each month during the term of this Lease and any extensions thereof. Rent for any fractional month shall be paid on the Commencement Date.

3.05. If applicable, as used in this Lease, the following terms shall have the following meanings:

(a) "Gross sales" means the aggregate selling price of all merchandise and services sold in, upon or from the Leased Property by Tenant, its subtenants, licensees and concessionaires, personally or from any computer (whether on the Internet or any other sales from any computer), vending or coin-operated or token-operated device, whether for check, cash, on credit or otherwise.

All gross income of Tenant or any other person, firm or corporation from any operations in, at or upon the Leased Property which are not specifically excluded by this Section shall be included in gross sales. All sales originating at, upon or from the Leased Property shall be considered as made and completed thereon and shall be included in Tenant's gross sales even though bookkeeping and payment of the account therefor may be transferred to another place for collection and even though actual filling of the sale or order or actual delivery of the merchandise may be made from a place other than the Leased Property. No credit shall be allowed for uncollected or uncollectable credit accounts. Each sale upon installment or credit shall be treated as a sale for the full price in the month during which such sale is made, regardless of the time when or whether Tenant shall receive payment therefor. In the event that Tenant or any person, firm, entity or corporation which controls, is controlled by or is otherwise affiliated with Tenant owns, operates, or becomes financially interested in a business similar to that conducted on the Leased Property within a radius of three (3) miles in any direction from the perimeter of the Center, the gross sales from such business shall be included in the gross sales made in, upon or from the Leased Property for the purpose of computing the percentage rent payable to Landlord under this Lease to the same extent as if such other premises were part of the Leased Property.

(b) "Lease year" shall mean the twelve (12) month period beginning on the Commencement Date, except that in the event the Commencement Date occurs on a date other than the first day of a month, the Lease year shall commence on the first day of the month following the Commencement Date.

3.06. In addition to the minimum rent, Tenant shall pay Landlord at the time and in the manner herein set forth as percentage rental for each calendar quarter throughout the term hereof the Percentage Rent Rate of Tenant's gross sales made during the particular calendar quarter in question, less the total of the minimum rent paid by Tenant to Landlord for such calendar quarter. If the Leased Property is ready for occupancy on any date other than the first day of a calendar quarter, for that fractional calendar quarter Tenant shall pay the percentage rent in the manner provided herein for payment of percentage rent for a full calendar quarter.



3.07. On or before the 15<sup>th</sup> day of each calendar month during the term of this Lease (including the calendar month next succeeding the last month of the term hereof), Tenant shall deliver to Landlord a written statement signed and certified by Tenant or an officer of Tenant as being true and correct, setting forth the amount of Tenant's gross sales during the calendar month immediately preceding. On or before the Payment Date, Tenant shall deliver to Landlord a written statement signed and certified by Tenant or an officer of Tenant as being true and correct, setting forth the amount of Tenant's gross sales during the calendar quarter immediately preceding, and on the same date shall pay Landlord the percentage rental for the immediately preceding calendar quarter. Within thirty (30) days after the end of each calendar year during the term of this Lease (or within thirty (30) days after the end of the term or the termination hereof), Tenant shall deliver to Landlord a written statement, signed and certified by a Certified Public Accountant or an officer, general partner or similar representative of Tenant, to be true and correct, setting forth the total amount of Tenant's gross sales made during each calendar quarter of the immediately preceding year, and Tenant shall, concurrently therewith, pay Landlord the full balance of the percentage rental due hereunder for such year. The authorized deductions from percentage rental shall be non-cumulative and a computation of payment of the percentage rental shall be made separately for each calendar quarter throughout the term of this Lease without regard to Tenant's gross sales, percentage rental or authorized deductions therefrom in connection with any other calendar quarter.

3.08. All rents and other monies required to be paid by Tenant hereunder shall be paid to Landlord without deduction or offset, prior notice or demand, in lawful money of the United States of America, at such place as Landlord may, from time to time, designate in writing.

3.09. If Tenant shall fail to pay, when the same is due and payable, any rent, percentage rent or any additional rent, or any other amount or charges to be paid by Tenant hereunder, after three (3) business days Tenant shall pay, as additional rent, ten percent (10%) of the amount due (the "Default Rate").

#### SECTION 4 PROMOTIONAL SERVICES

Tenant shall, at Landlord's option, participate in Landlord's marketing fund (the "Marketing Fund"). Landlord shall control and administer the Marketing Fund, if established, in its sole discretion. Tenant shall contribute the sum set forth in Section (n) of the Fundamental Lease Provisions per year.

#### SECTION 5 SECURITY DEPOSIT

Tenant, concurrently with the execution of this Lease, shall deposit with Landlord the Security Deposit as set forth in Section (h) of the Fundamental Lease Provisions. The Security Deposit shall be held by Landlord as security for the full and faithful performance by Tenant of all the terms, covenants and conditions of this Lease by Tenant to be kept and performed during the term hereof, provided that Tenant shall not be excused from the payment of any rent herein reserved or any other charge herein provided. If Tenant defaults with respect to any provision of this Lease, Landlord may, but shall not be required to, use or retain all or any part of the Security Deposit for the payment of any rent, to repair damages to the Leased Property, to clean the Leased Property or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant shall, within five (5) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount.

Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. Should Tenant comply with all of said terms, covenants and conditions and promptly pay all the rental herein provided for as it falls due, and all other sums payable by Tenant to Landlord hereunder, then the Security Deposit shall be returned to Tenant within thirty (30) days after the end of the term of this Lease or after the last payment due from Tenant to Landlord, whichever last occurs. In the event of sale or transfer of the Center or of any portion thereof containing the Leased Property, if Landlord transfers the Security Deposit to the vendee or transferee for the benefit of Tenant, or if such vendee or transferee assumes all liability with respect to the Security Deposit, Landlord shall be considered released by Tenant from all liability for the return of the Security Deposit, and Tenant agrees to look solely to the new landlord for the return of the Security Deposit, and it is

agreed that this Section 5 shall apply to every transfer or assignment to a new landlord. The Security Deposit shall not be assigned, transferred or encumbered by Tenant, and any attempt to do so by Tenant shall not be binding upon Landlord.

## SECTION 6 POSSESSION AND SURRENDER OF LEASED PROPERTY

6.01. Tenant shall by entering upon and occupying the Leased Property, be deemed to have accepted the Leased Property as is and Landlord shall not be liable for any latent or patent defect therein; provided, however, that upon delivery of the Leased Property to Tenant, Landlord and Tenant shall conduct a walk through of the Leased Property and Tenant shall have fifteen (15) days thereafter to prepare and deliver to Landlord a punchlist of correction items, which Landlord shall have a reasonable time thereafter to complete or repair. Tenant will be deemed to have accepted the Leased Property upon completion of repairs by Landlord of such punchlist items. Landlord shall transfer, upon request, any warranties for Landlord's Work to Tenant for up to one (1) year after Lease execution.

6.02. Upon the expiration or sooner termination of the term of this Lease, if Tenant has fully and faithfully performed all of the terms, conditions and covenants of this Lease to be performed by Tenant, but not otherwise, Tenant shall, at its sole cost and expense, remove all personal property and trade fixtures which Tenant has installed or placed on the Leased Property (all of which are hereinafter referred to as "Tenant's Property") from the Leased Property and repair all damage thereto resulting from such removal and Tenant shall thereupon surrender the Leased Property in the same condition as on the date when the Leased Property was ready for occupancy, reasonable wear and tear excepted. If Tenant has not fully and faithfully performed all of the terms, conditions and covenants of this Lease to be performed by Tenant, Tenant shall nevertheless remove Tenant's Property from the Leased Property in the manner aforesaid within fifteen (15) days after receipt of written direction to do so from Landlord. In the event Tenant shall fail to remove any of Tenant's Property as provided herein, Landlord may, at its option, retain all or any portion thereof as abandoned by Tenant, or Landlord may, but is not obligated to, at Tenant's expense, remove all of such property not so removed and repair all damage to the Leased Property resulting from such removal, and Landlord shall have no responsibility to Tenant for any loss or damage to said property caused by or resulting from such removal or otherwise. If the Leased Property is not surrendered at the end of the Lease term, Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in so surrendering the Leased Property including, without limitation, any claims made by any succeeding tenant or prospective tenant founded on such delay. Without limiting the foregoing, lighting fixtures, bulbs and tubes and all partitions, whether removable or not, shall be deemed part of the Leased Property, not Tenant's Property.

## SECTION 7 USE OF LEASED PROPERTY

7.01. The Leased Property is leased to Tenant solely for the Permitted Use set forth in Section (i) of the Fundamental Lease Provisions and for no other use whatsoever. Subject to licensing by the City of Las Vegas (or any other required governmental agency), which licensing Tenant shall procure and maintain at its sole cost and expense, and subject to the receipt by Tenant of all required consents and approvals under the Declaration (as defined below), Tenant may sell liquor, beer and wine at the Leased Property for on-premises consumption only and the operation of a restricted gaming facility. Tenant shall not use or suffer to be used the Leased Property, or any portion thereof, for any other purpose or purposes whatsoever, without Landlord's written consent therefor first had and obtained, which consent may be withheld in Landlord's sole and absolute discretion. Tenant shall conduct business under the trade name set forth in Section (j) of the Fundamental Lease Provisions above and no other without prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion.

7.02. Tenant shall not, without prior written consent of all insurance companies which have issued any insurance of any kind whatsoever with respect to the Leased Property or the Center, sell, or suffer to be kept, used or sold in, upon or about the Leased Property any gasoline, distillate or other petroleum products or any other substance or material of an explosive, inflammable or radiological nature, in such quantities as may be prohibited by any such insurance policy, or which may endanger any part of the Center or its occupants, business patrons or invitees. Tenant will not use any method of heating or air conditioning other than that supplied by Landlord.

7.03. Tenant shall not, without Landlord's prior written approval, operate or permit to be operated on the Leased Property any coin or token operated vending machines or similar device for the sale or leasing to the public of any goods, wares, merchandise, food, beverages, and/or service, including, without limitation, pay telephones, ATMs, pay lockers, pay toilets and scales, however, foregoing notwithstanding Tenant may operate an ATM and pay telephone with the appropriate approvals and subject to the Declaration.

7.04. Tenant shall not, without Landlord's prior written approval, conduct or permit any fire, bankruptcy or auction sale in, on or about the Leased Property.

7.05. Tenant shall not, without Landlord's prior written approval which shall not be unreasonably withheld, cover, obstruct or place any sign or object on or by any windows, glass doors, lights, skylights, or other apertures that reflect or admit light into the Leased Property.

7.06. Tenant shall refrain from keeping or permitting the keeping of any animals of any kind in, about or upon the Leased Property without Landlord's prior written consent.

7.07. Tenant shall not use the Leased Property for storage or warehouse purposes beyond such use as is reasonably required to keep Tenant's store adequately stocked for retail sales in, at or from the Leased Property.

7.08. No cooking shall be done or permitted by any Tenant on the Leased Property nor shall they be used for the manufacture of merchandise; provided, however, that if the business conducted by Tenant on the Leased Property includes sale of prepared food, Tenant may conduct such cooking on the Leased Property as is normally incident to such business.

7.09. Except as provided for elsewhere herein, Tenant shall keep and maintain in first class order, condition and repair (including any such replacement and restoration as is required for that purpose) the Leased Property and every part thereof and any and all appurtenances thereto wherever located, including, but without limitation, the exterior and interior portion of all doors, door checks, windows, plate glass, storefront, all grease traps, oven and stove exhausts, oven and stove exhaust filters, all plumbing and sewage facilities within the Leased Property fixtures, heating and air conditioning and electrical systems (whether or not located in the Leased Property), sprinkler system, walls, floors and ceilings, and any work performed by or on behalf of Tenant hereunder. Any such work shall be subject to such requirements as Landlord may, in its sole discretion, deem reasonable, including, but not limited to, the requirement that Landlord approve the contractors, materials, mechanics and/or materialmen utilized for such purposes. Landlord agrees to assign to Tenant any warranties Landlord may have pertaining to those parts of the Leased Property Tenant is responsible for maintaining hereunder.

7.10. Tenant shall store all trash and garbage in metal containers located where designated by Landlord and so as not to be visible or create a nuisance to customers and business invitees in the Center, and so as not to create or permit any health or fire hazard, and arrange for the prompt and regular removal thereof.

7.11. Tenant shall at all times during the term of the Lease comply with all governmental rules, regulations, ordinances, statutes and laws, and the orders and regulations of the Insurance Services Office or any other body now or hereafter exercising similar functions, now or hereafter in effect pertaining to the Center, the Leased Property or Tenant's use thereof.

7.12. Tenant hereby covenants and agrees that it, its agents, employees, servants, contractors, subtenants and licensees shall abide by the Rules and Regulations attached hereto as Exhibit D and incorporated herein by reference as well as those provided herein and such additional rules and regulations hereafter adopted and amendments and modifications of any of the foregoing as Landlord may, from time to time, adopt for the safety, care and cleanliness of the Leased Property or the Center or for the preservation of good order thereon.

7.13. Tenant shall operate all of the Leased Property during the entire lease term with sound business practice, due diligence and efficiency so as to provide the maximum gross receipts that may be produced by such manner of

operation. Tenant shall provide, install and at all times maintain in the Leased Property all suitable furniture, fixtures, equipment and other personal property necessary for the conduct of Tenant's business therein, in a businesslike manner, shall carry at all times in the Leased Property a stock of merchandise of such size, character and quality as shall be reasonably designed to produce the maximum return to Tenant (and Landlord if percentage rent is included in this Lease), and shall staff the Leased Property at all times with sufficient sales personnel to serve its customers. Tenant shall conduct its business in the Leased Property during those days, nights and hours as shall be determined by Landlord, which shall not be less than ten (10) hours per day on weekdays, six (6) hours on Saturday and five (5) hours on Sunday. Subject to the Declaration, Tenant may also operate and open for twenty four (24) hours per day. In the event of breach by Tenant of any of the conditions of this Section, Landlord shall have, in addition to any and all remedies herein provided, the right, at its option, to collect not only the minimum rent herein provided, but additional rent at the rate of one-thirtieth (1/30) of the minimum monthly rent herein provided for each and every day that Tenant is not open for business as herein provided. Said additional rent shall be due on demand during such period of Tenant's failure to conduct its business as herein provided.

7.14. Tenant shall keep all merchandise display cases in the Leased Property suitably lighted during such hours as Landlord may reasonably require, including periods other than or in addition to the business hours of Tenant.

7.15. 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, odor, vibration, 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.

7.16. If Tenant's permitted use of the Leased Property involves the sale of food, then Tenant shall maintain a health department rating of "A" (or such other highest health department or similar rating as is available) at all times during the term of this Lease. If Tenant receives any lower rating, then Tenant shall immediately notify Landlord of such rating, shall correct all deficiencies noted by the health department and shall have the Leased Property reinspected. Should the Leased Property be rated lower than an "A" (or such other highest health department or similar rating as is available) more than three times in any twelve (12) month period including any extensions, such shall be an incurable event of default not subject to the notice and cure provisions of Section 26 hereof that will give rise to Landlord's rights pursuant to the terms hereof.

7.17. During the term of the Lease, and so long as the Leased Property is continuously used for the purposes stated herein and Tenant has not been in default under any term or provision of the Lease, Landlord shall not lease or operate within the Center any other directly competing business whose primary use is exclusively the Exclusive Use set forth in Lease Section (o). Notwithstanding anything contained in this Section to the contrary, the exclusive rights granted Tenant hereunder shall not be deemed to restrict the activities of any Major Tenant and that the foregoing shall not apply to existing tenants or occupants in the Center as of the date of this lease to the extent that any such tenant's lease permits such use. "Major Tenant" is defined as any occupant in the Center in excess of 12,000 square feet. Tenant covenants and agrees to indemnify and hold Landlord harmless from any claims, actions, damages, expenses, injuries, costs, including reasonable attorney's fees, arising from any claim resulting in litigation brought by an independent, third party seeking space at the Center that the granting of the foregoing exclusive in favor of Tenant violates any state or federal law, regulation or common law protection or right; provided, however, that Tenant may, at Tenant's option, waive its exclusive rights and avoid this indemnification obligation.

## SECTION 8 ALTERATIONS AND IMPROVEMENTS

8.01. Landlord shall install those improvements required to be installed by it pursuant to Exhibit C attached hereto and incorporated herein by reference. Such improvements shall be constructed substantially in accordance with the plans and specifications adopted pursuant to Exhibit C.

It is understood and agreed by Tenant that any minor changes from any plans or specifications that may hereafter be made during construction shall not affect or change this Lease or invalidate the same. Tenant shall pay to Landlord any expense incurred by Landlord as a result of changes requested by Tenant which affect Landlord's work. Tenant agrees to furnish Landlord, within the time periods required in Exhibit C, with a complete and detailed set of plans and specifications, in compliance with Exhibit C, drawn by a registered architect, which architect shall be previously approved in writing by Landlord. Landlord may require Tenant, at Tenant's sole cost and expense, to furnish a bond or other security satisfactory to Landlord to assure diligent and faithful performance of any work to be performed by Tenant. It is understood and agreed that in the event any disagreement or dispute arises between Landlord and Tenant with reference to the work to be performed with respect to the Leased Property pursuant hereto or with respect to whether or not the Leased Property is available for Tenant's work or Tenant's occupancy, the certification of Landlord's supervising architect or agent shall be conclusive and binding upon Landlord and Tenant.

8.02. Tenant shall observe and perform all of its obligations under this Lease (except its obligations to pay minimum rent, percentage rent (if applicable), and additional rent) from the date upon which the Leased Property is turned over to Tenant or is made available for Tenant's work until the Commencement Date in the same manner as though the Lease term began when the Leased Property was so made available to Tenant.

8.03. Tenant shall not make any additions, alterations, improvements or changes (collectively, "Improvements") in or to the Leased Property without the prior written reasonable approval of Landlord, including, without limitation, any penetration of the roof from the interior or exterior of the Leased Property (which must be performed by the contractor that installed the roof, or such other contractor acceptable to Landlord in its sole and absolute discretion). Any request to make Improvements shall be accompanied by a set of plans drawn by a licensed architect and a proposed timeline for the completion of the work. Except as provided in Exhibit C hereof, any Improvements shall be at the sole cost and expense of Tenant. Any Improvements shall be made promptly and in a good and workmanlike manner and in compliance with all insurance requirements and with all applicable permits, authorizations, building regulations, zoning laws and all other governmental rules, regulations, ordinances, statutes and laws, now or hereafter in effect pertaining to the Leased Property or Tenant's use thereof. Prior to the commencement of such work, Tenant shall give evidence to Landlord that appropriate insurance satisfactory to Landlord has been obtained for the protection of Landlord and its tenants and invitees from damage or injury resulting from the making of such Improvements. In addition, prior to the commencement of such work, Tenant, if required by Landlord, shall secure, at Tenant's expense, performance, labor and materials bonds for the full cost of such work satisfactory to Landlord. Landlord will direct electricians as to where and how telephone wires are to be introduced. No boring or cutting for wires will be allowed without the consent of Landlord. The location of telephones, call boxes and other office equipment affixed to the Leased Property shall be subject to the reasonable approval of Landlord. Tenant shall not lay linoleum, tile, carpet or other similar floor coverings and the same shall not be affixed to the floor of the Leased Property in any manner except as approved by Landlord. The expense of repairing any damage resulting from a violation of this rule or removal of any floor covering shall be borne by the tenant (including Tenant, if applicable) by whom, or by whose contractors, employees or invitees, the damage shall have been caused. Any Improvements made by Tenant shall at Landlord's option become the property of Landlord upon the expiration or sooner termination of this Lease. However, Landlord shall have the right to require Tenant to remove such Improvements, at Tenant's sole cost and expense, upon such termination of this Lease and to surrender the Leased Property in the same condition as it was prior to the making of any or all such Improvements, ordinary wear and tear excepted.

8.04. Tenant will not create or permit to be created or to remain, and will discharge, any lien, encumbrance or charge upon fixtures, equipment, or personal property located within the Leased Property. Tenant, however, foregoing notwithstanding, is permitted to finance its fixturing without violating this paragraph, if Tenant in good faith contests the payment to a contractor, subcontractor or materialman which results in a lien, in such event the Tenant shall not be required to remove the lien, provided that Tenant shall post a bond or other reasonable security in Landlord's favor, pending the Tenant's resolution of the Tenant's dispute.

8.05. Landlord's approval of any drawing, plans or specifications shall not constitute any assumption of any liability for the accuracy or sufficiency thereof.

8.06. If available, a panel identifying Tenant's business shall be installed on the Center's pylon signs, ("Pylon"), at Tenant's sole cost at a position and cost to be determined by Landlord. Tenant's panel shall conform to the Center's signage criteria and shall conform with all governmental and association regulations applicable to the Center. Tenant must use Landlord's sign company for the manufacture and installation of the panel.

8.07. If permitted, Tenant may place a sign identifying Tenant's business on three (3) sides of the Leased Property, which signs shall conform to the Center's signage criteria and shall conform with all governmental and association regulations applicable to the Center.

## SECTION 9 LANDLORD'S REPAIRS

Landlord agrees to keep in good order, condition and repair the foundations, exterior walls and roof structure of the Leased Property (but excluding the exterior and interior of all windows, doors, plate glass and showcases) except for reasonable wear and tear and except for any damage thereto caused by any act or negligence of Tenant or its agents, employees, servants, contractors, subtenants, licensees, customers or business invitees. It is an express condition precedent to all obligations of Landlord to repair and maintain that Tenant shall have notified Landlord in writing of the need for such repairs or maintenance. The cost of such repairs shall be included in the Center's Operating Cost, as such term is hereinafter defined in Section 10.

## SECTION 10 PARKING AND COMMON AREAS

10.01.1. Tenant, its agents, employees, servants, contractors, subtenants, licensees, customers and business invitees shall have the nonexclusive right, in common with Landlord and all others to whom Landlord has or may hereafter grant rights, to use such areas of the Center (including, but not limited to, the parking areas, walkways and sidewalks) as designated from time to time by Landlord, subject to such rules and regulations as Landlord may from time to time impose and subject to the provisions of that Declaration of Restrictions and Operation and Easement Agreement, recorded Book No. 981022 as Instrument No. 10589, Official Records, Office of the County Recorder, Clark County, Nevada, and all amendments thereto (the "Declaration"). Tenant agrees that it, its agents, employees, servants, contractors, subtenants and licensees shall abide by such rules and regulations and all the terms and conditions of the Declaration. Landlord may at any time close any common area to make repairs or changes, to prevent the acquisition of public rights in such areas, or to discourage noncustomer parking. Landlord reserves the right to dedicate all or portions of such common areas and other portions of the Center for public utility purposes. Landlord may do such other acts in and to the common areas as in its judgment may be desirable. Tenant shall not at anytime interfere with the rights of Landlord, other owners of portions of the Center, other tenants, its and their agents, employees, servants, contractors, subtenants, licensees, customers and business invitees to use any part of the parking areas or other common areas.

10.01.2. All parking areas and common areas that Tenant may be permitted to use are to be used under a revocable license, and if any such license is revoked, or if the amount of such area is diminished, Landlord shall not be subject to any liability, nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall revocation or diminution of such areas be deemed constructive or actual eviction.

10.02.1 Beginning on the earlier of (i) the Commencement Date or (ii) the date of opening, Tenant will pay to Landlord monthly in advance in addition to the rent specified in Section 3 hereof, as additional rent, an amount fixed for the first calendar year or portion thereof in the amount set forth in Section (k) of the Fundamental Lease Provisions above annually to cover the "Center's Operating Cost" as defined below. Such annual amount shall be increased as of January 1 of each year by the greater of (i.) one hundred four percent (104%) or ii.) the percentage increase, if any, of the U.S. City Average Consumer Price Index for Urban Wage Earners and Clerical Workers for all items (1982-84=100), published by the Bureau of Labor Statistics of the U.S. Department of Labor ("CPI"), plus the actual increase in Impositions as determined by Landlord. In no event shall Center's Operating Cost be decreased. The first CPI increase shall be the percentage increase in the CPI from the month in which the Commencement Date occurs to the



next November after the Commencement Date. Thereafter, the increases shall be based on the percent increase in CPI from each November to November of the next year. If at the time required for the determination the CPI is no longer published or issued, Landlord shall use such index reasonably determined by Landlord. Landlord reserves the right to adjust the Center's Operating Cost during the first ninety (90) days of the renewal term.

10.02.2. For the purpose of this Section 10, the term "Center's Operating Cost" is hereby defined to mean the total cost and expense incurred in insuring, managing, operating, equipping, lighting, repairing, replacing and maintaining the Center, and may include sums due pursuant to the terms of the Declaration.

10.02.3. The additional rent provided to be paid in this Section 10 shall be paid in advance by Tenant on the first day of each month without further demand or any deduction or set off whatsoever.

## SECTION 11 INTENTIONALLY OMITTED

## SECTION 12 TAXES

12.01. Tenant shall be liable for and shall pay before delinquency (and, upon demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of the payment thereof) all taxes (including entertainment taxes), fees and assessments of whatsoever kind or nature, and penalties and interest thereon, if any, levied against Tenant's property or any other personal property of whatsoever kind and to whomsoever belonging situate or installed in or upon the Leased Property whether or not affixed to the realty. If at any time during the term of this Lease any such taxes on personal property are assessed as part of the tax on the real property of which the Leased Property is a part, then in such event Tenant shall pay to Landlord on demand the amount of such additional taxes as may be levied against the real property by reason thereof.

12.02. Impositions shall be included in Center's Operating Cost.

12.03. For the purposes of this Lease "Impositions" means:

(a) Any real estate taxes, fees, assessments or other charges assessed against the Center or any improvements thereon, and the reasonable costs incurred by Landlord in contesting same.

(b) All personal property taxes on personal property used in connection with the Center and related structures other than taxes payable by Tenant under Section 12.01 hereof and taxes of the same kind as those described in said Section 12.01 payable by other tenants on the Center pursuant to corresponding provisions of their leases.

(c) Any and all taxes, assessments, license fees, and public charges levied, assessed, or imposed and which become payable during the term hereof upon all leasehold improvements, over and above the building shell, whether installed by Landlord or Tenant.

(d) Any and all environmental levies or charges now in force affecting the Center or any portion thereof, or which may hereafter become effective, including, but not limited to, parking taxes, levies, or charges, employer parking regulations, and any other parking or vehicular regulations, levies, or charges imposed by any municipal, state or federal agency or authority.

(e) Any other taxes levied or assessed in addition to or in lieu of such real or personal property taxes.

12.04. If at any time during the term of this Lease, under the laws of the United States, Nevada or any political subdivision thereof, a tax or excise on rents or other tax (except income tax), however described, is levied or assessed by the United States, Nevada or said political subdivision against Landlord on account of any rent reserved under this Lease, the Leased Property or any use thereof, all such tax or excise on rents or other taxes shall be paid by Tenant.



Whenever Landlord shall receive any statement or bill for any such tax or shall otherwise be required to make any payment on account thereof, Tenant shall pay the amount due hereunder within ten (10) days after demand therefor accompanied by delivery to Tenant of a copy of such tax statement, if any.

### SECTION 13 UTILITIES

Tenant shall pay all charges for water, gas, heat, electricity, power, garbage service, air conditioning, telephone service, sewer service charges and sewer rentals charged or attributable to the Leased Property, and all other services or utilities used in, upon or about the Leased Property by Tenant or any of its subtenants, licensees or concessionaires during the term hereof. Within ten (10) days after delivery of the Leased Property to Tenant, as evidenced by the notice in Section 2.02, Tenant shall transfer into the name of Tenant the service for all utilities directly servicing the Leased Property, excluding water, sewer and garbage. Landlord shall estimate in advance and Tenant shall pay as additional rent and in the manner specified in Section 10 hereof all charges for water, gas, heat, electricity, power, garbage service, air conditioning, telephone service, sewer service charges and sewer rentals charged or attributable to the Leased Property, and all other services or utilities used in, upon or about the Leased Property by Tenant or any of its subtenants, licensees or concessionaires during the term hereof not metered separately to Tenant and paid by Landlord. Landlord may require that Tenant, at Tenant's cost, provide a separate check or sub meter for one or more utility lines from a main line into the Leased Property. Landlord may charge an administrative fee of the lesser of ten percent (10%) or Five Dollars (\$5.00) of the monthly water cost billed by Landlord.

### SECTION 14 INSURANCE

14.01. Tenant shall not use or occupy, or permit the Leased Property to be used or occupied in a manner which will increase the rates of insurance for the Leased Property or the Center (or any portion thereof), which will make void or voidable any insurance then in force with respect thereto, which would constitute a defense to any action thereon, or which will make it impossible to obtain any insurance with respect thereto. If by reason of the failure of Tenant to comply herewith, any insurance rates for the Leased Property or the Center (or any portion thereof) become higher than they otherwise would be, Tenant shall reimburse Landlord, on the first day of the calendar month next succeeding notice by Landlord to Tenant of said increase, for that part of all insurance premiums thereafter paid by Landlord which shall have been charged because of such failure of Tenant. Any policy of insurance maintained by Tenant insuring against any risk in, upon, about or in any way connected with the Leased Property or Tenant's use thereof shall contain an express waiver of any and all rights of subrogation thereunder whatsoever against Landlord, its officers, agents and employees.

14.02. Tenant shall, at all times during the term hereof and beginning upon Tenant's occupying the Leased Property for any reason or for the construction of Tenant's Improvements, at its sole cost and expense, procure and maintain in full force and effect a policy of commercial public liability insurance issued by an insurance carrier approved by Landlord assuring against loss, damage or liability for injury or death to persons and loss or damage to property occurring from any cause whatsoever in connection with the Leased Property or Tenant's use thereof. Such liability insurance shall be in amounts of not less than One Million Dollars (\$1,000,000.00) per occurrence. All such insurance shall specifically insure the performance by Tenant of the indemnity agreement as to liability for injury to or death of persons and loss of or damage to property contained in Section 16.01 hereof. Tenant, Landlord and Landlord's lender shall be named as the insured and additional insureds, respectively, (and at Landlord's option, any other persons, firms or corporations designated by Landlord shall also be named additional insureds) under each such policy of insurance which shall provide that Landlord, although named as an additional insured, shall nevertheless be entitled to recovery thereunder for any loss suffered by it, its agents, servants and employees by reason of Tenant's negligence.

14.03.01. Tenant shall, at all times during the term hereof, at its sole cost and expense, procure and maintain in full force and effect special form insurance covering Tenant's Property and its merchandise (including Tenant's improvements and betterments), and the personal property of others in Tenant's possession in, upon or about the Leased Property. Such insurance shall be in an amount equal to the then current replacement value of the property required to be insured. Tenant, Landlord and Landlord's lender, as their interests may appear, shall be the named insured and

additional insureds, respectively, (and at Landlord's option, any other persons, firms or corporations designated by Landlord shall be additionally named additional insureds) under each such policy of insurance.

14.03.02. Landlord may procure and maintain in full force and effect a policy of rental insurance in an amount up to twelve (12) times the monthly rent then due hereunder, the premiums for which shall be a part of Center's Operating Cost.

14.03.03. Intentionally omitted.

14.03.04. Landlord shall procure and maintain in full force and effect standard form of fire with extended coverage insurance covering the Leased Property and the building or buildings on the Parcel.

14.04. Intentionally omitted.

14.05. A certificate issued by the insurance carrier for each policy of insurance required to be maintained by Tenant hereunder shall be delivered to Landlord, Landlord's lender and all other named insureds and additional insureds on or before the Commencement Date and thereafter, as to policy renewals, within thirty (30) days prior to the expiration of the terms of each such policy. Each of said certificates of insurance and each such policy of insurance required to be maintained by Tenant hereunder shall be from an insurer and in form and substance satisfactory to Landlord and shall expressly evidence insurance coverage as required by this Lease and shall contain an endorsement or provision requiring not less than thirty (30) days written notice to Landlord and all other named insureds and additional insureds prior to the cancellation, diminution in the perils insured against, or reduction of the amount of coverage of the particular policy in question.

14.06. Tenant hereby waives any and all rights of recovery from Landlord, its officers, agents and employees for any loss or damage, including consequential loss or damage, caused by any peril or perils (including negligent acts) enumerated in each form of insurance policy required to be maintained by Tenant hereunder.

14.07. Each policy of insurance provided for in this Section 14 shall contain an express waiver of any and all rights of subrogation thereunder whatsoever against Landlord, its officers, agents and employees. All such policies shall be written as primary policies and not contributing with or in excess of the coverage, if any, which Landlord may carry. Any other provision contained in this Section 14 or elsewhere in this Lease notwithstanding, the amounts of all insurance required hereunder to be paid by Tenant shall be not less than an amount sufficient to prevent Landlord or Tenant from becoming a co-insurer.

14.08. Tenant shall replace or self insure, at the expense of Tenant, any and all plate and other glass damaged or broken from any cause whatsoever in and about the Leased Property. Tenant shall insure, and keep insured, at Tenant's expense, all plate and other glass in the Leased Property for and in the name of Tenant and Landlord.

## SECTION 15 LIENS

Tenant shall at all times indemnify, save and hold Landlord, the Leased Property and the leasehold created by this Lease free, clear and harmless from any and all claims, liens, demands, charges, encumbrances, litigation and judgments arising directly or indirectly out of any use, occupancy or activity of Tenant, or out of any work performed, material furnished, or obligations incurred by Tenant in, upon or otherwise in connection with the Leased Property. Tenant shall give Landlord written notice at least ten (10) business days prior to the commencement of any such work on the Leased Property to afford Landlord the opportunity of filing appropriate notices of nonresponsibility. Tenant shall, at its sole cost and expense, within fifteen (15) days after filing of any lien of record, obtain the discharge and release thereof. Nothing contained herein shall prevent Landlord, at the cost and for the account of Tenant, from obtaining said discharge and release in the event Tenant fails or refuses to do the same within said fifteen (15) day period.

## SECTION 16 INDEMNIFICATION

16.01. Tenant hereby covenants and agrees to indemnify, save and hold Landlord, the Leased Property and the leasehold estate created by this Lease free, clear and harmless from any and all liability, loss, damages, costs, expenses, including reasonable attorneys' fees, judgments, claims, liens and demands of any kind whatsoever in connection with, arising out of, or by reason of any act, omission or negligence of Tenant, its agents, employees, servants, contractors, subtenants, licensees, customers or business invitees while in, upon, about or in any way connected with the Leased Property or the Center or arising from any accident, injury or damage, howsoever and by whomsoever caused, to any person or property whatsoever, occurring in, upon, about or in any way connected with the Leased Property or any portion thereof other than as a result of Landlord's gross negligence or willful acts. The foregoing obligation to indemnify shall include, but is not limited to, Landlord's reasonable attorneys' fees, investigation costs and all other of Landlord's costs, expenses and liabilities reasonably incurred in connection therewith from the first notice that any claim or demand is to be made or may be made. Tenant further agrees that if, by reason of any act or omission of Tenant, Landlord is made a party defendant in any legal proceeding concerning this Lease or the Leased Property, Tenant shall indemnify and hold Landlord harmless from all costs, expenses, and liabilities (including attorneys' fees and court costs) it may incur by reason thereof.

16.02. Landlord shall not be liable to Tenant or to any other person whatsoever for any damage occasioned by falling plaster, electricity, plumbing, gas, water, steam, sprinkler or other pipe and sewage system, by the bursting, running or leaking of any tank, washstand, closet, waste or other pipes, or by water being upon or coming through the roof, skylight, vent, trap door or otherwise for any reason whatsoever or for any damage arising from any acts or neglect of co-tenants or occupants of the Center or of adjacent property or of the public, including, but not limited to, breach of any lease or rules and regulations, nor shall Landlord be liable in damages or otherwise for any failure to furnish, or interruption of, service of any utility.

## SECTION 17 SUBORDINATION

17.01. Tenant agrees upon request of Landlord to subordinate this Lease and its rights hereunder to the lien of any mortgage, deed of trust or other encumbrance, (including, but not limited to, sale-lease back transactions), together with any renewals, extensions or replacements thereof, hereafter placed, charged or enforced against the Leased Property, or any portion thereof, or any property of which the Leased Property is a part, and to execute and deliver at any time, and from time to time, upon demand by Landlord, such documents as may be required to effectuate such subordination, and in the event that Tenant shall fail, neglect or refuse to execute and deliver any such documents to be executed by it, Tenant hereby appoints Landlord, its successors and assigns, the attorney-in-fact of Tenant irrevocably to execute and deliver any and all such documents for and on behalf of Tenant.

17.02. In the event that the mortgagee, beneficiary of any mortgage or deed of trust, or ground lessor (collectively, "Mortgagee") elects to have this Lease a prior lien to its mortgage, deed of trust, or ground lease, then and in such event, upon such Mortgagee's giving written notice to Tenant to that effect, this Lease shall be deemed prior in lien to such mortgage, deed of trust, or ground lease whether this Lease is dated prior to or subsequent to the date of recordation of such mortgage, deed of trust, or ground lease.

17.03. Tenant shall, in the event any proceedings are brought for the foreclosure of the Leased Property or in the event of exercise of the power of sale under any deed of trust made by Landlord covering the Leased Property, or termination of any ground lease, attorn to the purchaser upon any such foreclosure or sale, or ground lessor, as the case may be, and recognize such purchaser or lessor as the landlord under this Lease.

17.04. Tenant hereby agrees not to look to any Mortgagee for accountability for any security deposit required by Landlord hereunder, unless said sums have been actually received by said Mortgagee as security for Tenant's performance of this Lease.

SECTION 18  
ASSIGNMENT AND SUBLETTING

18.01. Tenant shall not assign, mortgage, pledge, hypothecate or encumber this Lease nor the leasehold estate hereby created or any interest herein, whether by agreement, operation of law or otherwise, or sublet the Leased Property or any portion thereof, or license the use of all or any portion of the Leased Property without the prior written consent of Landlord. If this Lease be assigned, or if the Leased Property or any part thereof be sublet or occupied by anybody other than Tenant, Landlord may collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this Section, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. If Tenant is a corporation or a partnership, the issuance of any additional stock or equity interests and/or the transfer, assignment or hypothecation of any stock or interest in such corporation or partnership in the aggregate in excess of forty-nine percent (49%) of such interests, as the same may be constituted as of the date of this Lease, whether directly or indirectly, shall be deemed an assignment within the meaning of this Section 18.

18.02. In the absence of an express agreement in writing to the contrary, executed by Landlord, no assignment, mortgage, pledge, hypothecation, encumbrance, subletting or license hereof or hereunder shall act as a release of Tenant or any guarantor from any of the terms, covenants and conditions of this Lease on the part of Tenant to be kept and performed. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver of any of the provisions of this Lease or a consent to the assignment or subletting of the Leased Property.

18.03. Each assignee or transferee shall assume and be deemed to have assumed this Lease and shall be and remain liable jointly and severally with Tenant for the payment of all rents due hereunder, and for the due performance during the term of this Lease of all the covenants and conditions herein set forth by Tenant to be kept and performed. No assignment or transfer shall be effective or binding on Landlord unless said assignee or transferee shall concurrently deliver to Landlord a recordable instrument which contains a covenant of assumption by said assignee or transferee; provided that a failure or refusal to so execute said instrument shall not release or discharge the assignee or transferee from its liability aforesaid.

18.04. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation hereof, or the termination of this Lease by Landlord pursuant to any provision contained herein, shall not work a merger, but at the option of Landlord, shall either terminate any or all existing subleases or subtenancies, or operate as an assignment to the Landlord of any and all such subleases or subtenancies.

SECTION 19  
INSOLVENCY AND DEATH

19.01. It is understood and agreed that neither this Lease nor any interest herein or hereunder, nor any estate hereby created in favor of Tenant, shall pass by operation of law under any state or federal insolvency, bankruptcy or inheritance act, or any similar law now or hereafter in effect, to any trustee, receiver, assignee for the benefit of creditors, heir, legatee, devisee, or any other person whomsoever without the express written consent of Landlord first had and obtained therefor.

19.02. Landlord and Tenant hereby acknowledge and recognize that Section 365 of Title 11 of the United States Code (the "Bankruptcy Code") provides that a debtor-in-possession or a trustee, with court approval, may assume or reject an unexpired lease and that in a case under Chapter 11 of the Bankruptcy Code, the court, on request of a party to such unexpired lease, may order the trustee or debtor-in-possession to determine within a specified period of time whether to assume or reject such unexpired lease. Because of the fact that time is of the essence to this Lease, Tenant expressly covenants, agrees and bargains to file or cause to be filed a motion either to assume or to reject this Lease within forty-five (45) days of the filing of a voluntary petition under the Bankruptcy Code or the entry of an order for relief in the event of the filing of an involuntary petition.

19.03. Landlord and Tenant further recognize that Section 365 of the Bankruptcy Code provides for the assumption and assignment, subject to court approval, of unexpired leases. Court approval of such assumption and assignment is pre-conditioned on, among other things, the provision of adequate assurance of future performance. In view of the foregoing, Landlord and Tenant do hereby bargain, covenant and agree that the following, and each of them, specifically and without limiting Tenant's obligations to continue to perform all of the terms of this Lease, are conditions and covenants the fulfillment of which are necessary to provide Landlord with adequate assurance of future performance:

(a) The assumption and assignment of this Lease will not breach any provision, such as a radius, location use or exclusive use provision, in any other lease, financing agreement or master agreement (including the Declaration and any other covenants, conditions and restrictions encumbering the Center) relating to the Center;

(b) The proposed assignee will not increase the burden on the common area and will not use the Leased Property in violation of the terms of this Lease and any restrictive covenant applicable to the Center then in force;

(c) The proposed assignee will, in Landlord's reasonable opinion, be a suitable tenant for a first class shopping center; and

(d) The proposed assignee has adequate financial resources to pay all rent and other consideration due under this Lease and to assume all other obligations of Tenant under this Lease.

## SECTION 20 CONDEMNATION

20.01. Should the whole or any part of the Leased Property be condemned or taken by a competent authority for any public or quasi-public purpose, all awards payable on account of such condemnation and taking shall be payable to Landlord, and Tenant hereby waives any and all interest therein. Tenant, however, may make a separate claim for the taking of its trade fixtures, furniture, and or leasehold improvements, as well as any special damages, such as Tenant's moving expenses.

20.02. If the whole of the Leased Property shall be so condemned and taken, then this Lease shall terminate upon such taking. If greater than one-third (1/3) of the floor space of the Leased Property is condemned or taken, and if the remaining portion thereof will not be reasonably adequate for the operation of Tenant's business after Landlord completes such repairs or alterations as Landlord elects to make, either Landlord or Tenant shall have the option to terminate this Lease by notifying the other party hereto of such election in writing within twenty (20) days after such taking. If by such condemnation and taking one-third (1/3) or less of the Leased Property has been taken, or if only a part of the Leased Property is taken and the remaining part thereof is suitable for the purposes for which Tenant has leased the Leased Property, this Lease shall continue in full force and effect, but the minimum rent shall be reduced in an amount equal to that proportion of the minimum rent which the floor space of the portion taken bears to the total floor space of the Leased Property. In the event a partial taking does not terminate this Lease, Tenant, at Tenant's expense, shall make repairs and restorations to the remaining premises of the nature of Tenant's work required by Exhibit C and shall also repair or replace its stock in trade, fixtures, furniture, furnishings, floor coverings and equipment and if Tenant has closed shall promptly reopen for business. If any part of the Center other than the Leased Property shall be so taken or appropriated, Landlord shall have the right, at its option to terminate this Lease by notifying Tenant within six (6) months of such taking.

20.03. Tenant shall in no case be entitled to compensation from Landlord for damage on account of any annoyance or inconvenience in making repairs hereunder. If this Lease is terminated pursuant to this Section 20 and Tenant is not in default hereunder, rent shall be prorated as of the date of termination, any security deposited with Landlord shall be returned to Tenant and all rights and obligations hereunder shall cease and terminate. Except to the extent provided for in this Section 20, neither the rent payable by Tenant nor any of Tenant's other obligations under any provision of this Lease shall be affected by any condemnation or taking of the Leased Property or the Center or any portion of either.

20.04. For the purposes hereof, a deed in lieu of condemnation shall be deemed a taking. A change in grade of street adjoining the Center shall also be deemed a taking.

## SECTION 21 DESTRUCTION OF LEASED PROPERTY

21.01. In the case of total destruction of the Leased Property, or any portion thereof substantially interfering with Tenant's use of the Leased Property, whether by fire or other casualty, not caused by the fault or negligence of Tenant, its agents, employees, servants, contractors, subtenants, licensees, customers or business invitees, this Lease shall terminate except as herein provided. If Landlord notifies Tenant in writing within forty-five (45) days of such destruction of Landlord's election to repair said damage, and if Landlord proceeds to and does repair such damage with reasonable dispatch, this Lease shall not terminate, but shall continue in full force and effect, except that Tenant shall be entitled to a reduction in the minimum rent in an amount equal to that proportion of the minimum rent which the number of square feet of floor space in the unusable portion bears to the total number of square feet of floor space in the Leased Property. Said reduction shall be prorated so that the rent shall only be reduced for those days any given area is actually unusable. In determining what constitutes reasonable dispatch, consideration shall be given to delays caused by labor disputes, civil commotion, war, warlike operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or control, fire or other casualty, inability to obtain any materials or services, acts of God and other causes beyond Landlord's control. If this Lease is terminated pursuant to this Section 21 and if Tenant is not in default hereunder, rent shall be prorated as of the date of termination, any security deposited with Landlord shall be returned to Tenant, and all rights and obligations hereunder shall cease and terminate.

21.02. Notwithstanding the foregoing provisions, in the event the Leased Property, or any portion thereof, shall be damaged by fire or other casualty due to the fault or negligence of Tenant, its agents, employees, servants, contractors, subtenants, licensees, customers or business invitees, then, without prejudice to any other rights and remedies of Landlord, this Lease shall not terminate, the damage shall be repaired by Tenant, and there shall be no apportionment or abatement of any rent.

21.03. In the event of any damage not limited to, or not including, the Leased Property, such that the building of which the Leased Property is a part is damaged to the extent of twenty-five (25%) percent or more of the cost of replacement, or the buildings (taken in the aggregate) of the Center owned by Landlord shall be damaged to the extent of more than twenty-five percent (25%) of the aggregate cost of replacement, Landlord may elect to terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the occurrence of the event causing the damage.

21.04. The provisions of this Section 21 with respect to Landlord shall be limited to such repair as is necessary to place the Leased Property in the condition specified for Landlord's work by Exhibit C and when placed in such condition the Leased Property shall be deemed restored and rendered tenantable promptly following which time Tenant, at Tenant's expense shall perform Tenant's Work required by Exhibit C and Tenant shall also repair or replace its stock in trade, fixtures, furniture, furnishings, floor coverings and equipment, and if Tenant has closed, Tenant shall promptly reopen for business.

21.05. All insurance proceeds payable under any fire and/or rental insurance shall be payable solely to Landlord and Tenant shall have no interest therein. Tenant shall in no case be entitled to compensation for damages on account of any annoyance or inconvenience in making repairs under any provision of this Lease. Except to the extent provided for in this Section 21, neither the rent payable by Tenant nor any of Tenant's other obligations under any provision of this Lease shall be affected by any damage to or destruction of the Leased Property or any portion thereof by any cause whatsoever.



## SECTION 22 RECORDS AND BOOKS OF ACCOUNT

22.01. Tenant, its subtenants, licensees, concessionaires and any other person, firm or corporation selling merchandise or services in, upon or from the Leased Property or any part thereof shall keep and maintain at the Leased Property complete, accurate and customary records and books of account of all sales, whether for cash or on credit, and all business transactions made in, upon or from the Leased Property during each year, and the same shall be retained intact for a period of not less than three (3) years after the end of the year to which said records and books of account pertain. Landlord shall be entitled at all times during business hours, at the Leased Property, through Landlord's duly authorized agents, attorneys or accountants, to inspect and make copies of any and all such records and books of account, including copies of any sales tax or information returns required by or furnished to any governmental authority, together with any and all other records and documents in any way bearing on Tenant's gross sales as herein defined.

22.02. If percentage rent is included in the Lease, Landlord shall be entitled at any time to cause an audit to be made by any person authorized by Landlord of all records and books of account required to be kept hereunder together with any other records and data which Landlord believes would be of assistance in such audit, and if such audit discloses that Tenant's gross sales as previously reported for the period audited were understated, Tenant shall immediately pay to Landlord the additional percentage rental due for the period audited, together with interest at twelve percent (12%) per annum on such shortage of rental from the time such rental became due. If such shortage was in excess of two percent (2%) of the actual percentage rental due as disclosed by such audit, Tenant shall immediately pay to Landlord the cost of such audit. If such shortage was in excess of five percent (5%) of said actual percentage rental due, in addition to the monies due as provided herein, said shortage shall, at the option of the Landlord, terminate this Lease.

## SECTION 23 RIGHT OF ACCESS

23.01. Landlord and its authorized agents and representatives shall be entitled to enter the Leased Property at any reasonable time for the purpose of observing, posting or keeping posted thereon notices provided for hereunder, and such other notices as Landlord may deem necessary or appropriate for protection of Landlord, its interest or the Leased Property; for the purpose of inspecting the Leased Property or any portion thereof; and for the purpose of making repairs to the Leased Property or any other portion of the Center and performing any work therein or thereon which Landlord may elect or be required to make hereunder, or which may be necessary to comply with any laws, ordinances, rules, regulations or requirements of any public authority or any applicable standards that may, from time to time, be established by the insurance services office or any similar body, or which Landlord may deem necessary or appropriate to prevent waste, loss, damage or deterioration to or in connection with the Leased Property or any other portion of the Center or for any other lawful purpose. Landlord shall have the right to use any means that Landlord may deem proper to open all doors in the Leased Property in an emergency. Entry into the Leased Property obtained by Landlord by any such means shall not be deemed to be forcible or unlawful entry into, or a detainer of, the Leased Property, or an eviction of Tenant from the Leased Property or any portion thereof. Nothing contained herein shall impose any duty on the part of Landlord to do any work or repair, maintenance, reconstruction or restoration, which under any provision of this Lease is required to be done by Tenant; and the performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to do the same.

23.02. Landlord may, during the progress of any work on the Leased Property, keep and store upon the Leased Property all necessary materials, tools and equipment and may erect scaffolding and other similar structures. Landlord shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business or quiet enjoyment, or other damage or loss to Tenant by reason of making any such repairs or performing any such work upon the Leased Property, or on account of bringing materials, supplies and equipment into, upon or through the Leased Property during the course thereof or erecting such structures, and the obligations of Tenant under this Lease shall not thereby be affected in any manner whatsoever. Landlord shall, however, in connection with the performance of such work, cause as little inconvenience, disturbance or other damage or loss to Tenant as may be reasonably possible under the circumstances.



23.03. Landlord, and/or its authorized agents and representatives, shall be entitled to enter the Leased Property at all reasonable times for the purpose of exhibiting the same to prospective purchasers and lenders and, during the final six (6) months of the term of this Lease, Landlord shall be entitled to exhibit the Leased Property for lease and post signs therein announcing the same.

#### SECTION 24 EXPENDITURES BY LANDLORD

Whenever under any provision of this Lease Tenant shall be obligated to make any payment or expenditure, or to do any act or thing, or to incur any liability whatsoever, and Tenant fails, refuses or neglects to perform as herein required, Landlord shall be entitled, but shall not be obligated, to make any such payment or to do any such act or thing, or to incur any such liability, all on behalf of and at the cost and for the account of Tenant. In such event, the amount thereof, together with the greater of (i) ten percent (10%) of the amount due and (ii) interest thereon at the rate of fifteen percent (15%) per annum, shall constitute and be collectable as additional rent on demand.

#### SECTION 25 OFFSET STATEMENT

Tenant agrees that within five (5) days of any demand therefor by Landlord, Tenant will execute and deliver to Landlord and/or Landlord's designee a recordable certificate stating that this Lease is unmodified and in full force and effect, such defenses or offsets as are claimed by Tenant, if any, the date to which all rentals have been paid, and such other information including financial statements, concerning the Lease, the Leased Property and Tenant as Landlord or said designee may request.

#### SECTION 26 DEFAULT

26.01.1. Tenant's compliance with each and every covenant and obligation hereof on its part to be performed hereunder is a condition precedent to each and every covenant and obligation of Landlord hereunder.

26.01.2. Landlord shall have all the rights and remedies provided in this Section or elsewhere herein, in the event that:

(a) Tenant shall default in the payment of any sum of money required to be paid hereunder and such default continues for ten (10) days after written notice thereof from Landlord to Tenant; or

(b) Tenant shall default in the performance of any other term, covenant or condition of this Lease on the part of Tenant to be kept and performed and Tenant fails to cure such default as soon as reasonably possible under the circumstances, not to exceed fifteen (15) days; provided, however, that if the default complained of in such notice is of such a nature that the same can be rectified or cured, but cannot with reasonable diligence be done within said fifteen (15) day period, then such default shall be deemed to be rectified or cured if Tenant shall, as soon as reasonably possible within said fifteen (15) day period, commence to rectify and cure the same and shall thereafter complete such rectification and cure with all due diligence, and in any event, within sixty (60) days from the date of giving of such notice; or

(c) Tenant should vacate or abandon the Leased Property during the term of this Lease. Tenant shall be deemed to have "vacated" or "abandoned" the Leased Property if Tenant fails to open its business to the public for three (3) consecutive days, except, with Landlord's prior written consent, closure due to renovation, remodeling, force majeure, or damage or destruction as set forth in Section 21 above; or

(d) Tenant should default under any other agreement with, or for the benefit of, Landlord; or

(e) There is commenced any case in bankruptcy against the original named Tenant, any assignee or sublessee of the original named Tenant, any then occupant of the Leased Property or any guarantor of all or any of

Tenant's obligations hereunder (collectively "Key Persons") or an order for relief is entered with respect to any Key Person or there is appointed a receiver or trustee to take possession of any of the assets of any Key Person or the Leased Property or any Key Person applies for or consents to such appointment, or there is a general assignment by any Key Person for the benefit of creditors, or any action is taken by or against any Key Person under any state or federal insolvency or bankruptcy act, or any similar law now or hereafter in effect or any property of any Key Person is taken or seized under levy of execution or attachment, or any Key Person admits in writing its inability to pay its debts as they mature; provided, however, that the filing of a petition in bankruptcy or any other action taken against any Key Person without the Key Person's consent by an independent third party adverse in interest to the Key Person, except seizure under levy of execution or attachment, shall not be a default hereunder unless the same shall continue in effect for sixty (60) days.

26.01.3. All cure periods provided herein shall run concurrently with any periods provided by law.

26.02. In the event of default as designated in this Section or elsewhere herein, in addition to any other rights or remedies provided for herein or at law or in equity, Landlord, at its sole option, shall have the following rights:

(a) The right to declare the term of this Lease ended and to reenter the Leased Property and take possession thereof, and to terminate all of the rights of Tenant in and to the Leased Property;

(b) The right, without declaring the term of this Lease ended, to reenter the Leased Property and to occupy and/or relet the same, or any portion thereof, for and on account of Tenant as hereinafter provided, and Tenant shall be liable for and pay to Landlord on demand all such expenses as Landlord may have paid, assumed or incurred in recovering possession of the Leased Property, including costs, expenses, attorneys' fees, and expenditures placing the same in good order and condition, or preparing or altering the same for reletting, and all other expenses, commissions and charges paid, assumed or incurred by Landlord in or in connection with reletting the Leased Property. Any such reletting as provided for herein may be for the remainder of the term of this Lease or for a longer or shorter period. Such reletting shall be for such rent and on such other terms and conditions as Landlord, in its sole discretion, deems appropriate. Landlord may execute any lease made pursuant to the terms hereof either in Landlord's own name or in the name of Tenant, or assume Tenant's interest in and to any existing subleases to any tenant of the Leased Property, as Landlord may see fit, and Tenant shall have no right or authority whatsoever to collect any rent from such tenants, subtenants, licensees or concessionaires on the Leased Property. In any case, and whether or not the Leased Property or any part thereof be relet, Tenant, until the end of what would have been the term of this Lease in the absence of such default and whether or not the Leased Property or any part thereof shall have been relet, shall be liable to Landlord and shall pay to Landlord monthly an amount equal to the amount due as rent hereunder, less the net proceeds for said month, if any, of any reletting effected for the account of Tenant pursuant to the provisions of this paragraph, after deducting from said proceeds all of Landlord's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorneys' fees, expenses of employees, alteration costs, and expenses of preparation for such reletting (all said costs are cumulative and shall be applied against proceeds of reletting until paid in full). Landlord reserves the right to bring such actions for the recovery of any deficits remaining unpaid by Tenant to Landlord hereunder as Landlord may deem advisable from time to time without being obligated to await the end of the term hereof for a final determination of Tenant's account and the commencement or maintenance of one or more actions by Landlord in this connection shall not bar Landlord from bringing any subsequent actions for further accruals pursuant to the provisions of this Section 26. In no event shall Tenant be entitled to any excess rental received by Landlord over and above that which Tenant is obligated to pay hereunder. Notwithstanding anything herein to the contrary, in the event Landlord takes possession of the Leased Property as permitted by this paragraph, then Tenant shall not remove any of Tenant's property from the Leased Property, including, without limitation, Tenant's trade fixtures, unless Landlord requires Tenant to remove such property;

(c) The right, even though it may have relet all or any portion of the Leased Property in accordance with the provisions of subparagraph (b) of this Section, to thereafter at any time elect to terminate this Lease for such previous default on the part of Tenant, and to terminate all of the rights of Tenant in and to the Leased Property;

(d) The right to recover or obtain rental compensation for any periods of free rent, including, but not limited to, any Tenant fixturing or Tenant improvement period; and

(e) The right to take any action on behalf of Tenant and to charge to Tenant the cost of such action.

26.03. Pursuant to the rights of re-entry provided above, Landlord may remove all persons from the Leased Property and may, but shall not be obligated to, remove all property therefrom, and may, but shall not be obligated to, enforce any rights Landlord may have against said property or store the same in any public or private warehouse or elsewhere at the cost and for the account of Tenant or the owner or owners thereof. Tenant agrees to hold Landlord free and harmless from any liability whatsoever for the removal and/or storage of any such property, whether of Tenant or any third party whomsoever. Anything contained herein to the contrary notwithstanding, Landlord shall not be deemed to have terminated this Lease or the liability of Tenant to pay any rent or other sum of money thereafter to accrue hereunder, or Tenant's liability for damages under any of the provisions hereof, by any such reentry, or by any action in unlawful detainer or otherwise to obtain possession of the Leased Property, unless Landlord shall have specifically, with reference to this Section, notified Tenant in writing that it has so elected to terminate this Lease. Tenant covenants and agrees that the service by Landlord of any notice pursuant to the unlawful detainer statutes of the State of Nevada and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of, or at any time subsequent to, the service of such notice to Tenant) be deemed to be a termination of this Lease, or the termination of any liability of Tenant hereunder to Landlord.

26.04. Intentionally omitted.

26.05. Intentionally omitted.

26.06. In any action brought by Landlord to enforce any of its rights under or arising from this Lease, Landlord shall be entitled to receive its costs and legal expenses including reasonable attorneys' fees, whether such action is prosecuted to judgment or not. If Landlord shall engage the services of an attorney for the purpose of collecting any rental due from Tenant, Tenant shall pay the reasonable fees of such attorney for his or her services regardless of the fact that no legal proceeding or action may have been filed or commenced. The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with the Lease, the relationship of landlord and tenant, Tenant's use of occupancy of the Leased Property, and/or any claim of injury or damage. In the event Landlord commences any proceedings for nonpayment of any rent, Tenant will not interpose any counterclaim of whatever nature or description in any such proceedings. This shall not, however, be construed as a waiver of the Tenant's right to assert such claims in any separate action or actions brought by Tenant.

26.07. The waiver by Landlord of any default or breach of any of the terms, covenants or conditions hereof on the part of Tenant to be kept and performed shall not be a waiver of any preceding or subsequent breach of the same or any other term, covenant or condition contained herein. The subsequent acceptance of rent or any other payment hereunder by Tenant to Landlord shall not be construed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease other than the failure of Tenant to pay the particular rental or other payment or portion thereof so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rental or other payment. No payment by Tenant or receipt by Landlord of a lesser amount than the rent herein provided shall be deemed to be other than on account of the earliest rent due and payable hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and a satisfaction, and Landlord may accept any such check or payment without prejudice to Landlord's rights to recover the balance of such rent or pursue any other remedy in or under this Lease. The consent by Landlord to any matter or event requiring Landlord's consent shall not constitute a waiver of the necessity for such consent to any subsequent matter or event. This Section 26.07 may not be waived.

26.08. Nothing contained herein shall constitute a waiver of Landlord's right to recover damages by reason of Landlord's efforts to mitigate the damage to it caused by Tenant's default; nor shall anything in this Section adversely affect Landlord's right, as in this Lease elsewhere provided, to indemnification against liability for injury or damage to persons or property occurring prior to a termination of this Lease.

26.09. In the event of termination of this Lease pursuant to this Section, Landlord may recover from Tenant:

(a) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(b) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

As used in subparagraphs (a) and (b) above, the "worth at the time of award" is computed by allowing interest at the Default Rate per annum. As used in subparagraph (c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

## SECTION 27 HAZARDOUS WASTE

27.01. As used in this Section, the term "Hazardous Waste" means:

(a) Those substances defined as "hazardous substances," "hazardous materials," "toxic substances," "regulated substances," or "solid waste" in the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq., as now amended or hereafter amended, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as now amended or hereafter amended, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., as now amended or hereafter amended, The Federal Hazardous Substances Act, 15 U.S.C. § 1261 et seq., as now amended or hereafter amended, the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., as now amended or hereafter amended, the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., as now amended or hereafter amended, and the rules and regulations now in effect or promulgated hereafter pursuant to each law referenced above;

(b) Those substances defined as "hazardous waste," "hazardous material," or "regulated substances" in Chapters 363, 459 and 598 of the Nevada Revised Statutes ("NRS"), or in the regulations now existing or hereafter promulgated pursuant thereto, or in the Uniform Fire Code, 1988 edition;

(c) Those substances listed in the United States Department of Transportation table (49 CFR §172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); and

(d) Such other substances, mixtures, materials and waste which are regulated under applicable local, state or federal law, or which are classified as hazardous or toxic under federal, state or local laws or regulations (all laws, rules and regulations referenced in paragraphs (a), (b), (c) and (d) are collectively referred to as "Environmental Laws").

27.02. Tenant does not intend to and Tenant will not, nor will Tenant allow any other person (including partnerships, corporations and joint ventures) to, during the term of this Lease, manufacture, process, store, distribute, use, discharge or dispose any Hazardous Waste in, under or on the Leased Property, the common areas, the Center or any property adjacent thereto.

(a) Tenant shall notify Landlord promptly in the event of any spill or release of Hazardous Waste into, on or onto the Leased Property, the common areas or the Center regardless of the source of spill or release, whenever Tenant knows or suspects that such a release occurred.

(b) Tenant will not be involved in operations at or near the Leased Property which could lead to the imposition on the Tenant or the Landlord of liability or the creation of a lien on the Leased Property or the Center under the Environmental Laws.

(c) Tenant shall, upon twenty-four (24) hour prior notice by Landlord, permit Landlord or Landlord's agent access to the Leased Property to conduct an environmental site assessment with respect to the Leased Property.

27.03. Tenant for itself and its successors and assigns undertakes to protect, indemnify, save and defend Landlord, its agents, employees, directors, officers, shareholders, affiliates, consultants, independent contractors, successors and assigns (collectively, the "Indemnitees") harmless from any and all liability, loss, damage and expense, including attorneys' fees, claims, suits and judgments that Landlord or any other Indemnitee, whether as Landlord or otherwise, may suffer as a result of, or with respect to:

(a) Any Environmental Law, including the assertion of any lien thereunder and any suit brought or judgment rendered regardless of whether the action was commenced by a citizen (as authorized under the Environmental Laws) or by a government agency;

(b) Any spill or release of or the presence of any Hazardous Waste affecting the Leased Property, the common areas or the Center, whether or not the same originates or emanates from the Leased Property or any contiguous real estate, including any loss of value of the Leased Property, the common areas or the Center as a result of a spill or release of or the presence of any Hazardous Waste;

(c) Any other matter affecting the Leased Property, the common areas or the Center within the jurisdiction of the United States Environmental Protection Agency, the Nevada State Environmental Commission, the Nevada Department of Conservation and Natural Resources, or the Nevada Department of Commerce, including costs of investigations, remedial action, or other response costs whether such costs are incurred by the United States Government, the State of Nevada, or any Indemnitee;

(d) Liability for clean-up costs, fines, damages or penalties incurred pursuant to the provisions of any applicable Environmental Law; and

(e) Liability for personal injury or property damage arising under any statutory or common-law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance, or for the carrying of an abnormally dangerous activity, and response costs.

27.04. In the event of any spill or release of or the presence of any Hazardous Waste affecting the Leased Property, the common areas or the Center caused by Tenant, whether or not the same originates or emanates from the Leased Property or any contiguous real estate, and/or if Tenant shall fail to comply with any of the requirements of any Environmental Law, Landlord may, without notice to Tenant, at its election, but without obligation so to do, give such notices and/or cause such work to be performed at the Leased Property, the common areas or the Center, as the case may be, and/or take any and all other actions as Landlord shall deem necessary or advisable in order to remedy said spill or release of Hazardous Waste or cure said failure of compliance and any amounts paid as a result thereof, together with interest at the rate of fifteen percent (15%) per annum, from the date of payment by Landlord, shall be immediately due and payable by Tenant to Landlord.

27.05. Landlord upon giving Tenant ten (10) days prior notice, shall have the right in good faith to pay, settle or compromise, or litigate any claim, demand, loss, liability, cost, charge, suit, order, judgment or adjudication under the belief that it is liable therefor, whether liable or not, without the consent or approval of Tenant unless Tenant within said ten (10) day period shall protest in writing and simultaneously with such protest deposit with Landlord collateral

satisfactory to Landlord sufficient to pay and satisfy any penalty and/or interest which may accrue as a result of such protest and any judgment or judgments as may result, together with attorney's fees and expenses, including, but not limited to, environmental consultants.

#### SECTION 28 QUIET POSSESSION

Tenant, upon paying the rentals and other payments herein required from Tenant, and upon Tenant's performance of all of the terms, covenants and conditions of this Lease on its part to be kept and performed, may quietly have, hold and enjoy the Leased Property during the term of this Lease without any disturbance from Landlord or from any other person claiming through Landlord.

#### SECTION 29 SALE BY LANDLORD

In the event of any sale, transfer or exchange of the Leased Property by Landlord, Landlord shall be and is hereby 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, occurrence or omission relating to the Leased Property occurring after consummation of such sale or exchange. Tenant agrees to attorn to such purchaser or grantee.

#### SECTION 30 DEFAULT BY LANDLORD

In the event Landlord fails or refuses to perform any of the provisions, covenants or conditions of this Lease on Landlord's part to be kept or performed, Tenant, prior to exercising any right or remedy Tenant may have against Landlord on account of such default, shall give written notice to Landlord of such default, specifying in said notice the default with which Landlord is charged and Landlord shall not be deemed in default if the same is cured within thirty (30) days of receipt of said notice. Notwithstanding any other provision hereof, Tenant agrees that if the default complained of in the notice provided for by this Section 30 is of such a nature that the same can be rectified or cured by Landlord, but cannot with reasonable diligence be rectified or cured within said thirty (30) day period, then such default shall be deemed to be rectified or cured if Landlord within said thirty (30) day period shall commence the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing to proceed.

#### SECTION 31 FORCE MAJEURE

Whenever a day is appointed herein on which, or a period of time is appointed in which, either party is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days on or during which such party is prevented from, or is reasonably interfered with, the doing or completion of such act, matter or thing because of labor disputes, civil commotion, war, warlike operation, sabotage, governmental regulations or control, fire or other casualty, inability to obtain any materials, or to obtain fuel or energy, weather or other acts of God, or other causes beyond such party's reasonable control (financial inability excepted); provided, however, that nothing contained herein shall excuse Tenant from the prompt payment of any rent or charge required of Tenant hereunder.

#### SECTION 32 NO PARTNERSHIP

Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant. Neither the method of computation of rent nor any other provisions contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

### SECTION 33 SERVICE OF NOTICES

33.01. Any and all notices and demands by either party hereto to the other party, required or desired to be given hereunder, shall be in writing and shall be validly given only if personally delivered, deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, or if made by Federal Express or similar delivery service which keeps records of deliveries and attempted deliveries, or if made by facsimile machine with electronic confirmation of receipt (receipt of which is acknowledged or if a copy thereof is promptly delivered by certified mail or a delivery service which keeps records of deliveries and attempted deliveries). Service shall be conclusively deemed made on the first business day delivery is attempted or upon receipt, whichever is sooner, and addressed to the addresses set forth in Section (l) of the Fundamental Lease Provisions above.

33.02. Any party hereto may change its address for the purpose of receiving notices or demands as herein provided by a written notice given in the manner aforesaid to the other party hereto, which notice of change of address shall not become effective, however, until the actual receipt thereof by the other party.

### SECTION 34 BROKERS

34.01. Landlord and Tenant hereby acknowledge and agree that, in connection with the transactions contemplated by this Agreement, the brokers listed in Section (m) of the Fundamental Lease Provisions above shall receive a commission pursuant to a separate agreement, payable within thirty (30) days after Tenant opens for business to the public from the Leased Property.

34.02. Landlord represents and warrants to Tenant, and Tenant represents and warrants to Landlord, that no broker or finder, other than those brokers set forth in Section (m) of the Fundamental Lease Provisions above, if any, has been engaged by them in connection with any of the transactions contemplated by this Agreement. Landlord and Tenant will indemnify, save harmless and defend the other from any liability, cost or expense arising out of or connected with any claim for any commission or compensation made by any person or entity claiming to have been retained or contacted by them in connection with this transaction, other than those brokers set forth in Section 34.01,

### SECTION 35 MISCELLANEOUS

35.01. The captions appearing at the commencement of the sections hereof are descriptive only and for convenience in reference to this Lease and in no way whatsoever define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

35.02. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein which the context requires such substitution or substitutions.

35.03. The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Lease. The parties hereto agree that the venue for any disagreement, dispute or litigation shall be the State of Nevada, County of Clark, and City of Las Vegas.

35.04. Whenever in this Lease any words of obligation or duty are used in connection with either party, such words shall have the same force and effect as though framed in the form of express covenants on the part of the party obligated.

35.05. In the event Tenant now or hereafter shall consist of more than one person, firm or corporation, then and in such event, all such persons, firms or corporations shall be jointly and severally liable as Tenant hereunder.



35.06. The submission of this Lease for examination and/or execution hereof by Tenant does not constitute a reservation of or option for the Leased Property and this Lease becomes effective as a Lease only upon execution and delivery thereof by Landlord and Tenant.

35.07. Should any claim or lien be filed against the Leased Property, or any action or proceeding is instituted affecting the title to the Leased Property, Tenant shall give Landlord written notice thereof as soon as Tenant obtains actual or constructive knowledge thereof.

35.08. This Lease shall not be construed either for or against Landlord or Tenant, but shall be interpreted in accordance with the general tenor of its language and as if drafted mutually.

35.09. Notwithstanding any other provision of this Lease, in the event the term of this Lease shall not have commenced within twenty-one (21) years from the date of execution hereof, this Lease shall become null and void, and Landlord and Tenant shall thereupon be released from any and all obligations with respect thereto.

35.10. Tenant shall pay all costs, expenses and reasonable attorneys' fees that may be incurred or paid by Landlord in processing, documenting or administering any request of Tenant for Landlord's consent required pursuant to this Lease, including, without limitation, requests to assign or sublet the Lease.

35.11. If Tenant hereunder is a corporation, the parties executing this Lease on behalf of Tenant represent and warrant to Landlord: that Tenant is a valid and existing corporation; all things necessary to qualify Tenant to do business in Nevada have been accomplished prior to the date of this Lease; that all franchise and other corporate taxes have been paid to the date of this Lease; that all forms, reports, fees, and taxes required to be filed or paid by said corporation in compliance with applicable laws will be filed and paid when due.

35.12. Landlord reserves the absolute right to effect such other tenancies in the Center as Landlord, in the exercise of its own business judgment, shall determine. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or number of tenants shall, during the term of this Lease or any extension thereof, occupy any space in the Center. There are no other representations or warranties between the parties hereto, and all reliance with respect to representations is solely on such representations and agreements as are contained in this Lease.

35.13. The various rights, options, elections and remedies of Landlord contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law and not expressly waived in this Lease.

35.14. The obligations of Landlord under this Lease do not constitute personal obligations of the individual members, managers, partners, directors, officers, shareholders or similar positions of Landlord, and Tenant shall not seek recourse against the individual partners, directors, officers, members, managers or shareholders of Landlord or any of their personal assets for satisfaction of any liability in respect to this Lease.

35.15. The terms, provisions, covenants and conditions contained in this Lease shall apply to, bind and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns (where assignment is permitted) of Landlord and Tenant, respectively.

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

35.17. Time is of the essence of this Lease and all of the terms, covenants and conditions hereof.

35.18. This Lease contains the entire agreement between the parties and cannot be changed or terminated orally.

35.19. Tenant acknowledges that the site plan attached hereto as Exhibit A-2 is for the purposes of convenience only and that Landlord reserves the right at any time during initial construction or thereafter to expand, reduce, remove, demolish, change, renovate or construct any existing or new improvements at the Center.

35.20. The parties hereto understand that this is a legal document and each acknowledges that they have had the opportunity to seek independent legal counsel to review this Lease.

35.21. Upon Landlord's request, and within thirty (30) days thereof, Tenant agrees to modify this Lease to meet the reasonable requirements of a lender selected by Landlord who demands such modification as a condition precedent to granting a loan and placing a deed of trust or other mortgage encumbrance upon the Parcel or the Leased Property; provided such modification does not increase the monthly minimum rent, percentage rent or any other monetary obligation of Tenant under this Lease; provided further, that such lender agrees to execute an attornment and non-disturbance agreement in favor of Tenant concurrently with Tenant's execution of any documents required under this Section 35.21.

#### SECTION 36 QUEING AND CROWD CONTROL

36.01. Orderly Queuing and Crowd Control. Tenant agrees to (i) maintain all queuing, which occurs due to the Permitted Use of the Leased Property, in an orderly fashion whether such queuing occurs inside or outside the Leased Property or the Center; and (ii) keep all crowds, which may gather due to the Permitted Use of the Leased Property under control whether such crowds gather inside or outside the Leased Property or the Center.

36.02. Additional Measures. If Landlord determines, in its sole judgement, that Tenant has not complied with Paragraph a hereof, Tenant will, upon Landlord's direction and at Tenant's sole cost and expense (i) hire a security guard or guards; and/or (ii) install temporary and removable crowd control devices in areas designated by Landlord.

36.03. Other Directions by Landlord. Tenant agrees to follow Landlord's other directions regarding orderly queuing and crowd control.

36.04. Self-help. If Tenant fails to comply with Landlord's directions pursuant to Sections 36.02 and 36.03 hereof, Landlord shall have the right to do so on Tenant's behalf, and Tenant shall concurrently reimburse Landlord for the cost and expense of doing so.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first set forth above.

"TENANT"

HIGCO, INC.  
a Nevada corporation

By: \_\_\_\_\_

Name: Sean J. Higgins

Its: President

"LANDLORD"

BOCA PARK PARCELS, LLC  
a Nevada limited liability company

By: \_\_\_\_\_

John M. McCall

Manager, Corporate Counsel

## GUARANTY

GUARANTY OF LEASE dated \_\_\_\_\_ by and between Boca Park Parcels, LLC, a Nevada limited liability company, as Landlord, and Higeo, Inc., a Nevada corporation, as Tenant.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned Guarantor hereby unconditionally and irrevocably guarantees the full and faithful performance by Tenant of all the terms, covenants and conditions of the above-referenced Lease. This Guaranty shall remain in full force and effect regardless of any amendment, modification, extension, compromise or release of any term, covenant or condition of the Lease or of any party, assignee or subtenant thereto, as the case may be.

The undersigned agrees to indemnify Landlord against any and all liability, loss, costs, charges, penalties, obligations, expenses, attorneys' fees, litigation, judgments, damages, claims and demands of any kind whatsoever in connection with, arising out of or by reason of the assertion by Tenant of any defense to its obligations under the Lease or the assertion by Guarantor of any defense to its obligations hereunder. Guarantor waives any right or claim or rights to cause a marshalling of Tenant's assets or to proceed against Guarantor or Tenant or any security for the Lease or this Guaranty in any particular order and Guarantor agrees that any payments or performance required to be made hereunder shall become due upon demand in accordance with the terms hereof immediately upon the happening of a default under the Lease, whether or not Guarantor has been given notice of such default, and Guarantor hereby expressly waives and relinquishes all rights and remedies accorded by applicable law to guarantors, including, but not limited to, notice of demand, notice of default, any failure to pursue Tenant or its property, any defense arising out of the absence, impairment or loss of any right of reimbursement or subrogation and any defense arising by reason of any defense of Tenant or by reason of the cessation of the liability of Tenant or any defense by reason of the assertion by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease, or by reason of summary or other proceedings against Tenant.

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

Guarantor agrees that any judgment rendered against Tenant for monies or performance due Landlord shall in every and all respects bind and be conclusive against Guarantor to the same extent as if Guarantor had appeared in any such proceedings and judgment therein had been rendered against Guarantor. Guarantor agrees that Landlord may seek any and all damages and/or remedies from Guarantor directly without first having to seek damages and/or remedies from Tenant.

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

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

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

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

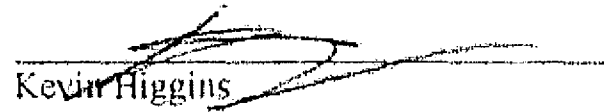
This Guaranty shall be construed in accordance with its intent and without regard to any presumption or other rule requiring construction against the party causing the same to be drafted.

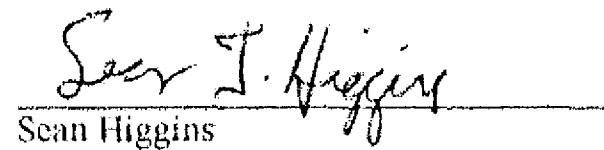
The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Guaranty. The venue for any disagreement, dispute or litigation shall be the State of Nevada, County of Clark and City of Las Vegas.

Should Guarantor consist of more than one person or entity, then, in such event, all such persons and entities shall be jointly and severally liable as Guarantor hereunder. In any action brought by Landlord to enforce any of its rights under or arising from this Guaranty, Landlord shall be entitled to receive its costs and legal expenses including reasonable attorneys' fees, whether such action is prosecuted to judgment or not. If Landlord shall engage the services of any attorney for the purpose of collecting any rental due from Tenant, having first given Tenant five (5) days' notice of its intention so to do, Tenant shall pay the reasonable fees of such attorney for his services regardless of the fact that no legal proceeding or action may have been filed or commenced.

Dated this 5<sup>th</sup> day of November, 2002.

"GUARANTORS"

  
Kevin Higgins

  
Sean Higgins

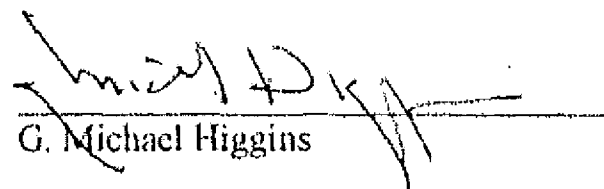
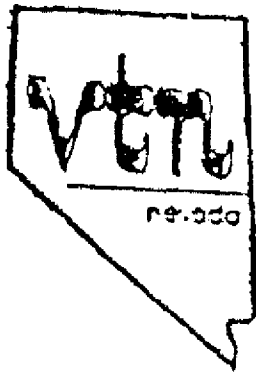
  
G. Michael Higgins

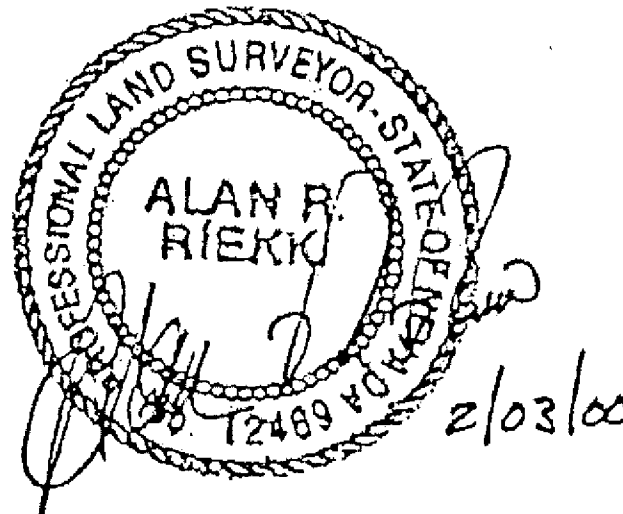
EXHIBIT A-1  
LEGAL DESCRIPTION OF CENTER

See Attached



CONSULTING ENGINEERS • PLANNERS • SURVEYORS

PROVIDING QUALITY PROFESSIONAL  
SERVICES SINCE 1960



W.O. 5334-1  
OCTOBER 15, 1998  
BY: TZ / ARR  
P.R. BY: ARR  
PAGE 1 OF 2  
REVISED: 5/27/99  
REVISED: 2/03/00

EXPLANATION:

THIS LEGAL DESCRIBES A PARCEL OF LAND GENERALLY LOCATED  
NORTHEASTERLY OF RAMPART BOULEVARD AND CHARLESTON BOULEVARD.

LEGAL DESCRIPTION  
PHASE 1

BEING A PORTION OF LOT 1, BLOCK 1 OF THAT COMMERCIAL SUBDIVISION  
KNOWN AS "PECCOLE RANCH TOWN CENTER" ON FILE IN THE OFFICE OF  
THE COUNTY RECORDER, CLARK COUNTY, NEVADA, IN BOOK 86 OF PLATS,  
AT PAGE 23, LOCATED WITHIN THE SOUTH HALF (S 1/2) OF SECTION 32,  
TOWNSHIP 20 SOUTH, RANGE 60 EAST, M.D.M., CITY OF LAS VEGAS,  
CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST SIXTEENTH SECTION CORNER OF SAID SECTION  
32, BEING ON THE CENTERLINE OF RAMPART BOULEVARD; THENCE NORTH  
00°33'39" WEST, ALONG THE CENTERLINE OF SAID RAMPART BOULEVARD,  
119.00 FEET; THENCE NORTH 89°26'21" EAST, DEPARTING SAID  
CENTERLINE, 56.00 FEET TO THE EASTERLY RIGHT-OF-WAY OF SAID  
RAMPART BOULEVARD, SAME BEING THE POINT OF BEGINNING;

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY, THE FOLLOWING COURSES:  
NORTH 00°33'39" WEST, 124.06 FEET; THENCE NORTH 07°45'20" EAST,  
60.83 FEET; THENCE NORTH 01°42'24" WEST, 81.44 FEET; THENCE  
NORTH 15°44'35" WEST, 41.23 FEET; THENCE NORTH 01°42'24" WEST,  
118.57 FEET; THENCE NORTH 00°33'39" WEST, 457.05 FEET TO THE  
BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF  
1650.00 FEET; THENCE NORTHEASTERLY, 547.45 FEET ALONG SAID  
RIGHT-OF-WAY AND SAID CURVE THROUGH A CENTRAL ANGLE OF  
19°00'36"; THENCE SOUTH 71°33'03" EAST, DEPARTING SAID EASTERLY  
RIGHT-OF-WAY, 15.00 FEET; THENCE 72°37'30" EAST, 200.04 FEET;  
THENCE SOUTH 04°29'51" EAST, 151.87 FEET; THENCE NORTH 89°26'21"  
EAST, 681.46 FEET; THENCE SOUTH 00°24'22" EAST, 131.38 FEET;  
THENCE NORTH 89°26'21" EAST, 782.86 FEET; THENCE SOUTH 00°19'57"  
EAST, 530.10 FEET; THENCE NORTH 89°40'03" EAST, 125.00 FEET TO  
THE WESTERLY RIGHT-OF-WAY OF MERIALDO LANE; THENCE SOUTH  
00°19'57" EAST, ALONG SAID WESTERLY RIGHT-OF-WAY, 541.00 FEET TO



LEGAL DESCRIPTION CONTINUED

W.O.5334-1

10/15/98

PAGE 2 OF 2

REVISED: 5/27/99

REVISED: 2/03/00

THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 54.00 FEET; THENCE SOUTHWESTERLY, 84.82 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" TO THE NORTHERLY RIGHT-OF-WAY OF CHARLESTON BOULEVARD; THENCE SOUTH 89°40'03" WEST, ALONG SAID NORTHERLY RIGHT-OF-WAY, 559.98 FEET; THENCE SOUTH 89°26'21" WEST, CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY, 1215.42 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 54.00 FEET; THENCE NORTHWESTERLY, 84.82 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" TO THE POINT OF BEGINNING, AS SHOWN ON THE "EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION" ATTACHED HERETO AND MADE A PART HEREOF.

CONTAINING 51.11 ACRES, MORE OR LESS, AS DETERMINED BY COMPUTER METHODS.

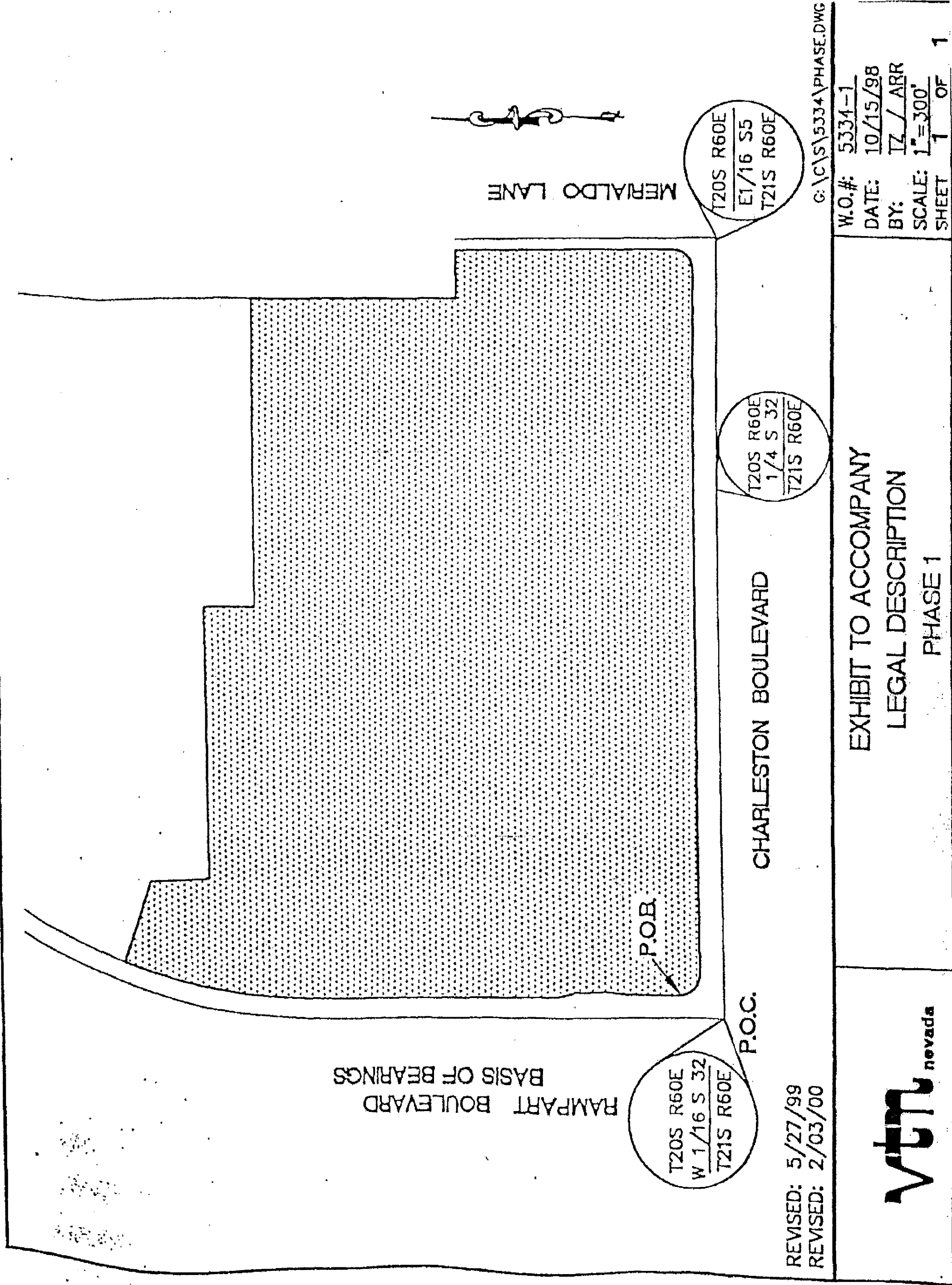
BASIS OF BEARINGS:

NORTH 00°33'39" WEST, BEING THE BEARING ON THE CENTERLINE OF RAMPART BOULEVARD, AS SHOWN ON THAT CERTAIN PARCEL MAP ON FILE IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA, IN FILE 82 OF PARCEL MAPS, AT PAGE 11.

NOTE: THIS LEGAL DESCRIPTION IS PROVIDED AS A CONVENIENCE AND IS NOT INTENDED FOR THE PURPOSE OF SUBDIVIDING LAND NOT IN CONFORMANCE WITH NEVADA REVISED STATUTES.

END OF DESCRIPTION.

G:\C\S\5334\5334PHS3REV4.DOC



Project: 5334srvy  
Lot Map Check

Thu Feb 03 10:58:52 2000

Lot name: PHASE1NEW

North: 16123.28 East: 17690.35  
 Line Course: N 00-33-39 W Length: 124.06  
     North: 16247.33 East: 17689.14  
 Line Course: N 07-45-20 E Length: 60.83  
     North: 16307.60 East: 17697.34  
 Line Course: N 01-42-24 W Length: 81.44  
     North: 16389.01 East: 17694.92  
 Line Course: N 15-44-35 W Length: 41.23  
     North: 16428.69 East: 17683.73  
 Line Course: N 01-42-24 W Length: 118.57  
     North: 16547.21 East: 17680.20  
 Line Course: N 00-33-39 W Length: 457.05  
     North: 17004.24 East: 17675.73  
 Curve Length: 547.45 Radius: 1650.00  
     Delta: 19-00-36 Tangent: 276.26  
     Chord: 544.94 Course: N 08-56-39 E  
     Course In: N 89-26-21 E Course Out: N 71-33-03 W  
     RP North: 17020.39 East: 19325.65  
     End North: 17542.55 East: 17760.45  
 Line Course: S 71-33-03 E Length: 15.00  
     North: 17537.81 East: 17774.68  
 Line Course: S 72-37-30 E Length: 200.04  
     North: 17478.07 East: 17965.59  
 Line Course: S 04-29-51 E Length: 151.87  
     North: 17326.67 East: 17977.50  
 Line Course: N 89-26-21 E Length: 681.46  
     North: 17333.34 East: 18658.93  
 Line Course: S 00-24-22 E Length: 131.38  
     North: 17201.96 East: 18659.86  
 Line Course: N 89-26-21 E Length: 782.86  
     North: 17209.62 East: 19442.68  
 Line Course: S 00-19-57 E Length: 530.10  
     North: 16679.53 East: 19445.76  
 Line Course: N 89-40-03 E Length: 125.00  
     North: 16680.26 East: 19570.76  
 Line Course: S 00-19-57 E Length: 541.00  
     North: 16139.27 East: 19573.90  
 Curve Length: 84.82 Radius: 54.00  
     Delta: 90-00-00 Tangent: 54.00  
     Chord: 76.37 Course: S 44-40-03 W  
     Course In: S 89-40-03 W Course Out: S 00-19-57 E  
     RP North: 16138.95 East: 19519.90  
     End North: 16084.95 East: 19520.21  
 Line Course: S 89-40-03 W Length: 559.93  
     North: 16081.70 East: 18960.24  
 Line Course: S 89-26-21 W Length: 1215.42  
     North: 16069.81 East: 17744.88  
 Curve Length: 84.82 Radius: 54.00

Thu Feb 03 10:58:52 2000

Project: 5334srvy

Lot Map Check

Delta: 90-00-00

Chord: 76.37

Course In: N 00-33-39 W

RP North: 16123.80

End North: 16123.28

Tangent: 54.00

Course: N 45-33-39 W

Course Out: S 89-26-21 W

East: 17744.35

East: 17690.35

Perimeter: 6534.39 Area: 2,226,298.754 sq.ft. 51.109 acres

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.00

Course: S 50-22-28 E

Error North: -0.001

East: 0.001

Precision 1: 3,557,022.19

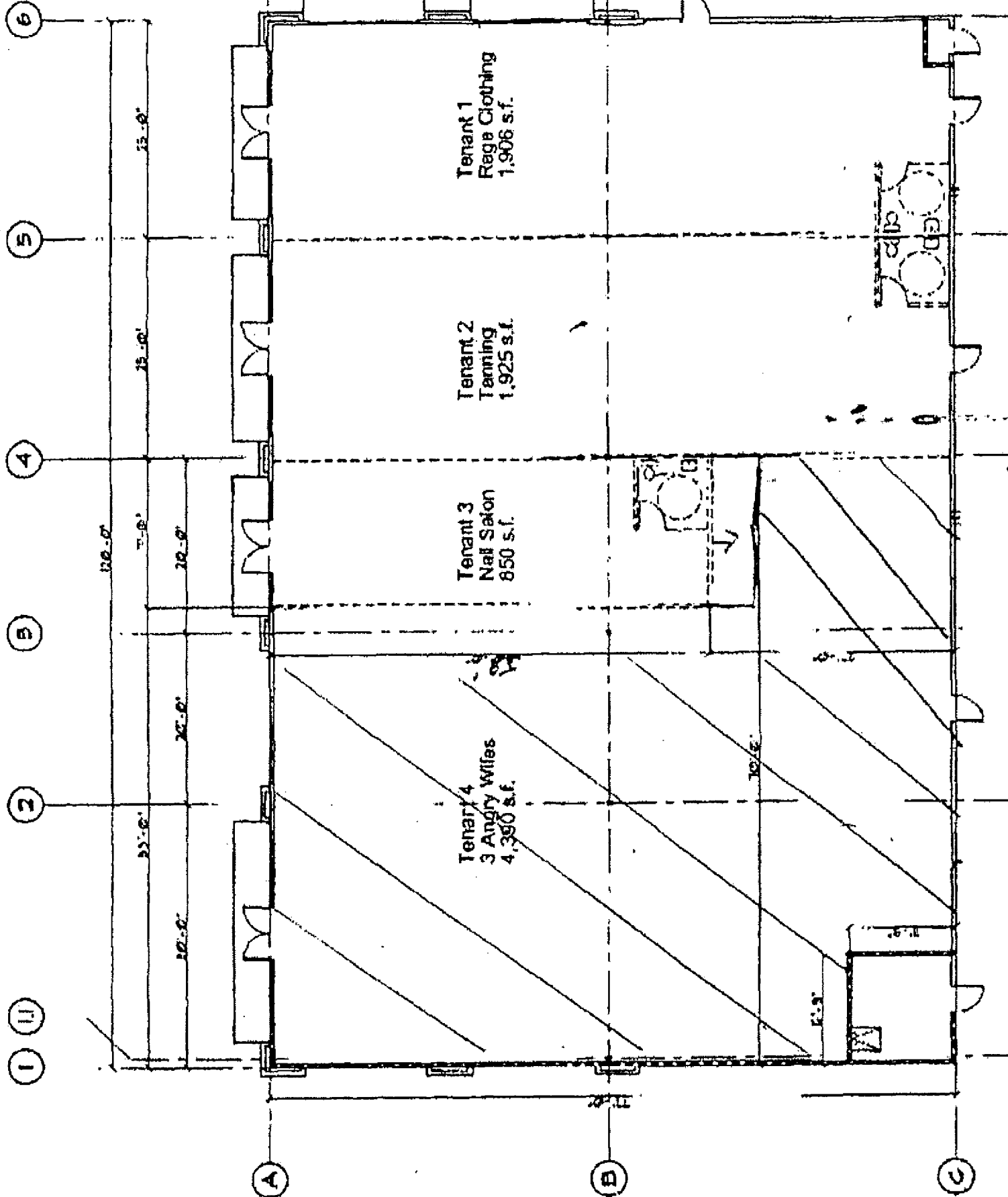
EXHIBIT A-2

SITE PLAN

See Attached

# Building Information

Building Area		9,240 gsf
Building Size		120' x 77'
Tenant 1	57'-4" x 77'	4,390 sf
Tenant 2	17' x 50'	850 sf
Tenant 3	25' x 77'	1,925 sf
Tenant 4	25' x 77'	1,906 sf
Total Retail		<u>9,071 sf</u>
Common		<u>169 sf</u>
		<u>9,240 sf</u>



*[Handwritten signature]*

## Pad J @ Boca Park I

Triple Five Nevada Dev. Corp.  
Las Vegas, Nevada 702-242-6937



PERLMAN ARCHITECTS, INC.  
2230 CORPORATE CIRCLE, SUITE 200  
HENDERSON, NEVADA 89074  
702.590.8900 702.912.3222 fax

Scale: 1" = 20'

\*This Layout is Conceptual in Nature and No Guarantee of Accuracy is Implied.  
All Dimensions and Sizes are Preliminary and Subject to Change.

Date: July 29, 2002  
Project Number: 143201

20

10

0

EXHIBIT B  
COMMENCEMENT DATE

Sean T. Higgins  
Higco, Inc.  
10273 Garden Glen Lane  
Las Vegas, Nevada 89135

*Re: Three Angry Wives -- Boca Park Marketplace  
Commencement Date Memorandum*

Dear Mr. Higgins:

The commencement date of that Lease dated as of \_\_\_\_\_, 200\_\_\_\_, by and between Boca Park  
Parcels, LLC, a Nevada limited liability company, as Landlord, and Higco, Inc., a Nevada corporation, as Tenant, was  
the \_\_\_\_ of \_\_\_\_\_, 200\_\_\_\_.

"LANDLORD"

BOCA PARK PARCELS, LLC  
a Nevada limited liability company

By: \_\_\_\_\_  
John M. McCall  
Manager, Corporate Counsel



## EXHIBIT C

### DESCRIPTION OF WORK

When Landlord's architect has completed drawings of the basic shell of the building (or if such drawings have already been completed, then promptly after the execution of this Lease), Landlord shall deliver a floor plan of the Leased Property to Tenant showing the columns and other structural work in the Leased Property.

Within fifteen (15) days after receipt of said floor plan, Tenant shall submit to Landlord four (4) sets of fully dimensioned scale drawings of the interior space of the Leased Property, prepared by Tenant's registered architect at Tenant's expense. Said drawings shall indicate the specific requirement of Tenant's space showing clearly interior partitions, trade fixture plans, location and layout of the bar, restrooms, telephones and post locations ("Interior Plans"). Tenant shall also deliver to Landlord specifications for all such trade fixtures. Landlord, at landlord's sole cost and expense, shall, using the Interior Plans complete all architectural, mechanical, electrical and plumbing drawings. Landlord shall allow Tenant to review said plans and the parties shall both sign off on the final drawings. These shall be the "Approved Plans". The Approved Plans shall be completed by Landlord in conformity with this Exhibit C and all applicable permits, authorizations, building regulations, zoning laws and all other governmental rules, regulations, ordinances, statutes and laws. In addition, Landlord, at landlord's sole cost and expense, shall apply for and obtain all necessary permits from all government agencies required to complete Landlord's Work. Such plans shall also indicate the work to be done by Landlord at Landlord's expense, as provided in Section I hereof ("Landlord's Work"), the work to be done by Landlord at Tenant's expense and the work to be done by Tenant at Tenant's expense (any work that is not Landlord's Work as provided in Section I hereof, shall be referred to as "Tenant's Work"). Any engineering services required for Tenant's Work or any re-engineering services required of Landlord's Work because of Tenant's Work shall be at the expense of Tenant.

Unless provided otherwise in this Exhibit C, Tenant shall complete or arrange for the completion of Tenant's Work, at Tenant's expense, in accordance with the Approved Plans. Tenant agrees and acknowledges that any and all contractors, subcontractors and materialmen utilized, directly or indirectly, by Tenant or any agent of Tenant shall at all times comply with all applicable laws, ordinances and regulations, including, without limitation, compliance with State Industrial Insurance System and State Contractors Board requirements. Tenant shall obtain Landlord's prior written approval of the contractor and any subcontractor or subtrade who is to perform the construction work, or any portion thereof. Tenant and/or its contractor shall diligently and aggressively pursue, obtain and pay for all required inspections, licenses, authorizations, building permits, fees and occupancy certificates required for Tenant's Work or for Tenant to open for business after all work has been completed. Tenant may not enter upon the Leased Property until plans and specifications have been adopted as hereinafter provided and Landlord notifies Tenant that the Leased Property is ready for Tenant to perform its work. Tenant shall not conduct its work in such a manner as to interfere with Landlord performing Landlord's Work hereunder. Tenant may request that Landlord complete all or any part of Tenant's Work at Tenant's expense, subject to Landlord's acceptance of the job and the terms and conditions thereof and that Tenant's request specifically state in writing the scope of Tenant's Work to be undertaken by Landlord at Tenant's expense.

In the event that, based on the final plans and specifications, Tenant desires that Landlord not undertake a specific element of Landlord's Work, Landlord will provide Tenant a credit to Tenant for that portion of Landlord's Work not performed by Landlord. Such credit shall not exceed the actual cost to Landlord had Landlord provided that omitted portion of Landlord's Work. Any credits provided in this Exhibit C shall be paid to Tenant upon the Commencement date of the Lease.

Landlord has agreed to modify the exterior store front design of the Leased Property, removing all windows and allowing for a larger exterior door. Any further modifications by Tenant must be previously approved by Landlord in writing.

Any additional charges, expenses (including architectural and engineering fees) or costs arising by

reason of any subsequent change, modification or alteration in said Approved Plans and specifications made at the request of Tenant shall be at the sole cost and expense of Tenant, and Landlord shall have the right to demand immediate payment for such change, modification or alteration prior to Landlord's performance of any work in the Leased Property to the extent that such request affects the work Landlord is to perform hereunder. No such changes, modifications or alterations in said Approved Plans and specifications can be made without the written consent of Landlord after the written request thereof by Tenant. No part of the cost of any trade fixture or personal property for Tenant shall be payable by Landlord.

The fact that Tenant may enter into possession of the Leased Property prior to the actual completion of the building for the purpose of installing trade fixtures and equipment shall not be deemed an acceptance by Tenant of completion by the Landlord until actual completion shall have taken place; provided, however, in such event, Tenant shall hold Landlord harmless and indemnify Landlord for any loss or damage to Tenant's fixtures, equipment and merchandise and for injury to any person.

Where the Approved Plans and specifications are in conflict with this Exhibit C, the provisions of this Exhibit C shall prevail.

#### I. WORK DONE BY LANDLORD AT LANDLORD'S EXPENSE

Landlord shall deliver to Tenant the Leased Property as agreed upon in this Exhibit C ("Landlord's Work") which shall include:

##### A. STRUCTURE

1. Frame, etc.: The building shall be of steel frame, reinforced concrete, masonry, wood, or bearing wall or any combination construction designed in accordance with governing building codes.
2. Exterior Walls: The exterior walls shall be of masonry or such other material or materials as selected by Landlord's architect or agent.
3. Clear Heights: Clear height between floor slab and Tenant's ceiling shall be no less than nine feet (9') and, no lower than the top of any window frame, and shall otherwise be governed by structural design.
4. Floor Construction: Floors shall be of concrete slab on grade, smooth finish, including restrooms
5. Roof: The roof shall be composition gravel, tile or as otherwise specified by Landlord's architect or agent.
6. Ceilings: Finished ceiling in restrooms, suspended t-bar acoustical ceiling over balance of ceiling area, including ceiling as required by code in the kitchen.
7. Insulation: Landlord shall furnish all insulation for walls and ceilings.
8. Demising Walls: Landlord shall provide the wood frame, metal frame or masonry fire wall, as required by code, separating the leased suites within the same building. Landlord shall also provide standard drywall unpainted and ready for tenant's décor, and insulation, as

required by code, for such demising walls. Landlord shall also install an interior partition of up to eighty (80) linear feet, not including restroom walls, separating the storage and kitchen area from the sales area.

9. Exits: Exits shall be in accordance with governing codes, however, the exact location shall be determined after reviewing Tenant's Interior Plans.
10. Dimensions: Frontage Dimension: Interior stores shall be measured from center line to center line of party walls; exterior stores shall be measured from center line of party walls to outside face of exterior walls. Depth shall be measured from outside face of exterior walls and window mullions.
11. Door Frames: Exterior door frames will be hollow metal construction or as otherwise specified by Landlord's architect or agent.
12. Doors: Exterior service doors will be hollow metal, which shall generally be located at the rear of the Leased Property.
13. Parapets, etc.: Landlord reserves the right to require a 12' neutral strip between stores, centered on the line defining Leased Property.

B. STORE FRONTS

1. Design: As agreed upon by the Landlord and Tenant.

C. UTILITIES

1. Water and Sewer: Landlord will furnish to designated points in the Leased Property, as determined by the Approved Plans, water and sewer service as required for two restrooms with three (3) stalls each and to all designated points for Tenant's bar per Approved Plans. All installation beyond these facilities shall not be part of the Landlord's responsibility. Landlord may install, at Tenant's expense, a check, sub or flow meter, as applicable, to monitor Tenant's water usage at the Leased Property.
2. Grease Trap: Landlord shall install, at Tenant's expense one (1) pre-cast type exterior grease interceptor(s) sized per requirements of applicable codes and in accordance with the size of Tenant's restaurant at location designated by Landlord's. Tenant, however, shall maintain said grease interceptors and Landlord shall have no liability for said grease interceptor.
3. Gas: Landlord shall install and furnish such utility to designated points in the Leased Property per the Approved Plans. Cost of the gas meter shall be Tenant's responsibility based upon Tenant's credit with the gas company.
4. Electricity: Landlord will furnish panels, as well as, sufficient conduit and wiring to the Leased Property to a maximum 600 amp. meter socket. Any and all fixtures, panel, breakers or equipment and the distribution of electrical service throughout the Leased Property, in accordance with the mutually Approved Plans and specifications, shall be Landlord's responsibility at Landlord's expense. Landlord shall also provide forty five (45) light fixtures capped at a maximum of \$120.00 per light, up to fifty (50) wall or ceiling outlets and four (4) telephone boxes.
5. Telephone, Data and Cable: Landlord shall furnish a conduit and wiring for telephone, data and cable to designated points in the Leased Property per the Approved Plans. All conduit systems and wiring from the telephone, data and cable throughout the Leased Property shall

be undertaken by Landlord at Landlord's expense.

6. Exterior Signage: Landlord shall provide all j-boxes and other equipment necessary for the installation of Tenant's signage on three (3) sides of the building facia, at Landlord's sole cost and expense, per Tenant's mutually approved Signage Plan. Landlord shall provide signage criteria from Perlman Architects who handles the approvals.
7. HVAC: Landlord will furnish Tenant with air conditioning unit(s) at the rate of one (1) ton for every 200 square feet of floor space. The HVAC unit(s) will be placed on the roof, with a plenum duct into the Leased Property. All wiring and distribution of the HVAC, in accordance with the Approved Plans and specifications, shall be undertaken by Landlord, at Landlord's expense.

D. FIRE SPRINKLERS

Landlord will furnish fire sprinklers as required for the building shell only.

E. RESTROOMS

Landlord shall furnish two (2) restrooms, located per Tenant's Interior Plan. The men's room shall contain: one (1) water closet, partitioned with a door, two (2) urinals, two (2) hot/cold water sinks, exhaust fan, light switch and fixture, and one mirror. The women's room shall contain: three (3) water closets, partitioned with doors; two cold/hot water sinks, exhaust fan, light switch and fixture and one mirror. Such restrooms shall meet the requirements of the Americans with Disabilities Act. Landlord shall be responsible for the water and sewer connection fees associated with said restroom.

F. ROUGH PLUMBING

Landlord shall provide one (1) mop sink, eight (8) flood drains per Approved Plans.

G. Permits: All required building permits and fees to build the building shall be Landlord's responsibility, however, the Certificate of Occupancy and permits and fees for Tenant's Work shall be paid by Tenant.

H. TENANT IMPROVEMENT ALLOWANCE:

Landlord shall, in addition to all work contemplated by this Section I of Exhibit C, also provide Tenant with an allowance of ten dollars (\$10.00) per square foot of the Leased Property, which may be used for additional tenant improvements on the Leased Property. Landlord shall pay this allowance to tenant thirty days following Tenant's opening of the business to the public upon invoice upon the Commencement Date of the Lease.

II. WORK DONE AT TENANT'S EXPENSE

All work provided for in the plans and specifications, as mutually agreed upon by Landlord and Tenant that is not specifically set forth as "Landlord's Work" in Section I of this Exhibit C ("Tenant's Work"). All Tenant's Work shall be in full compliance with any and all applicable federal, state or local laws, ordinances, regulations and rules. Tenant's Work shall include, without limitation, the cost of any architectural, permitting or engineering services or expenses required for any work beyond Landlord's Work and the following:

- A. Electrical Fixtures and Equipment: All meters, electric fixtures (lighting fixtures), equipment, except as provided in Section I (C) above, "Work Done by Landlord."
- B. Gas Connections: The cost of all gas meters.

- C. Water Connections: The cost of all water, check, sub or flow meters or valves, whichever is applicable, and any plumbing distribution throughout the Leased Property.
- D. Walls: All interior partitions and curtain walls within the Leased Property, except as set forth in Section I.
- E. Furniture and Fixtures: All store fixtures, cases, wood paneling, cornices, etc.
- F. Show Window Background, Floors, etc.: All show window finish floors, show window backgrounds, show window lighting fixtures and show window doors.
- G. Floor Coverings or Finishes: All floor coverings or finishes, including any additional preparation of floor slab for vinyl, tile or any special or other floor treatment.
- H. HVAC: Intentionally omitted.
- I. Alarm Systems, etc.: All alarm systems or other protective devices including any special wiring required for such devices.
- J. Special Plumbing: All extra plumbing, either roughing in or fixtures required for Tenant's special needs not included in the Approved Plans.
- K. Special Ventilation: Any required ventilation and related equipment including show window ventilation.
- L. Intentionally Omitted.
- M. Special Equipment: All special equipment such as conveyors, elevators, escalators, dumb waiters, etc., including installation and connection.
- N. Electric Floor Outlets and Point of Sale Stations. Intentionally omitted.
- O. Sewer: All sewer hookups, usage and service charges shall be paid by Tenant.
- P. Store Front: Any alterations to the standard storefront, except as provided for in Section I, must be approved by Landlord or Landlord's architect, and Tenant shall bear all additional costs.
- Q. Permits: Intentionally omitted.
- R. Roof: Tenant and/or Tenant's contractor shall not penetrate the roof of the Leased Property without the prior written approval of Landlord. Any penetration of the roof must be sealed by the original roofing contractor, at Tenant's expense.
- S. Fire Sprinkler: All fire sprinkler work, beyond the fire sprinkler work for the building shell performed by Landlord pursuant to Section I(D) above, required by government code and requirements due to Tenant's interior or exterior design.
- T. Wiring: Any other wiring and connections required by Tenant, except as provided by Landlord pursuant to Section I above.
- U. Restrooms: Intentionally omitted.
- V. Drywall: Other than as specifically provided in Section I, including all painting and staining.

W. Insulation: Intentionally omitted.

X. Other: Any other work required by Tenant not covered herein.

## EXHIBIT D

### RULES AND REGULATIONS

Tenant agrees as follows:

1. All loading and unloading of goods shall be done only at such times, in the areas, and through the entrances designated for such purposes by Landlord.
2. The delivery or shipping of merchandise, supplies and fixtures to and from the Leased Property shall be subject to such rules and regulations as, in the judgment of Landlord, are necessary for the proper operation of the Leased Property or the Center.
3. No radio or television or other similar device shall be installed within the Leased Property such that it can be heard or seen outside the Leased Property without first obtaining in each instance Landlord's consent in writing. No aerial shall be erected on the roof or exterior walls of the Leased Property or in the Center, without in each instance, the written consent of Landlord and the installation of such aerial shall be by the roofing contractor that installed the roof. Any aerial so installed without such written consent shall be subject to removal without notice at any time at Tenant's expense of removal, repair to the roof and restoration of the roof warranty.
4. Tenant shall not, without the written consent of Landlord first had and obtained, use in or about the Leased Property any advertising or promotional media such as search lights, loud speakers, phonographs, or other similar visual or audio media which can be seen or heard outside the Leased Property.
5. Tenant shall keep the Leased Property at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.
6. The exterior areas immediately adjoining the Leased Property shall be kept clean and free from dirt and rubbish by Tenant to the satisfaction of Landlord, and Tenant shall not place or permit any obstructions or merchandise in such areas.
7. Tenant and Tenant's employees shall park their cars only in those parking areas designated for that purpose by Landlord. Tenant shall furnish Landlord with automobile license numbers assigned to Tenant's car or cars, and cars of Tenant's employees, within five (5) days after taking possession of the Leased Property and shall thereafter notify Landlord of any changes within five (5) days after such changes occur. In the event that Tenant or its employees fail to park their cars in designated parking areas as aforesaid, then Landlord at its option, in addition to any other remedies, including, but not limited to, towing, may charge Tenant Twenty-Five Dollars (\$25.00) per day per car parked in any area other than those designated.
8. The plumbing facilities shall not be used for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Tenant who shall, or whose employees, agents, servants, customers or invitees shall, have caused it.
9. Tenant shall keep the Leased Property free from pests and vermin.
10. Tenant shall not burn any trash or garbage of any kind in or about the Leased Property or the Center.
11. Tenant shall not make noises, cause disturbances, or create odors that may be offensive to Landlord or to other tenants of the Center or their employees, agents, servants, customers or invitees.
12. No portion of the Leased Property or the Center shall be used for sale or display of any obscene, pornographic, so called "adult" or other offensive merchandise or activities.



13. Tenant shall not install or otherwise place on the Leased Property, without Landlord's written consent therefor first had and obtained, any sign or other object or thing visible to public view outside of the Leased Property, except that Tenant shall, at its expense, erect a sign on the exterior of the Leased Property of such size, shape, materials and design as may be prescribed by Landlord. Tenant shall not change or modify such sign without the written consent of Landlord. Tenant shall be required to properly maintain its sign, including prompt repairs of any nature. Tenant shall keep such sign lit during such hours as Landlord may designate. Upon expiration of the Lease, Tenant shall be responsible for promptly removing all signs placed in and around the Leased Property by Tenant. Tenant shall repair all damage caused to the building or Leased Property by such removal, including proper "capping off" of electrical wiring.

14. Tenant and Tenant's employees and agents shall not solicit business in the parking areas or other common areas, nor shall Tenant distribute any handbills or other advertising matter in automobiles parked in the parking area or in other common areas.

15. Tenant shall refrain from keeping, displaying or selling any merchandise or any object outside of the interior of the Leased Property or in any portion of any sidewalks, walkways or other part of the Center outside of the Leased Property.

16. Landlord may impose fines and penalties upon Tenant for failure to comply with the Rules and Regulations.

1 **IAFD**

2 **GORDON SILVER**

3 **ERIC R. OLSEN**

4 Nevada Bar No. 3127

5 E-mail: eolsen@gordonsilver.com

6 **DYLAN T. CICILIANO**

7 Nevada Bar No. 12348

8 E-mail: dciciliano@gordonsilver.com

9 3960 Howard Hughes Pkwy., 9th Floor

10 Las Vegas, Nevada 89169

11 Tel: (702) 796-5555/Fax: (702) 369-2666

12 Attorneys for Plaintiff

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 **HIGCO, INC., a Nevada corporation,**

16 **Plaintiff,**

17 **vs.**

18 **BOCA PARK PARCELS, LLC, a revoked**  
19 **Nevada limited liability company; BOCA PARK**  
20 **MARKETPLACE LV, LLC, a Nevada limited**  
21 **liability company; BOCA PARK**  
22 **MARKETPLACE LV SYNDICATIONS**  
23 **GROUP MM, INC., a Nevada corporation;**  
24 **BOCA PARK MARKETPLACE**  
25 **SYNDICATIONS GROUP, LLC, a Nevada**  
26 **limited liability company; and DOES I-X, and**  
27 **ROE ENTITIES I-X, inclusive,**

28 **Defendants.**

**CASE NO**

**DEPT**

**INITIAL APPEARANCE FEE**  
**DISCLOSURE (NRS CHAPTER 19)**

**BUSINESS COURT**

29 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for  
30 parties appearing in the above-entitled action as indicated below:

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Name of Plaintiff:

HIGCO, INC.

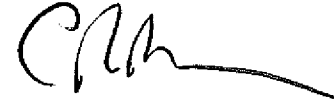
\$1,530.00

TOTAL REMITTED

\$1,530.00

Dated this 5<sup>th</sup> day of December 2014.

GORDON SILVER



---

ERIC R. OLSEN

Nevada Bar No. 3127

Email: eolsen@gordonsilver.com

DYLAN T. CICILIANO

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Attorneys for Plaintiff

# EXHIBIT A

# BUSINESS COURT CIVIL COVER SHEET A-14-710780-B

Clark County, Nevada

XI

Case No. \_\_\_\_\_  
(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone): HIGCO, Inc., a Nevada corporation

Attorney (name/address/phone):

Eric R. Olsen/Dylan T. Ciciliano, Esq.

Gordon Silver

3960 Howard Hughes Parkway, 9<sup>th</sup> Floor

Las Vegas, NV 89169

Tel: (702) 796-5555

Defendant(s) (name/address/phone): Boca Park Parcels, LLC, a revoked Nevada limited liability company; Boca Park Marketplace LV, LLC, a revoked Nevada limited liability company; Boca Park Marketplace LV Syndications Group MM, Inc., a Nevada corporation; Boca Park Marketplace Syndications Group, LLC, a Nevada limited liability company; and DOES I-X, and ROE ENTITIES I-X, inclusive

Attorney (name/address/phone):

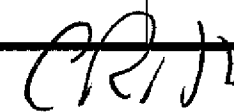
## II. Nature of Controversy (please select the one most applicable filing type below)

☐ Arbitration Requested

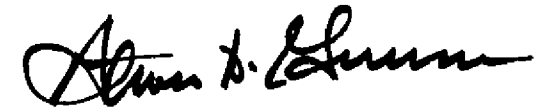
Civil Case Filing Types		Business Court Filing Types
<p style="text-align: center;"><b>Real Property</b></p> <p><b>Landlord/Tenant</b></p> <p><input type="checkbox"/> Unlawful Detainer</p> <p><input type="checkbox"/> Other Landlord/Tenant</p> <p><b>Title to Property</b></p> <p><input type="checkbox"/> Judicial Foreclosure</p> <p><input type="checkbox"/> Other Title to Property</p> <p><b>Other Real Property</b></p> <p><input type="checkbox"/> Condemnation/Eminent Domain</p> <p><input type="checkbox"/> Other Real Property</p>	<p style="text-align: center;"><b>Torts</b></p> <p><b>Negligence</b></p> <p><input type="checkbox"/> Auto</p> <p><input type="checkbox"/> Premises Liability</p> <p><input type="checkbox"/> Other Negligence</p> <p><b>Malpractice</b></p> <p><input type="checkbox"/> Medical/Dental</p> <p><input type="checkbox"/> Legal</p> <p><input type="checkbox"/> Accounting</p> <p><input type="checkbox"/> Other Malpractice</p> <p><b>Other Torts</b></p> <p><input type="checkbox"/> Product Liability</p> <p><input type="checkbox"/> Intentional Misconduct</p> <p><input type="checkbox"/> Employment Tort</p> <p><input type="checkbox"/> Insurance Tort</p> <p><input type="checkbox"/> Other Tort</p>	<p style="text-align: center;"><b>CLARK COUNTY BUSINESS COURT</b></p> <p><input type="checkbox"/> NRS Chapters 78-79</p> <p><input type="checkbox"/> Commodities (NRS 91)</p> <p><input type="checkbox"/> Securities (NRS 90)</p> <p><input type="checkbox"/> Mergers (NRS 92A)</p> <p><input type="checkbox"/> Uniform Commercial Code (NRS 104)</p> <p><input type="checkbox"/> Purchase/Sale of Stock, Assets, or Real Estate</p> <p><input type="checkbox"/> Trademark or Trade Name (NRS 600)</p> <p><input type="checkbox"/> Enhanced Case Management</p> <p><input checked="" type="checkbox"/> Other Business Court Matters</p>
<p style="text-align: center;"><b>Construction Defect &amp; Contract</b></p> <p><b>Construction Defect</b></p> <p><input type="checkbox"/> Chapter 40</p> <p><input type="checkbox"/> Other Construction Defect</p> <p><b>Contract Case</b></p> <p><input type="checkbox"/> Uniform Commercial Code</p> <p><input type="checkbox"/> Building and Construction</p> <p><input type="checkbox"/> Insurance Carrier</p> <p><input type="checkbox"/> Commercial Instrument</p> <p><input type="checkbox"/> Collection of Accounts</p> <p><input type="checkbox"/> Employment Contract</p> <p><input checked="" type="checkbox"/> Other Contract</p>	<p style="text-align: center;"><b>Civil Writ</b></p> <p><input type="checkbox"/> Writ of Habeas Corpus</p> <p><input type="checkbox"/> Writ of Mandamus</p> <p><input type="checkbox"/> Writ of Quo Warrant</p> <p><input type="checkbox"/> Writ of Prohibition</p> <p><input type="checkbox"/> Other Civil Writ</p>	<p style="text-align: center;"><b>WASHOE COUNTY BUSINESS COURT</b></p> <p><input type="checkbox"/> NRS Chapters 78-79</p> <p><input type="checkbox"/> Commodities (NRS 91)</p> <p><input type="checkbox"/> Securities (NRS 90)</p> <p><input type="checkbox"/> Investments (NRS 104 Art.8)</p> <p><input type="checkbox"/> Deceptive Trade Practices (NRS 598)</p> <p><input type="checkbox"/> Trademark/Trade Name (NRS 600)</p> <p><input type="checkbox"/> Trade Secrets (NRS 600A)</p> <p><input type="checkbox"/> Enhanced Case Management</p> <p><input type="checkbox"/> Other Business Court Matters</p>
<p><b>Judicial Review/Appeal</b></p>		
<p><b>Judicial Review</b></p> <p><input type="checkbox"/> Foreclosure Mediation Case</p> <p><b>Appeal Other</b></p> <p><input type="checkbox"/> Appeal from Lower Court</p>	<p><b>Other Civil Filing</b></p> <p><input type="checkbox"/> Foreign Judgment</p> <p><input type="checkbox"/> Other Civil Matters</p>	

December 5, 2014

Date



Signature of initiating party or representative



CLERK OF THE COURT

1 **COMP**  
GORDON SILVER  
2 ERIC R. OLSEN  
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3 E-mail: eolsen@gordonsilver.com  
DYLAN T. CICILIANO  
4 Nevada Bar No. 12348  
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*Attorneys for Plaintiff*

7  
8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 HIGCO, INC, a Nevada corporation,

11 Plaintiff,

11 vs.

CASE NO. A - 1 4 - 7 1 0 7 8 0 - B  
DEPT. X I

**COMPLAINT**

**ARBITRATION EXEMPT:**  
**Amount in Controversy in Excess of**  
**\$50,000.00**

*Business Court Requested*

12 BOCA PARK PARCELS, LLC, a revoked  
Nevada limited liability company; BOCA PARK  
13 MARKETPLACE LV, LLC, a revoked Nevada  
limited liability company; BOCA PARK  
14 MARKETPLACE LV SYNDICATIONS  
GROUP MM, INC., a Nevada corporation;  
15 BOCA PARK MARKETPLACE  
SYNDICATIONS GROUP, LLC, a Nevada  
16 limited liability company; BOCA PARK  
MARKETPLACE MM, INC., a revoked Nevada  
17 limited liability company and DOES I-X, and  
ROE ENTITIES I-X, inclusive,

18 Defendants.  
19

20 Plaintiff, HIGCO, Inc. ("Plaintiff"), a Nevada corporation, by and through its counsel, the  
21 law firm of Gordon Silver, hereby alleges against Defendants, BOCA PARK PARCELS, LLC  
22 ("Boca Park Parcels"), a revoked Nevada limited liability company; BOCA PARK  
23 MARKETPLACE, LLC ("Boca Park Successor-in-Interest"), a revoked Nevada limited liability  
24 company; BOCA PARK MARKETPLACE LV SYNDICATIONS GROUP MM, INC. ("Boca  
25 Park Parent Corp."), a Nevada corporation; and BOCA PARK MARKETPLACE  
26 SYNDICATIONS GROUP, LLC ("Boca Park Manager," collectively with Boca Park Parcels,  
27 Boca Park Successor-in-Interest, and Boca Park Parent Corp., the "Defendants"), a Nevada  
28 limited liability company; as follows:

I.

**THE PARTIES, JURISDICTION AND VENUE**

1. At all times herein mentioned, Plaintiff was and is a Nevada corporation with its principal place of business in the City of Las Vegas, Clark County, State of Nevada.

2. Plaintiff is informed and believes and thereupon alleges that at times herein mentioned, Boca Park Parcels was Nevada limited liability company organized and existing under the laws of the State of Nevada, but that Boca Park Parcels has been revoked.

3. Plaintiff is informed and believes and thereupon alleges that at all times herein mentioned, Boca Park Successor-in-Interest was and is now a Nevada limited liability company organized and existing under the laws of the State of Nevada, but that Boca Park Successor-in-Interest has been revoked.

4. Plaintiff is informed and believes and thereupon alleges that at all times herein mentioned, Boca Park Parent Corp. was and is now a Nevada corporation organized and existing under the laws of the State of Nevada.

5. Plaintiff is informed and believes and thereupon alleges that at all times herein mentioned, Boca Park Manager was and is now a Nevada limited liability company organized and existing under the laws of the State of Nevada.

6. The true names and capacities, whether individual, corporate, associate or otherwise of Defendants DOES I-X, inclusive, and ROE ENTITIES I-X, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the Defendants designated herein as a fictitiously named Defendant may have rights or duties arising from or related to the contract at issue in this case, or is in some manner responsible for the events and happenings herein referred to, or is an affiliate, subsidiary, parent entity, or successor in interest to one of the herein named defendants. Plaintiff will amend this Complaint to assert the true names and capacities of such Doe and Roe Entities when more information has been ascertained.

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II.

GENERAL ALLEGATIONS

**A. Defendants Granted Plaintiff an Exclusive Use for Gaming in Boca Park Phase I**

7. At the end of 2001, Plaintiff and Defendants began discussing Plaintiff's lease from Defendants of premises in Boca Park Phase I. Over the next year, Plaintiff and Defendants negotiated the lease provisions. The parties understood that Plaintiff intended to operate a tavern and to having gaming on the premises. Among those provisions was an "Exclusive Use" clause for Plaintiff in Boca Park I. (See Order Granting Plaintiff's Motion for Summary Judgment, at p. 3, ¶1, attached hereto as **Exhibit 1**).

8. On or about May 2, 2002, the parties first agreed upon a proposed Exclusive Use Clause, under which Defendants would:

... grant [Plaintiff] an exclusive for Boca Park I for a tavern and gaming, except for any tenants currently located in the center which allow gaming (i.e. Vons, Longs).

(the "Exclusive Use Clause"). (Id. at ¶2). The Exclusive Use Clause granted Plaintiff the right to exclusively operate a tavern and a gaming operation in Boca Park I. (Id.). The only exception to this exclusive was to be for existing tenants in Boca Park I that offered gaming. (Id.). The provision identified those specific tenants, Von's Grocery and Long's Drugs. (Id.).

9. The parties' negotiations of the lease continued over the next five months. All proposed lease terms exchanged after May 2, 2002 included the Exclusive Use Clause as written in paragraph 8 above. (Id.).

10. On November 5, 2002, the parties executed a lease that contained a different exclusive use clause referring only to "tavern." (Id. at ¶ 4).

11. On January 20, 2003, Defendants provided Plaintiff a corrected lease page 3 for Plaintiff's initials. (Id. at ¶ 5). The accompanying corrected lease page contained the Exclusive Use Clause above, which was consistent with all written negotiations, and stated:

Landlord shall grant [Plaintiff] an exclusive for Boca Park I for a tavern and gaming, except for any tenants currently located in the center, which allow gaming (i.e. Vons, Longs).

1 This Exclusive Use clause was initialed and dated by Defendants, and faxed to Plaintiff. (Id. at  
2 ¶ 5).

3 12. On or about January 20, 2003, Defendants delivered to Plaintiff a complete copy  
4 of the corrected lease (the "Lease"). (See Lease, attached hereto as **Exhibit 2**).

5 **B. The District Court Has Already Entered Judgment Ruling That the Lease Grants**  
6 **Plaintiff the Exclusive Right to Offer Gaming in Boca Park I.**

7 13. On April 23, 2012, Plaintiff brought a single cause of action for declaratory relief  
8 against Defendants, in the Eighth Judicial District Court, Higco, Inc. vs. Boca Park Parcels, LLC,  
9 Case No. A-12-660548-B (the "Declaratory Relief Action"). (See Declaratory Relief Action).  
10 Plaintiff's Declaratory Relief Action requested that the Court declare the parties rights under the  
11 Lease and specifically to interpret the Exclusive Use Clause. (See Declaratory Relief Action  
12 Complaint, attached hereto as **Exhibit 3**, at p. 5).

13 14. On November 7, 2012, the Court entered its Order Granting Plaintiff's Motion for  
14 Summary Judgment. (Exh. 1).

15 15. The Court found that "in the lease, "gaming" was included as a category for  
16 which there would be exclusivity, and that category was central to contract formation. The  
17 Exclusive Use Clause is not ambiguous. The inclusion of an exception for "tenants currently  
18 located in the center which allow gaming" establishes that the Exclusive Use Clause was  
19 intended to extend beyond just taverns offering gaming. Von's Grocery and Long's Drugs were  
20 not taverns, but are included in the exception for current tenants offering gaming. Therefore, the  
21 Exclusive Use Clause was intended to give Plaintiff an exclusive for all gaming in Boca Park I,  
22 regardless of the primary purpose of the business offering gaming, i.e. regardless of whether the  
23 primary purpose was a tavern." (Id. at p.4, ¶7).

24 16. The Court further ORDERED that the Lease "is unambiguous, and that [Plaintiff]  
25 has a right to an exclusive use both for tavern and for gaming in Boca Park I, except for any  
26 tenants offering gaming in Boca Park I as of November 5, 2002, including Vons and Longs; and  
27 that the exclusive use applies to all businesses operating in Boca Park I, such that Defendants  
28 **shall** not allow any business in Boca Park I, other than [Plaintiff], to offer gaming, unless the

1 business allowed gaming in Boca Park I, as of November 5, 2002.” (Id. at p. 6) (emphasis  
2 added).

3 **C. Defendants Allowed Wahoo’s Fish Taco to Offer Gaming in Boca Park I in**  
4 **Violation of the Lease.**

5 17. In 2012, Wahoo’s Fish Taco (“Wahoo”) entered into a lease with the Defendants  
6 and began operating at 1000 S. Rampart, Building 21 (the “Wahoo Premises”), which is located  
7 in Boca Park I.

8 18. Shortly thereafter, Plaintiff became aware that Wahoo and/or Golden Route  
9 Operations (“Golden”) had applied for a restricted gaming license at the Wahoo Premises.

10 19. Plaintiff immediately demanded that Defendants not allow gaming at the Wahoo  
11 Premises. Defendants refused the demand and consented to allow gaming to occur at the Wahoo  
12 Premises.

13 20. On April 19, 2012, the Nevada Gaming Control Board approved the restricted  
14 gaming license application for the Wahoo Premises.

15 21. Plaintiff filed an action in District Court, which Defendants litigated on the  
16 merits, to determine the issue of whether the Exclusive Use provision of the Lease applied to and  
17 prohibited gaming at the Wahoo Premises. Defendants lost that fight when the District Court  
18 entered judgment declaring that the Exclusive Use applied to all gaming in Boca Park I  
19 (excluding Von’s), including Wahoo.

20 22. Nonetheless, from April 2012 until present, Defendants have allowed gaming to  
21 continually occur at the Wahoo Premises, to the detriment of the Plaintiff.

22 **III.**

23 **CLAIMS FOR RELIEF**

24 **FIRST CLAIM FOR RELIEF**  
25 **(Breach of Contract)**

26 23. Plaintiff repeats and realleges the allegations in the preceding paragraphs of this  
27 Complaint as though fully set forth herein.

1           24.    The Lease constitutes a valid and existing contract between Plaintiff and  
2 Defendants.

3           25.    The District Court has entered judgment against the Defendants, declaring that the  
4 Lease grants Plaintiff the exclusive right for gaming in Boca Park I such that Defendants shall  
5 not allow any business in Boca Park I, other than Plaintiff, to offer gaming, unless the business  
6 allowed gaming in Boca Park I, as of November 5, 2002.

7           26.    The Wahoo Premises is located in Boca Park I.

8           27.    On or after April 19, 2012, the Wahoo Premises began offering gaming in breach  
9 of the Lease and has continued to offer gaming since that time. By consenting to and/or allowing  
10 gaming on the Wahoo Premises, the Defendants breached the Lease.

11          28.    As a direct and proximate result of Defendants' breach, Plaintiff has suffered  
12 substantial damages by the loss of gaming revenues, which amounts exceeded \$150,000 for the  
13 first 12 months alone and have continued to accrue since that time. The total amount of damages  
14 will be determined at trial.

15          29.    Defendants' refusal to perform under the Lease has required Plaintiff to employ  
16 an attorney for redress, entitling it to recover its reasonable attorney's fees and costs of this as  
17 well as the prior action, as an element of its damages.

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

20          30.    Plaintiff repeats and realleges the allegations in the preceding paragraphs of this  
21 Complaint as though fully set forth herein.

22          31.    The Lease constitutes a valid and existing contract between Plaintiff and  
23 Defendant.

24          32.    Every contract in Nevada imposes upon the contracting parties an implied duty of  
25 good faith and fair dealing.

26          33.    Defendants owed an implied duty of good faith and fair dealing to Plaintiff under  
27 the Lease at issue here.

28

1           34. Defendants entered into a lease for the Wahoo Premises, in or about 2012. On or  
2 after April 19, 2012, the Wahoo Premises began offering gaming and has continued to offer  
3 gaming since that time.

4           35. Defendants breached their duty of good faith and fair dealing by entering into  
5 another lease in Boca Park I after November 5, 2002, the lease of the Wahoo Premises, and  
6 consenting to and/or allowing gaming, by refusing demands that it not allow gaming on the  
7 Wahoo Premises, by forcing Plaintiff to seek relief declaring that gaming on the Wahoo  
8 Premises was in violation of an Exclusive Use, and by allowing gaming on the Wahoo Premises  
9 to continue even after the District Court entered judgment in Plaintiff's favor.

10           36. As a direct and proximate result of Defendants' breach, Plaintiff has suffered  
11 substantial damages by the loss of gaming revenues, which amounts exceeded \$150,000 for the  
12 first 12 months alone and have continued to accrue since that time. The total amount of damages  
13 will be determined at trial.

14           37. In addition, Defendants' refusal to perform under the Lease has required Plaintiff  
15 to employ an attorney for redress, entitling it to recover its reasonable attorney's fees and costs  
16 of this as well as the prior action, as an element of its damages.

17           Wherefore, Plaintiff prays for judgment against Defendants as follows:

18           1. For an award of compensatory damages against Defendants and in favor of  
19 Plaintiff, in an amount in excess of \$10,000.00;

20           2. For an award to Plaintiff of its reasonable attorneys' fees as damages;

21           3. For an award to Plaintiff of its costs;

22           4. For pre-judgment and post-judgment interest at the appropriate rate of interest;

23 and

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5. For such other and further relief that the Court deems just and proper.

Dated this 6<sup>th</sup> day of December 2014.

GORDON SILVER

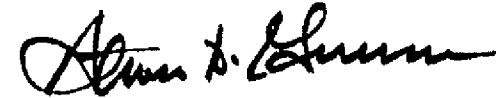


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Dylan T. Ciciliano  
Nevada Bar No. 12348  
3960 Howard Hughes Pkwy., 9th Floor  
Las Vegas, Nevada 89169  
(702) 796-5555  
Attorneys for Plaintiff

# EXHIBIT 1





CLERK OF THE COURT

**ORDR**  
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Tel: (702) 796-5555  
Fax: (702) 369-2666  
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

HIGCO, INC., a Nevada corporation,

Plaintiff,

vs.

BOCA PARK PARCELS, LLC, a revoked  
Nevada limited liability company; BOCA PARK  
MARKETPLACE LV, LLC, a Nevada limited  
liability company; BOCA PARK  
MARKETPLACE LV SYNDICATIONS  
GROUP MM, INC., a Nevada corporation;  
BOCA PARK MARKETPLACE  
SYNDICATIONS GROUP, LLC, a Nevada  
limited liability company; and DOES I-X, and  
ROE ENTITIES I-X, inclusive,

Defendants.

CASE NO. A-12-660548-B  
DEPT. XIII

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

This action having come on for hearing on June 25, 2012, on Plaintiff's Motion for Summary Judgment (the "Motion"), and again on September 24, 2012, following discovery and supplemental briefing, with Eric R. Olsen from the law firm of Gordon Silver appearing on behalf of Plaintiff Higco, Inc. (hereinafter referred to as "Higco"), and Steven C. Anderson of the law firm of Lionel Sawyer & Collins appearing on behalf of Defendants Boca Park Parcels, LLC, Boca Park Marketplace LV, LLC, Boca Park Marketplace LV Syndications Group MM, Inc., and Boca Park Marketplace Syndications Group, LLC (hereinafter collectively referred to as "Defendants"); the Court having had the opportunity to read and review Higco's Motion,

RECEIVED

NOV 02 2012

DISTRICT COURT DEPT# 13

Gordon Silver  
Attorneys At Law  
Ninth Floor  
3960 Howard Hughes Pkwy  
Las Vegas, Nevada 89169  
(702) 796-5555

1 Defendants Opposition to the Motion, Higco's Reply to the Opposition, Defendants  
2 Supplemental Opposition to the Motion, and Higco's Supplemental Reply to the Opposition,  
3 having heard the oral arguments of counsel for both parties, and having taken the matter under  
4 advisement for further review and consideration; with good cause appearing and there being no  
5 just reason for delay, the Court enters the following Order Granting Plaintiffs' Motion for  
6 Summary Judgment.

7 I.

8 Procedural Facts

9 On April 23, 2012, Higco filed its Complaint, seeking a "judicial determination of the  
10 interpretation of the Lease with respect to whether and to what extent the Lease contains an  
11 Exclusive Use provision . . . granting [Higco] an exclusive right [to] operate a tavern and an  
12 exclusive right to conduct gaming." (See Complaint at ¶ 21.)

13 Higco moved for Summary Judgment, on May 15, 2012, and on June 11, 2012,  
14 Defendants opposed Higco's Motion and requested relief to conduct additional discovery  
15 pursuant to N.R.C.P 56(f). Higco filed its reply to Defendants Opposition, on June 18, 2012.

16 At the hearing on June 25, 2012, the Court granted Defendants' request for leave  
17 pursuant to N.R.C.P. 56(f) and continued Higco's Motion until September 24, 2012, ordering  
18 supplemental briefing in the interim.

19 Defendants filed their Supplemental Opposition on September 12, 2012, and on  
20 September 20, 2012, Higco filed its Supplemental Reply.

21 On September 24, 2012, the Court held oral argument on Higco's Motion and the Court  
22 took the matter under advisement for further review of the pleadings and papers, issuing its  
23 decision on October 3, 2012

24 After considering all briefing and oral argument, the Court finds, concludes, and orders as  
25 set forth below.

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II.

Findings of Fact

1. At the end of 2001, Higco and Defendants began discussing Higco's lease from Defendants of premises in Boca Park Phase I. Over the next year, Higco and Defendants negotiated the lease provisions. The parties understood that Higco intended to operate a tavern and to having gaming on the premises. Among those provisions was an "Exclusive Use" clause for Higco in Boca Park I.

2. Evidence shows that, on or about May 2, 2002, the parties first agreed upon a proposed Exclusive Use Clause, under which Defendants would:

... grant Higco an exclusive for Boca Park I for a tavern and gaming, except for any tenants currently located in the center which allow gaming (i.e. Vons, Longs).

(the "Exclusive Use Clause") The Exclusive Use Clause would grant Higco the right to exclusively operate a tavern and a gaming operation in Boca Park I. The only exception to this exclusive was to be for existing tenants in Boca Park I that were taverns or offered gaming. The provision identified those tenants as Von's Grocery and Long's Drugs.

3. The parties' negotiations of the lease continued over the next five months. All proposed lease terms exchanged after May 2, 2002 included the Exclusive Use Clause as written in paragraph 2 above, and no evidence of subsequent negotiations concerning the Exclusive Use Clause was offered here.

4. For whatever reason, a version of the lease that Defendants contend was executed on November 5, 2002, contains a different exclusive use clause referring only to "tavern", but the record demonstrates that version of the lease erroneously omitted the Exclusive Use Clause above.

5. On January 20, 2003, Defendants sent Higco a corrected lease page 3 for Higco's initials. The body of the letter accompanying the corrected lease stated:

Please note the change to clarify the exclusive use and the new the (sic) site plan approximately reflecting the actual Leased Premises. Please initial the lease where indicated.

...

1 Defendants' letter does not use the words "amended", "proposed", or "offer". The accompanying  
2 corrected lease page contained the Exclusive Use Clause above, which was consistent with all  
3 written negotiations, and stated:

4 Landlord shall grant Higco an exclusive for Boca Park I for a tavern and gaming,  
5 except for any tenants currently located in the center, which allow gaming (i.e.  
Vons, Longs).

6 This Exclusive Use clause was initialed and dated by Defendants, and faxed to Higco.

7 6. On or after January 20, 2003, Defendants delivered a complete copy of the  
8 corrected lease, including the Exclusive Use Clause. That is evident, because the parties executed  
9 and initialed the complete copy of the corrected lease, which was attached to the Complaint in  
10 this action as Exhibit 1. That lease is the effective lease here.

11 7. In the lease, "gaming" was included as a category for which there would be  
12 exclusivity, and that category was central to contract formation. The Exclusive Use Clause is not  
13 ambiguous. The inclusion of an exception for "tenants currently located in the center which  
14 allow gaming" establishes that the Exclusive Use Clause was intended to extend beyond just  
15 taverns offering gaming. Von's Grocery and Long's Drugs were not taverns, but are included in  
16 the exception for current tenants offering gaming. Therefore, the Exclusive Use Clause was  
17 intended to give Higco an exclusive for all gaming in Boca Park I, regardless of the primary  
18 purpose of the business offering gaming, i.e. regardless of whether the primary purpose was a  
19 tavern.

### 20 III.

#### 21 Conclusions of Law

22 1. After viewing the evidence in a light most favorable to Defendants, the Court  
23 finds that there is an absence of a genuine issue of material facts.

24 2. The parties' unambiguous intent was for the Lease between Plaintiff and  
25 Defendants' Lease to contain an Exclusive Use Clause that states:

26 Landlord shall grant Higco an exclusive for Boca Park I for a tavern and gaming,  
27 except for any tenants currently located in the center which allow gaming (i.e.  
Vons, Longs).

28 ...

1 The lease that Defendants contend was executed on November 5, 2002, contains a different  
2 exclusive use clause, but the record demonstrates that version of the lease erroneously omitted  
3 the Exclusive Use Clause.

4 3. Defendants admit and the record shows that the corrected page, reflecting the  
5 previously agreed exclusive language, was prepared by Defendants, initialed by Defendants, and  
6 described as "clarifying." Further, the record shows that Defendants did not present the corrected  
7 page as a proposal or offer. Thus, the Court concludes that Defendants were bound by it.

8 4. The Court concludes that when the parties executed the complete corrected lease,  
9 containing the corrected provisions faxed by Defendants on or about January 20, 2003, the  
10 corrected lease was signed by Defendants and Higco, and served to correct the erroneous  
11 omission of the other version, such that the operative lease between Higco and Defendants  
12 contains the Exclusive Use Clause above; that is, the Lease attached to Plaintiff's Complaint as  
13 Exhibit 1.

14 5. The Court concludes that Defendants arguments regarding consideration and  
15 equitable estoppel are unpersuasive, as the corrected lease was a clarification to correct an  
16 erroneous omission. In addition, Defendants signed the corrected page, and the complete Lease  
17 containing the corrected page.

18 6. The Court concludes Defendants' argument that the clarified lease is ambiguous  
19 is unpersuasive. The Exclusive Use Clause provides that Higco has an exclusive use within Boca  
20 Park I both for tavern and for gaming.

21 ORDER

22 IT IS HEREBY ORDERED that Plaintiffs Motion for Summary Judgment is Granted in  
23 FULL.

24 IT IS FURTHER ORDERED that the controlling lease between Higco and Defendants is  
25 the lease delivered by Defendants on or after January 20, 2003, attached to the Complaint as  
26 Exhibit 1, and containing the provision:

27 Landlord shall grant Higco an exclusive for Boca Park I for a tavern and gaming,  
28 except for any tenants currently located in the center which allow gaming (i.e.  
Vons, Longs).

1 IT IS FURTHER ORDERED that the controlling lease is unambiguous, and that Higco  
2 has a right to an exclusive use both for tavern and for gaming in Boca Park I, except for any  
3 tenants offering gaming in Boca Park I as of November 5, 2002, including Vons and Longs; and  
4 that the exclusive use applies to all businesses operating in Boca Park I, such that Defendants  
5 shall not allow any business in Boca Park I, other than Higco, to offer gaming, unless the  
6 business allowed gaming in Boca Park I, as of November 5, 2002.


7 IT IS FURTHER ORDERED that Defendants Countermotion for Summary Judgment is  
8 DENIED in FULL.

9 Dated this 6<sup>th</sup> day of November, 2012.

10  
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12 DISTRICT COURT JUDGE *PB*

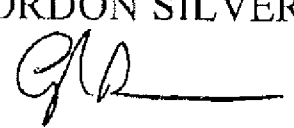
13 Approved / Disapproved as to form:

14 LIONEL SAWYER & COLLINS

15  
16   
17 STEVEN C. ANDERSON  
18 1700 Bank of America Plaza  
19 300 South Fourth Street  
20 Las Vegas, NV 89101

21 Respectfully Submitted,

22 GORDON SILVER

23   
24 ERIC R. OLSEN  
25 Nevada Bar No. 3127  
26 Email: [eolsen@gordonsilver.com](mailto:eolsen@gordonsilver.com)  
27 DYLAN T. CICILIANO  
28 Nevada Bar No. 12348  
Email: [dciciliano@gordonsilver.com](mailto:dciciliano@gordonsilver.com)  
3960 Howard Hughes Pkwy., 9th Floor  
Las Vegas, Nevada 89169

# **EXHIBIT 2**



LEASE

THIS LEASE is made and entered into as of this 5<sup>th</sup> day of November 2002, by and between Boca Park Parcels, LLC, a Nevada limited liability company ("Landlord"), and Higco, Inc., a Nevada corporation ("Tenant").

FUNDAMENTAL LEASE PROVISIONS

The following basic Lease provisions (the "Fundamental Lease Provisions") are an integral part of this Lease, are referred to in other sections of this Lease, and are presented in this Section for the convenience of the parties. They are not intended to constitute an exhaustive list of all charges that may become due and payable under this Lease or of all the material terms of the Lease.

- (a) **Center:** Section 1.01  
The Boca Park Marketplace shopping center, which Center is legally described on Exhibit A-1 attached hereto and incorporated herein by reference (the "Center").
- (b) **Leased Property:** Section 1.01  
Building J, Suite \_\_\_\_ in the Center, as shown by cross-hatching on Exhibit A-2 attached hereto and incorporated herein by reference, consisting of approximately 4,390 square feet (the "Leased Property").
- (c) **Term of Lease:** Sections 2.01 and 2.04  
(i) The term of this Lease shall be for a period of ten (10) years, unless terminated earlier as elsewhere herein provided; provided that if the Commencement Date is not the first day of a calendar month the term hereof shall be for ten (10) years plus the period between the Commencement Date and the first day of the next succeeding calendar month.  
(ii) Renewal term: four (4) options of five (5) years each.
- (d) **Commencement Date:** Section 2.02  
The Commencement Date shall be ninety (90) days after Landlord notifies Tenant that the improvements to be installed by Landlord pursuant to Exhibit C hereof have been substantially completed or as soon as Tenant commences to do business in, upon or from the Leased Property, whichever first occurs.
- (e) **Minimum Monthly Rent:** Section 3.01  
Beginning on the Commencement Date, Tenant shall pay to Landlord minimum monthly rent in an amount calculated based upon the actual rentable square feet included within the interior portions of the Premises (which shall be determined by measurement of Landlord's architect upon completion of construction of the Premises by Landlord) in accordance with the following rent schedule:

Years	Rent Per Square Foot	Monthly Rent
1-2	\$3.00	\$13,170.00
3-5	\$3.25	\$14,267.50
5-7	\$3.40	\$14,926.00
8-10	\$3.50	\$15,365.00

Thereafter, rent shall be adjusted for any renewal terms in accordance with Section 3.02. Tenant, concurrently with the execution hereof, shall deposit with Landlord the sum of Thirteen Thousand One Hundred Seventy and no/100ths Dollars (\$13,170.00), which sum shall be applied to the first full month's minimum monthly rent.

- (f) **Percentage Rent:** Section 3.06  
None.
- (g) **Payment of Percentage Rent:** Section 3.07  
Not Applicable.
- (h) **Security Deposit:** Section 5  
Fifteen Thousand Three Hundred Sixty Five and no/100ths Dollars (\$15,365.00) (the "Security Deposit").
- (i) **Use:** Section 7  
If available, for use as a Three Angry Wives restaurant and tavern with gaming and on-premises sale of liquor, beer and wine and a complete menu (the "Permitted Use").
- (j) **Trade Name:** Section 7  
Three Angry Wives or other name
- (k) **Common Area Maintenance Cost:** Section 10.02.1  
Six Dollars (\$6.00) per square foot of the Leased Property per year, adjusted annually.
- (l) **Notices Addresses:** Section 33.01  
     **Tenant:** Higco, Inc.  
                   10273 Garden Glen Lane  
                   Las Vegas, Nevada 89135  
                   Attn: Sean T. Higgins  
                   Facsimile: (702) 798-8079  
                   Telephone: (702) 798-6400  
                   or at the Leased Property once open for business.  
     **Landlord:** Boca Park Parcels, LLC  
                   9510 W. Sahara Avenue, Suite 200  
                   Las Vegas, Nevada 89117  
                   Attn: Leasing Department  
                   Facsimile: (702) 242-6941  
                   Telephone: (702) 242-6937  
     **with a copy to:** Triple Five Nevada Development Corporation  
                   9510 W. Sahara Avenue, Suite 200  
                   Las Vegas, Nevada 89117  
                   Attn: Legal Department  
                   Facsimile: (702) 242-6941  
                   Telephone: (702) 242-6937
- (m) **Broker:** Section 34  
Richard W. Truesdell of Cornerstone Company and Kevin Higgins of CB Richard Ellis, pursuant to a separate agreement.
- (n) **Advertising and Promotional Services** Section 4  
One Dollar per square foot per annum.

(o) **Exclusive Use**

Section 7.17

Landlord shall grant Tenant an exclusive for Boca Park Phase I for a tavern and gaming, except for any tenants currently located in the center, which allow gaming (i.e., Vons, Longs) (the "Exclusive Use").

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## SECTION 1 DEMISED PREMISES

1.01. Upon the conditions, limitations, covenants and agreements set forth below, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Leased Property. The actual square footage of the Leased Property shall be based upon measurements taken by Landlord's architect or engineer once the foundation and walls are complete. Interior stores shall be measured from centerline to centerline of party walls; exterior stores shall be measured from centerline of party walls to outside face of exterior walls; depth shall be measured from outside face of exterior walls. This Lease confers no rights on Tenant with respect to the Center or any improvements thereon except to the extent specifically provided herein.

1.02. Landlord reserves to itself the use of the roof, exterior walls (other than storefronts) and the area above and below the Leased Property together with the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires and structural elements now or in the future leading through the Leased Property and which serve other parts of the Center. Landlord shall have the sole and exclusive right to designate and from time to time redesignate the name, address, or other designation of the Center. Landlord shall have the right to prohibit any advertising by any tenant which, in Landlord's reasonable opinion, tends to impair the reputation of the Center or its desirability as a location for retail shops, and upon written notice from Landlord Tenant shall refrain from or discontinue such advertising.

## SECTION 2 TERM

2.01 The term of this Lease shall be for the period of time set forth in Section (c)(i) of the Fundamental Lease Provisions above. At such time as the Commencement Date shall have been established, Landlord shall deliver to Tenant a written notice substantially in the form attached hereto as Exhibit B setting forth such date, which date shall be conclusively deemed to be the Commencement Date. In the event that Tenant fails or refuses to open the Leased Property for, and to commence the conduct of, its business within sixty (60) days after the Commencement Date, then, at the option of Landlord, Landlord may treat such failure or refusal as an event of default. Should Landlord not terminate this Lease, Landlord may, without waiving its right to thereafter terminate this Lease for such failure to open, collect all rents due hereunder together with additional rent of one-twentieth (1/20) of the minimum monthly rent per day in lieu of percentage rental if percentage rental is included in this Lease.

2.02. The Commencement Date shall be as set forth in Section (d) in the Fundamental Lease Provisions above. However, should Landlord be unable to complete its Exhibit C work because of any special requirements of Tenant, notwithstanding any other provision hereof, including, but not limited to, Section 31 hereof, the Commencement Date shall be thirty (30) days after Landlord notifies Tenant in writing that Landlord cannot proceed further with its Exhibit C work until such special requirement of Tenant is completed, installed or otherwise satisfied, or as soon as Tenant commences to do business in, upon or from the Leased Property, whichever first occurs. Any other provision hereof to the contrary notwithstanding, should Tenant not fully and timely comply with the provisions of Exhibit C or should Tenant make any change in the plans and specifications for the Leased Property as approved and/or modified by Landlord or Landlord's architect pursuant to said Exhibit C, the Commencement Date shall be thirty (30) days after Landlord notifies Tenant in writing that the Leased Property is ready for construction and installation of the Exhibit C improvements.

2.03. Should Tenant hold possession of the Leased Property with the consent of Landlord after the expiration of the stated term of this Lease, such holding over shall create a tenancy from month to month only, upon the same terms and conditions as are hereinafter set forth, except that minimum rent shall be one hundred fifty percent (150%) of the adjusted minimum rent as determined in Section 3 hereof.

2.04. So long as Tenant is in compliance with the terms hereof, Tenant shall have the right to extend the term of this Lease for the number of additional, consecutive periods set forth in Section (c)(ii) of the Fundamental Lease Provisions above, the first of which shall commence as of the day after the last day of the initial term hereof. Tenant shall notify Landlord of its intention to exercise such option in writing no earlier than nine (9) months and no later than

six (6) months before the end of the preceding lease term. The terms, conditions, and obligations of Landlord and Tenant herein contained shall apply to the extended term, including as said terms relate to the amount of rent to be paid.

### SECTION 3 RENT

3.01. Subject to adjustments as hereinafter provided, beginning on the Commencement Date, Tenant shall pay to Landlord minimum monthly rent in the amount set forth in Section (e) of the Fundamental Lease Provisions above; provided that if the Lease term includes a fractional month, for that fractional month Tenant shall pay on the Commencement Date as minimum rent that proportion of the minimum monthly rent due which the number of days in said fractional month bears to the total number of days in said month.

3.02. During any extension of the initial Lease Term, the minimum rent shall be adjusted to equal one hundred four percent (104%) of the rent due for the previous Lease year.

3.03. Intentionally omitted.

3.04. The minimum rent shall be paid to Landlord in advance not later than the first day of each month during the term of this Lease and any extensions thereof. Rent for any fractional month shall be paid on the Commencement Date.

3.05. If applicable, as used in this Lease, the following terms shall have the following meanings:

(a) "Gross sales" means the aggregate selling price of all merchandise and services sold in, upon or from the Leased Property by Tenant, its subtenants, licensees and concessionaires, personally or from any computer (whether on the Internet or any other sales from any computer), vending or coin-operated or token-operated device, whether for check, cash, on credit or otherwise.

All gross income of Tenant or any other person, firm or corporation from any operations in, at or upon the Leased Property which are not specifically excluded by this Section shall be included in gross sales. All sales originating at, upon or from the Leased Property shall be considered as made and completed thereon and shall be included in Tenant's gross sales even though bookkeeping and payment of the account therefor may be transferred to another place for collection and even though actual filling of the sale or order or actual delivery of the merchandise may be made from a place other than the Leased Property. No credit shall be allowed for uncollected or uncollectable credit accounts. Each sale upon installment or credit shall be treated as a sale for the full price in the month during which such sale is made, regardless of the time when or whether Tenant shall receive payment therefor. In the event that Tenant or any person, firm, entity or corporation which controls, is controlled by or is otherwise affiliated with Tenant owns, operates, or becomes financially interested in a business similar to that conducted on the Leased Property within a radius of three (3) miles in any direction from the perimeter of the Center, the gross sales from such business shall be included in the gross sales made in, upon or from the Leased Property for the purpose of computing the percentage rent payable to Landlord under this Lease to the same extent as if such other premises were part of the Leased Property.

(b) "Lease year" shall mean the twelve (12) month period beginning on the Commencement Date, except that in the event the Commencement Date occurs on a date other than the first day of a month, the Lease year shall commence on the first day of the month following the Commencement Date.

3.06. In addition to the minimum rent, Tenant shall pay Landlord at the time and in the manner herein set forth as percentage rental for each calendar quarter throughout the term hereof the Percentage Rent Rate of Tenant's gross sales made during the particular calendar quarter in question, less the total of the minimum rent paid by Tenant to Landlord for such calendar quarter. If the Leased Property is ready for occupancy on any date other than the first day of a calendar quarter, for that fractional calendar quarter Tenant shall pay the percentage rent in the manner provided herein for payment of percentage rent for a full calendar quarter.

3.07. On or before the 15<sup>th</sup> day of each calendar month during the term of this Lease (including the calendar month next succeeding the last month of the term hereof), Tenant shall deliver to Landlord a written statement signed and certified by Tenant or an officer of Tenant as being true and correct, setting forth the amount of Tenant's gross sales during the calendar month immediately preceding. On or before the Payment Date, Tenant shall deliver to Landlord a written statement signed and certified by Tenant or an officer of Tenant as being true and correct, setting forth the amount of Tenant's gross sales during the calendar quarter immediately preceding, and on the same date shall pay Landlord the percentage rental for the immediately preceding calendar quarter. Within thirty (30) days after the end of each calendar year during the term of this Lease (or within thirty (30) days after the end of the term or the termination hereof), Tenant shall deliver to Landlord a written statement, signed and certified by a Certified Public Accountant or an officer, general partner or similar representative of Tenant, to be true and correct, setting forth the total amount of Tenant's gross sales made during each calendar quarter of the immediately preceding year, and Tenant shall, concurrently therewith, pay Landlord the full balance of the percentage rental due hereunder for such year. The authorized deductions from percentage rental shall be non-cumulative and a computation of payment of the percentage rental shall be made separately for each calendar quarter throughout the term of this Lease without regard to Tenant's gross sales, percentage rental or authorized deductions therefrom in connection with any other calendar quarter.

3.08. All rents and other monies required to be paid by Tenant hereunder shall be paid to Landlord without deduction or offset, prior notice or demand, in lawful money of the United States of America, at such place as Landlord may, from time to time, designate in writing.

3.09. If Tenant shall fail to pay, when the same is due and payable, any rent, percentage rent or any additional rent, or any other amount or charges to be paid by Tenant hereunder, after three (3) business days Tenant shall pay, as additional rent, ten percent (10%) of the amount due (the "Default Rate").

#### SECTION 4 PROMOTIONAL SERVICES

Tenant shall, at Landlord's option, participate in Landlord's marketing fund (the "Marketing Fund"). Landlord shall control and administer the Marketing Fund, if established, in its sole discretion. Tenant shall contribute the sum set forth in Section (n) of the Fundamental Lease Provisions per year.

#### SECTION 5 SECURITY DEPOSIT

Tenant, concurrently with the execution of this Lease, shall deposit with Landlord the Security Deposit as set forth in Section (h) of the Fundamental Lease Provisions. The Security Deposit shall be held by Landlord as security for the full and faithful performance by Tenant of all the terms, covenants and conditions of this Lease by Tenant to be kept and performed during the term hereof, provided that Tenant shall not be excused from the payment of any rent herein reserved or any other charge herein provided. If Tenant defaults with respect to any provision of this Lease, Landlord may, but shall not be required to, use or retain all or any part of the Security Deposit for the payment of any rent, to repair damages to the Leased Property, to clean the Leased Property or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant shall, within five (5) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount.

Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. Should Tenant comply with all of said terms, covenants and conditions and promptly pay all the rental herein provided for as it falls due, and all other sums payable by Tenant to Landlord hereunder, then the Security Deposit shall be returned to Tenant within thirty (30) days after the end of the term of this Lease or after the last payment due from Tenant to Landlord, whichever last occurs. In the event of sale or transfer of the Center or of any portion thereof containing the Leased Property, if Landlord transfers the Security Deposit to the vendee or transferee for the benefit of Tenant, or if such vendee or transferee assumes all liability with respect to the Security Deposit, Landlord shall be considered released by Tenant from all liability for the return of the Security Deposit, and Tenant agrees to look solely to the new landlord for the return of the Security Deposit, and it is

agreed that this Section 5 shall apply to every transfer or assignment to a new landlord. The Security Deposit shall not be assigned, transferred or encumbered by Tenant, and any attempt to do so by Tenant shall not be binding upon Landlord.

## SECTION 6 POSSESSION AND SURRENDER OF LEASED PROPERTY

6.01. Tenant shall by entering upon and occupying the Leased Property, be deemed to have accepted the Leased Property as is and Landlord shall not be liable for any latent or patent defect therein; provided, however, that upon delivery of the Leased Property to Tenant, Landlord and Tenant shall conduct a walk through of the Leased Property and Tenant shall have fifteen (15) days thereafter to prepare and deliver to Landlord a punchlist of correction items, which Landlord shall have a reasonable time thereafter to complete or repair. Tenant will be deemed to have accepted the Leased Property upon completion of repairs by Landlord of such punchlist items. Landlord shall transfer, upon request, any warranties for Landlord's Work to Tenant for up to one (1) year after Lease execution.

6.02. Upon the expiration or sooner termination of the term of this Lease, if Tenant has fully and faithfully performed all of the terms, conditions and covenants of this Lease to be performed by Tenant, but not otherwise, Tenant shall, at its sole cost and expense, remove all personal property and trade fixtures which Tenant has installed or placed on the Leased Property (all of which are hereinafter referred to as "Tenant's Property") from the Leased Property and repair all damage thereto resulting from such removal and Tenant shall thereupon surrender the Leased Property in the same condition as on the date when the Leased Property was ready for occupancy, reasonable wear and tear excepted. If Tenant has not fully and faithfully performed all of the terms, conditions and covenants of this Lease to be performed by Tenant, Tenant shall nevertheless remove Tenant's Property from the Leased Property in the manner aforesaid within fifteen (15) days after receipt of written direction to do so from Landlord. In the event Tenant shall fail to remove any of Tenant's Property as provided herein, Landlord may, at its option, retain all or any portion thereof as abandoned by Tenant, or Landlord may, but is not obligated to, at Tenant's expense, remove all of such property not so removed and repair all damage to the Leased Property resulting from such removal, and Landlord shall have no responsibility to Tenant for any loss or damage to said property caused by or resulting from such removal or otherwise. If the Leased Property is not surrendered at the end of the Lease term, Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in so surrendering the Leased Property including, without limitation, any claims made by any succeeding tenant or prospective tenant founded on such delay. Without limiting the foregoing, lighting fixtures, bulbs and tubes and all partitions, whether removable or not, shall be deemed part of the Leased Property, not Tenant's Property.

## SECTION 7 USE OF LEASED PROPERTY

7.01. The Leased Property is leased to Tenant solely for the Permitted Use set forth in Section (I) of the Fundamental Lease Provisions and for no other use whatsoever. Subject to licensing by the City of Las Vegas (or any other required governmental agency), which licensing Tenant shall procure and maintain at its sole cost and expense, and subject to the receipt by Tenant of all required consents and approvals under the Declaration (as defined below), Tenant may sell liquor, beer and wine at the Leased Property for on-premises consumption only and the operation of a restricted gaming facility. Tenant shall not use or suffer to be used the Leased Property, or any portion thereof, for any other purpose or purposes whatsoever, without Landlord's written consent therefor first had and obtained, which consent may be withheld in Landlord's sole and absolute discretion. Tenant shall conduct business under the trade name set forth in Section (J) of the Fundamental Lease Provisions above and no other without prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion.

7.02. Tenant shall not, without prior written consent of all insurance companies which have issued any insurance of any kind whatsoever with respect to the Leased Property or the Center, sell, or suffer to be kept, used or sold in, upon or about the Leased Property any gasoline, distillate or other petroleum products or any other substance or material of an explosive, inflammable or radiological nature, in such quantities as may be prohibited by any such insurance policy, or which may endanger any part of the Center or its occupants, business patrons or invitees. Tenant will not use any method of heating or air conditioning other than that supplied by Landlord.



7.03. Tenant shall not, without Landlord's prior written approval, operate or permit to be operated on the Leased Property any coin or token operated vending machines or similar device for the sale or leasing to the public of any goods, wares, merchandise, food, beverages, and/or service, including, without limitation, pay telephones, ATMs, pay lockers, pay toilets and scales, however, foregoing notwithstanding Tenant may operate an ATM and pay telephone with the appropriate approvals and subject to the Declaration.

7.04. Tenant shall not, without Landlord's prior written approval, conduct or permit any fire, bankruptcy or auction sale in, on or about the Leased Property.

7.05. Tenant shall not, without Landlord's prior written approval which shall not be unreasonably withheld, cover, obstruct or place any sign or object on or by any windows, glass doors, lights, skylights, or other apertures that reflect or admit light into the Leased Property.

7.06. Tenant shall refrain from keeping or permitting the keeping of any animals of any kind in, about or upon the Leased Property without Landlord's prior written consent.

7.07. Tenant shall not use the Leased Property for storage or warehouse purposes beyond such use as is reasonably required to keep Tenant's store adequately stocked for retail sales in, at or from the Leased Property.

7.08. No cooking shall be done or permitted by any Tenant on the Leased Property nor shall they be used for the manufacture of merchandise; provided, however, that if the business conducted by Tenant on the Leased Property includes sale of prepared food, Tenant may conduct such cooking on the Leased Property as is normally incident to such business.

7.09. Except as provided for elsewhere herein, Tenant shall keep and maintain in first class order, condition and repair (including any such replacement and restoration as is required for that purpose) the Leased Property and every part thereof and any and all appurtenances thereto wherever located, including, but without limitation, the exterior and interior portion of all doors, door checks, windows, plate glass, storefront, all grease traps, oven and stove exhausts, oven and stove exhaust filters, all plumbing and sewage facilities within the Leased Property fixtures, heating and air conditioning and electrical systems (whether or not located in the Leased Property), sprinkler system, walls, floors and ceilings; and any work performed by or on behalf of Tenant hereunder. Any such work shall be subject to such requirements as Landlord may, in its sole discretion, deem reasonable, including, but not limited to, the requirement that Landlord approve the contractors, materials, mechanics and/or materialmen utilized for such purposes. Landlord agrees to assign to Tenant any warranties Landlord may have pertaining to those parts of the Leased Property Tenant is responsible for maintaining hereunder.

7.10. Tenant shall store all trash and garbage in metal containers located where designated by Landlord and so as not to be visible or create a nuisance to customers and business invitees in the Center, and so as not to create or permit any health or fire hazard, and arrange for the prompt and regular removal thereof.

7.11. Tenant shall at all times during the term of the Lease comply with all governmental rules, regulations, ordinances, statutes and laws, and the orders and regulations of the Insurance Services Office or any other body now or hereafter exercising similar functions, now or hereafter in effect pertaining to the Center, the Leased Property or Tenant's use thereof.

7.12. Tenant hereby covenants and agrees that it, its agents, employees, servants, contractors, subtenants and licensees shall abide by the Rules and Regulations attached hereto as Exhibit D and incorporated herein by reference as well as those provided herein and such additional rules and regulations hereafter adopted and amendments and modifications of any of the foregoing as Landlord may, from time to time, adopt for the safety, care and cleanliness of the Leased Property or the Center or for the preservation of good order thereon.

7.13. Tenant shall operate all of the Leased Property during the entire lease term with sound business practice, due diligence and efficiency so as to provide the maximum gross receipts that may be produced by such manner of

operation. Tenant shall provide, install and at all times maintain in the Leased Property all suitable furniture, fixtures, equipment and other personal property necessary for the conduct of Tenant's business therein, in a businesslike manner, shall carry at all times in the Leased Property a stock of merchandise of such size, character and quality as shall be reasonably designed to produce the maximum return to Tenant (and Landlord if percentage rent is included in this Lease), and shall staff the Leased Property at all times with sufficient sales personnel to serve its customers. Tenant shall conduct its business in the Leased Property during those days, nights and hours as shall be determined by Landlord, which shall not be less than ten (10) hours per day on weekdays, six (6) hours on Saturday and five (5) hours on Sunday. Subject to the Declaration, Tenant may also operate and open for twenty four (24) hours per day. In the event of breach by Tenant of any of the conditions of this Section, Landlord shall have, in addition to any and all remedies herein provided, the right, at its option, to collect not only the minimum rent herein provided, but additional rent at the rate of one-thirtieth (1/30) of the minimum monthly rent herein provided for each and every day that Tenant is not open for business as herein provided. Said additional rent shall be due on demand during such period of Tenant's failure to conduct its business as herein provided.

7.14. Tenant shall keep all merchandise display cases in the Leased Property suitably lighted during such hours as Landlord may reasonably require, including periods other than or in addition to the business hours of Tenant.

7.15. 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, odor, vibration, 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.

7.16. If Tenant's permitted use of the Leased Property involves the sale of food, then Tenant shall maintain a health department rating of "A" (or such other highest health department or similar rating as is available) at all times during the term of this Lease. If Tenant receives any lower rating, then Tenant shall immediately notify Landlord of such rating, shall correct all deficiencies noted by the health department and shall have the Leased Property reinspected. Should the Leased Property be rated lower than an "A" (or such other highest health department or similar rating as is available) more than three times in any twelve (12) month period including any extensions, such shall be an incurable event of default not subject to the notice and cure provisions of Section 26 hereof that will give rise to Landlord's rights pursuant to the terms hereof.

7.17. During the term of the Lease, and so long as the Leased Property is continuously used for the purposes stated herein and Tenant has not been in default under any term or provision of the Lease, Landlord shall not lease or operate within the Center any other directly competing business whose primary use is exclusively the Exclusive Use set forth in Lease Section (o). Notwithstanding anything contained in this Section to the contrary, the exclusive rights granted Tenant hereunder shall not be deemed to restrict the activities of any Major Tenant and that the foregoing shall not apply to existing tenants or occupants in the Center as of the date of this lease to the extent that any such tenant's lease permits such use. "Major Tenant" is defined as any occupant in the Center in excess of 12,000 square feet. Tenant covenants and agrees to indemnify and hold Landlord harmless from any claims, actions, damages, expenses, injuries, costs, including reasonable attorney's fees, arising from any claim resulting in litigation brought by an independent, third party seeking space at the Center that the granting of the foregoing exclusive in favor of Tenant violates any state or federal law, regulation or common law protection or right; provided, however, that Tenant may, at Tenant's option, waive its exclusive rights and avoid this indemnification obligation.

## SECTION 8 ALTERATIONS AND IMPROVEMENTS

8.01. Landlord shall install those improvements required to be installed by it pursuant to Exhibit C attached hereto and incorporated herein by reference. Such improvements shall be constructed substantially in accordance with the plans and specifications adopted pursuant to Exhibit C.

It is understood and agreed by Tenant that any minor changes from any plans or specifications that may hereafter be made during construction shall not affect or change this Lease or invalidate the same. Tenant shall pay to Landlord any expense incurred by Landlord as a result of changes requested by Tenant which affect Landlord's work. Tenant agrees to furnish Landlord, within the time periods required in Exhibit C, with a complete and detailed set of plans and specifications, in compliance with Exhibit C, drawn by a registered architect, which architect shall be previously approved in writing by Landlord. Landlord may require Tenant, at Tenant's sole cost and expense, to furnish a bond or other security satisfactory to Landlord to assure diligent and faithful performance of any work to be performed by Tenant. It is understood and agreed that in the event any disagreement or dispute arises between Landlord and Tenant with reference to the work to be performed with respect to the Leased Property pursuant hereto or with respect to whether or not the Leased Property is available for Tenant's work or Tenant's occupancy, the certification of Landlord's supervising architect or agent shall be conclusive and binding upon Landlord and Tenant.

8.02. Tenant shall observe and perform all of its obligations under this Lease (except its obligations to pay minimum rent, percentage rent (if applicable), and additional rent) from the date upon which the Leased Property is turned over to Tenant or is made available for Tenant's work until the Commencement Date in the same manner as though the Lease term began when the Leased Property was so made available to Tenant.

8.03. Tenant shall not make any additions, alterations, improvements or changes (collectively, "Improvements") in or to the Leased Property without the prior written reasonable approval of Landlord, including, without limitation, any penetration of the roof from the interior or exterior of the Leased Property (which must be performed by the contractor that installed the roof, or such other contractor acceptable to Landlord in its sole and absolute discretion). Any request to make Improvements shall be accompanied by a set of plans drawn by a licensed architect and a proposed timeline for the completion of the work. Except as provided in Exhibit C hereof, any Improvements shall be at the sole cost and expense of Tenant. Any Improvements shall be made promptly and in a good and workmanlike manner and in compliance with all insurance requirements and with all applicable permits, authorizations, building regulations, zoning laws and all other governmental rules, regulations, ordinances, statutes and laws, now or hereafter in effect pertaining to the Leased Property or Tenant's use thereof. Prior to the commencement of such work, Tenant shall give evidence to Landlord that appropriate insurance satisfactory to Landlord has been obtained for the protection of Landlord and its tenants and invitees from damage or injury resulting from the making of such Improvements. In addition, prior to the commencement of such work, Tenant, if required by Landlord, shall secure, at Tenant's expense, performance, labor and materials bonds for the full cost of such work satisfactory to Landlord. Landlord will direct electricians as to where and how telephone wires are to be introduced. No boring or cutting for wires will be allowed without the consent of Landlord. The location of telephones, call boxes and other office equipment affixed to the Leased Property shall be subject to the reasonable approval of Landlord. Tenant shall not lay linoleum, tile, carpet or other similar floor coverings and the same shall not be affixed to the floor of the Leased Property in any manner except as approved by Landlord. The expense of repairing any damage resulting from a violation of this rule or removal of any floor covering shall be borne by the tenant (including Tenant, if applicable) by whom, or by whose contractors, employees or invitees, the damage shall have been caused. Any Improvements made by Tenant shall at Landlord's option become the property of Landlord upon the expiration or sooner termination of this Lease. However, Landlord shall have the right to require Tenant to remove such Improvements, at Tenant's sole cost and expense, upon such termination of this Lease and to surrender the Leased Property in the same condition as it was prior to the making of any or all such Improvements, ordinary wear and tear excepted.

8.04. Tenant will not create or permit to be created or to remain, and will discharge, any lien, encumbrance or charge upon fixtures, equipment, or personal property located within the Leased Property. Tenant, however, foregoing notwithstanding, is permitted to finance its fixturing without violating this paragraph, if Tenant in good faith contests the payment to a contractor, subcontractor or materialman which results in a lien, in such event the Tenant shall not be required to remove the lien, provided that Tenant shall post a bond or other reasonable security in Landlord's favor, pending the Tenant's resolution of the Tenant's dispute.

8.05. Landlord's approval of any drawing, plans or specifications shall not constitute any assumption of any liability for the accuracy or sufficiency thereof.

8.06. If available, a panel identifying Tenant's business shall be installed on the Center's pylon signs, ("Pylon"), at Tenant's sole cost at a position and cost to be determined by Landlord. Tenant's panel shall conform to the Center's signage criteria and shall conform with all governmental and association regulations applicable to the Center. Tenant must use Landlord's sign company for the manufacture and installation of the panel.

8.07. If permitted, Tenant may place a sign identifying Tenant's business on three (3) sides of the Leased Property, which signs shall conform to the Center's signage criteria and shall conform with all governmental and association regulations applicable to the Center.

## SECTION 9 LANDLORD'S REPAIRS

Landlord agrees to keep in good order, condition and repair the foundations, exterior walls and roof structure of the Leased Property (but excluding the exterior and interior of all windows, doors, plate glass and showcases) except for reasonable wear and tear and except for any damage thereto caused by any act or negligence of Tenant or its agents, employees, servants, contractors, subtenants, licensees, customers or business invitees. It is an express condition precedent to all obligations of Landlord to repair and maintain that Tenant shall have notified Landlord in writing of the need for such repairs or maintenance. The cost of such repairs shall be included in the Center's Operating Cost, as such term is hereinafter defined in Section 10.

## SECTION 10 PARKING AND COMMON AREAS

10.01.1. Tenant, its agents, employees, servants, contractors, subtenants, licensees, customers and business invitees shall have the nonexclusive right, in common with Landlord and all others to whom Landlord has or may hereafter grant rights, to use such areas of the Center (including, but not limited to, the parking areas, walkways and sidewalks) as designated from time to time by Landlord, subject to such rules and regulations as Landlord may from time to time impose and subject to the provisions of that Declaration of Restrictions and Operation and Easement Agreement, recorded Book No. 981022 as Instrument No. 10589, Official Records, Office of the County Recorder, Clark County, Nevada, and all amendments thereto (the "Declaration"). Tenant agrees that it, its agents, employees, servants, contractors, subtenants and licensees shall abide by such rules and regulations and all the terms and conditions of the Declaration. Landlord may at any time close any common area to make repairs or changes, to prevent the acquisition of public rights in such areas, or to discourage noncustomer parking. Landlord reserves the right to dedicate all or portions of such common areas and other portions of the Center for public utility purposes. Landlord may do such other acts in and to the common areas as in its judgment may be desirable. Tenant shall not at anytime interfere with the rights of Landlord, other owners of portions of the Center, other tenants, its and their agents, employees, servants, contractors, subtenants, licensees, customers and business invitees to use any part of the parking areas or other common areas.

10.01.2. All parking areas and common areas that Tenant may be permitted to use are to be used under a revocable license, and if any such license is revoked, or if the amount of such area is diminished, Landlord shall not be subject to any liability, nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall revocation or diminution of such areas be deemed constructive or actual eviction.

10.02.1 Beginning on the earlier of (i) the Commencement Date or (ii) the date of opening, Tenant will pay to Landlord monthly in advance in addition to the rent specified in Section 3 hereof, as additional rent, an amount fixed for the first calendar year or portion thereof in the amount set forth in Section (k) of the Fundamental Lease Provisions above annually to cover the "Center's Operating Cost" as defined below. Such annual amount shall be increased as of January 1 of each year by the greater of i.) one hundred four percent (104%) or ii.) the percentage increase, if any, of the U.S. City Average Consumer Price Index for Urban Wage Earners and Clerical Workers for all items (1982-84=100), published by the Bureau of Labor Statistics of the U.S. Department of Labor ("CPI"), plus the actual increase in Impositions as determined by Landlord. In no event shall Center's Operating Cost be decreased. The first CPI increase shall be the percentage increase in the CPI from the month in which the Commencement Date occurs to the

next November after the Commencement Date. Thereafter, the increases shall be based on the percent increase in CPI from each November to November of the next year. If at the time required for the determination the CPI is no longer published or issued, Landlord shall use such index reasonably determined by Landlord. Landlord reserves the right to adjust the Center's Operating Cost during the first ninety (90) days of the renewal term.

10.02.2. For the purpose of this Section 10, the term "Center's Operating Cost" is hereby defined to mean the total cost and expense incurred in insuring, managing, operating, equipping, lighting, repairing, replacing and maintaining the Center, and may include sums due pursuant to the terms of the Declaration.

10.02.3. The additional rent provided to be paid in this Section 10 shall be paid in advance by Tenant on the first day of each month without further demand or any deduction or set off whatsoever.

## SECTION 11 INTENTIONALLY OMITTED

## SECTION 12 TAXES

12.01. Tenant shall be liable for and shall pay before delinquency (and, upon demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of the payment thereof) all taxes (including entertainment taxes), fees and assessments of whatsoever kind or nature, and penalties and interest thereon, if any, levied against Tenant's property or any other personal property of whatsoever kind and to whomsoever belonging situate or installed in or upon the Leased Property whether or not affixed to the realty. If at any time during the term of this Lease any such taxes on personal property are assessed as part of the tax on the real property of which the Leased Property is a part, then in such event Tenant shall pay to Landlord on demand the amount of such additional taxes as may be levied against the real property by reason thereof.

12.02. Impositions shall be included in Center's Operating Cost.

12.03. For the purposes of this Lease "Impositions" means:

(a) Any real estate taxes, fees, assessments or other charges assessed against the Center or any improvements thereon, and the reasonable costs incurred by Landlord in contesting same.

(b) All personal property taxes on personal property used in connection with the Center and related structures other than taxes payable by Tenant under Section 12.01 hereof and taxes of the same kind as those described in said Section 12.01 payable by other tenants on the Center pursuant to corresponding provisions of their leases.

(c) Any and all taxes, assessments, license fees, and public charges levied, assessed, or imposed and which become payable during the term hereof upon all leasehold improvements, over and above the building shell, whether installed by Landlord or Tenant.

(d) Any and all environmental levies or charges now in force affecting the Center or any portion thereof, or which may hereafter become effective, including, but not limited to, parking taxes, levies, or charges, employer parking regulations, and any other parking or vehicular regulations, levies, or charges imposed by any municipal, state or federal agency or authority.

(e) Any other taxes levied or assessed in addition to or in lieu of such real or personal property taxes.

12.04. If at any time during the term of this Lease, under the laws of the United States, Nevada or any political subdivision thereof, a tax or excise on rents or other tax (except income tax), however described, is levied or assessed by the United States, Nevada or said political subdivision against Landlord on account of any rent reserved under this Lease, the Leased Property or any use thereof, all such tax or excise on rents or other taxes shall be paid by Tenant.

Whenever Landlord shall receive any statement or bill for any such tax or shall otherwise be required to make any payment on account thereof, Tenant shall pay the amount due hereunder within ten (10) days after demand therefor accompanied by delivery to Tenant of a copy of such tax statement, if any.

### SECTION 13 UTILITIES

Tenant shall pay all charges for water, gas, heat, electricity, power, garbage service, air conditioning, telephone service, sewer service charges and sewer rentals charged or attributable to the Leased Property, and all other services or utilities used in, upon or about the Leased Property by Tenant or any of its subtenants, licensees or concessionaires during the term hereof. Within ten (10) days after delivery of the Leased Property to Tenant, as evidenced by the notice in Section 2.02, Tenant shall transfer into the name of Tenant the service for all utilities directly servicing the Leased Property, excluding water, sewer and garbage. Landlord shall estimate in advance and Tenant shall pay as additional rent and in the manner specified in Section 10 hereof all charges for water, gas, heat, electricity, power, garbage service, air conditioning, telephone service, sewer service charges and sewer rentals charged or attributable to the Leased Property, and all other services or utilities used in, upon or about the Leased Property by Tenant or any of its subtenants, licensees or concessionaires during the term hereof not metered separately to Tenant and paid by Landlord. Landlord may require that Tenant, at Tenant's cost, provide a separate check or sub meter for one or more utility lines from a main line into the Leased Property. Landlord may charge an administrative fee of the lesser of ten percent (10%) or Five Dollars (\$5.00) of the monthly water cost billed by Landlord.

### SECTION 14 INSURANCE

14.01. Tenant shall not use or occupy, or permit the Leased Property to be used or occupied in a manner which will increase the rates of insurance for the Leased Property or the Center (or any portion thereof), which will make void or voidable any insurance then in force with respect thereto, which would constitute a defense to any action thereon, or which will make it impossible to obtain any insurance with respect thereto. If by reason of the failure of Tenant to comply herewith, any insurance rates for the Leased Property or the Center (or any portion thereof) become higher than they otherwise would be, Tenant shall reimburse Landlord, on the first day of the calendar month next succeeding notice by Landlord to Tenant of said increase, for that part of all insurance premiums thereafter paid by Landlord which shall have been charged because of such failure of Tenant. Any policy of insurance maintained by Tenant insuring against any risk in, upon, about or in any way connected with the Leased Property or Tenant's use thereof shall contain an express waiver of any and all rights of subrogation thereunder whatsoever against Landlord, its officers, agents and employees.

14.02. Tenant shall, at all times during the term hereof and beginning upon Tenant's occupying the Leased Property for any reason or for the construction of Tenant's Improvements, at its sole cost and expense, procure and maintain in full force and effect a policy of commercial public liability insurance issued by an insurance carrier approved by Landlord assuring against loss, damage or liability for injury or death to persons and loss or damage to property occurring from any cause whatsoever in connection with the Leased Property or Tenant's use thereof. Such liability insurance shall be in amounts of not less than One Million Dollars (\$1,000,000.00) per occurrence. All such insurance shall specifically insure the performance by Tenant of the indemnity agreement as to liability for injury to or death of persons and loss of or damage to property contained in Section 16.01 hereof. Tenant, Landlord and Landlord's lender shall be named as the insured and additional insureds, respectively, (and at Landlord's option, any other persons, firms or corporations designated by Landlord shall also be named additional insureds) under each such policy of insurance which shall provide that Landlord, although named as an additional insured, shall nevertheless be entitled to recovery thereunder for any loss suffered by it, its agents, servants and employees by reason of Tenant's negligence.

14.03.01. Tenant shall, at all times during the term hereof, at its sole cost and expense, procure and maintain in full force and effect special form insurance covering Tenant's Property and its merchandise (including Tenant's improvements and betterments), and the personal property of others in Tenant's possession in, upon or about the Leased Property. Such insurance shall be in an amount equal to the then current replacement value of the property required to be insured. Tenant, Landlord and Landlord's lender, as their interests may appear, shall be the named insured and



additional insureds, respectively, (and at Landlord's option, any other persons, firms or corporations designated by Landlord shall be additionally named additional insureds) under each such policy of insurance.

14.03.02. Landlord may procure and maintain in full force and effect a policy of rental insurance in an amount up to twelve (12) times the monthly rent then due hereunder, the premiums for which shall be a part of Center's Operating Cost.

14.03.03. Intentionally omitted.

14.03.04. Landlord shall procure and maintain in full force and effect standard form of fire with extended coverage insurance covering the Leased Property and the building or buildings on the Parcel.

14.04. Intentionally omitted.

14.05. A certificate issued by the insurance carrier for each policy of insurance required to be maintained by Tenant hereunder shall be delivered to Landlord, Landlord's lender and all other named insureds and additional insureds on or before the Commencement Date and thereafter, as to policy renewals, within thirty (30) days prior to the expiration of the terms of each such policy. Each of said certificates of insurance and each such policy of insurance required to be maintained by Tenant hereunder shall be from an insurer and in form and substance satisfactory to Landlord and shall expressly evidence insurance coverage as required by this Lease and shall contain an endorsement or provision requiring not less than thirty (30) days written notice to Landlord and all other named insureds and additional insureds prior to the cancellation, diminution in the perils insured against, or reduction of the amount of coverage of the particular policy in question.

14.06. Tenant hereby waives any and all rights of recovery from Landlord, its officers, agents and employees for any loss or damage, including consequential loss or damage, caused by any peril or perils (including negligent acts) enumerated in each form of insurance policy required to be maintained by Tenant hereunder.

14.07. Each policy of insurance provided for in this Section 14 shall contain an express waiver of any and all rights of subrogation thereunder whatsoever against Landlord, its officers, agents and employees. All such policies shall be written as primary policies and not contributing with or in excess of the coverage, if any, which Landlord may carry. Any other provision contained in this Section 14 or elsewhere in this Lease notwithstanding, the amounts of all insurance required hereunder to be paid by Tenant shall be not less than an amount sufficient to prevent Landlord or Tenant from becoming a co-insurer.

14.08. Tenant shall replace or self insure, at the expense of Tenant, any and all plate and other glass damaged or broken from any cause whatsoever in and about the Leased Property. Tenant shall insure, and keep insured, at Tenant's expense, all plate and other glass in the Leased Property for and in the name of Tenant and Landlord.

## SECTION 15 LIENS

Tenant shall at all times indemnify, save and hold Landlord, the Leased Property and the leasehold created by this Lease free, clear and harmless from any and all claims, liens, demands, charges, encumbrances, litigation and judgments arising directly or indirectly out of any use, occupancy or activity of Tenant, or out of any work performed, material furnished, or obligations incurred by Tenant in, upon or otherwise in connection with the Leased Property. Tenant shall give Landlord written notice at least ten (10) business days prior to the commencement of any such work on the Leased Property to afford Landlord the opportunity of filing appropriate notices of nonresponsibility. Tenant shall, at its sole cost and expense, within fifteen (15) days after filing of any lien of record, obtain the discharge and release thereof. Nothing contained herein shall prevent Landlord, at the cost and for the account of Tenant, from obtaining said discharge and release in the event Tenant fails or refuses to do the same within said fifteen (15) day period.



## SECTION 16 INDEMNIFICATION

16.01. Tenant hereby covenants and agrees to indemnify, save and hold Landlord, the Leased Property and the leasehold estate created by this Lease free, clear and harmless from any and all liability, loss, damages, costs, expenses, including reasonable attorneys' fees, judgments, claims, liens and demands of any kind whatsoever in connection with, arising out of, or by reason of any act, omission or negligence of Tenant, its agents, employees, servants, contractors, subtenants, licensees, customers or business invitees while in, upon, about or in any way connected with the Leased Property or the Center or arising from any accident, injury or damage, howsoever and by whomsoever caused, to any person or property whatsoever, occurring in, upon, about or in any way connected with the Leased Property or any portion thereof other than as a result of Landlord's gross negligence or willful acts. The foregoing obligation to indemnify shall include, but is not limited to, Landlord's reasonable attorneys' fees, investigation costs and all other of Landlord's costs, expenses and liabilities reasonably incurred in connection therewith from the first notice that any claim or demand is to be made or may be made. Tenant further agrees that if, by reason of any act or omission of Tenant, Landlord is made a party defendant in any legal proceeding concerning this Lease or the Leased Property, Tenant shall indemnify and hold Landlord harmless from all costs, expenses, and liabilities (including attorneys' fees and court costs) it may incur by reason thereof.

16.02. Landlord shall not be liable to Tenant or to any other person whatsoever for any damage occasioned by falling plaster, electricity, plumbing, gas, water, steam, sprinkler or other pipe and sewage system, by the bursting, running or leaking of any tank, washstand, closet, waste or other pipes, or by water being upon or coming through the roof, skylight, vent, trap door or otherwise for any reason whatsoever or for any damage arising from any acts or neglect of co-tenants or occupants of the Center or of adjacent property or of the public, including, but not limited to, breach of any lease or rules and regulations, nor shall Landlord be liable in damages or otherwise for any failure to furnish, or interruption of, service of any utility.

## SECTION 17 SUBORDINATION

17.01. Tenant agrees upon request of Landlord to subordinate this Lease and its rights hereunder to the lien of any mortgage, deed of trust or other encumbrance, (including, but not limited to, sale-lease back transactions), together with any renewals, extensions or replacements thereof, hereafter placed, charged or enforced against the Leased Property, or any portion thereof, or any property of which the Leased Property is a part, and to execute and deliver at any time, and from time to time, upon demand by Landlord, such documents as may be required to effectuate such subordination, and in the event that Tenant shall fail, neglect or refuse to execute and deliver any such documents to be executed by it, Tenant hereby appoints Landlord, its successors and assigns, the attorney-in-fact of Tenant irrevocably to execute and deliver any and all such documents for and on behalf of Tenant.

17.02. In the event that the mortgagee, beneficiary of any mortgage or deed of trust, or ground lessor (collectively, "Mortgagee") elects to have this Lease a prior lien to its mortgage, deed of trust, or ground lease, then and in such event, upon such Mortgagee's giving written notice to Tenant to that effect, this Lease shall be deemed prior in lien to such mortgage, deed of trust, or ground lease whether this Lease is dated prior to or subsequent to the date of recordation of such mortgage, deed of trust, or ground lease.

17.03. Tenant shall, in the event any proceedings are brought for the foreclosure of the Leased Property or in the event of exercise of the power of sale under any deed of trust made by Landlord covering the Leased Property, or termination of any ground lease, attorn to the purchaser upon any such foreclosure or sale, or ground lessor, as the case may be, and recognize such purchaser or lessor as the landlord under this Lease.

17.04. Tenant hereby agrees not to look to any Mortgagee for accountability for any security deposit required by Landlord hereunder, unless said sums have been actually received by said Mortgagee as security for Tenant's performance of this Lease.

SECTION 18  
ASSIGNMENT AND SUBLETTING

18.01. Tenant shall not assign, mortgage, pledge, hypothecate or encumber this Lease nor the leasehold estate hereby created or any interest herein, whether by agreement, operation of law or otherwise, or sublet the Leased Property or any portion thereof, or license the use of all or any portion of the Leased Property without the prior written consent of Landlord. If this Lease be assigned, or if the Leased Property or any part thereof be sublet or occupied by anybody other than Tenant, Landlord may collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this Section, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. If Tenant is a corporation or a partnership, the issuance of any additional stock or equity interests and/or the transfer, assignment or hypothecation of any stock or interest in such corporation or partnership in the aggregate in excess of forty-nine percent (49%) of such interests, as the same may be constituted as of the date of this Lease, whether directly or indirectly, shall be deemed an assignment within the meaning of this Section 18.

18.02. In the absence of an express agreement in writing to the contrary, executed by Landlord, no assignment, mortgage, pledge, hypothecation, encumbrance, subletting or license hereof or hereunder shall act as a release of Tenant or any guarantor from any of the terms, covenants and conditions of this Lease on the part of Tenant to be kept and performed. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver of any of the provisions of this Lease or a consent to the assignment or subletting of the Leased Property.

18.03. Each assignee or transferee shall assume and be deemed to have assumed this Lease and shall be and remain liable jointly and severally with Tenant for the payment of all rents due hereunder, and for the due performance during the term of this Lease of all the covenants and conditions herein set forth by Tenant to be kept and performed. No assignment or transfer shall be effective or binding on Landlord unless said assignee or transferee shall concurrently deliver to Landlord a recordable instrument which contains a covenant of assumption by said assignee or transferee; provided that a failure or refusal to so execute said instrument shall not release or discharge the assignee or transferee from its liability aforesaid.

18.04. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation hereof, or the termination of this Lease by Landlord pursuant to any provision contained herein, shall not work a merger, but at the option of Landlord, shall either terminate any or all existing subleases or subtenancies, or operate as an assignment to the Landlord of any and all such subleases or subtenancies.

SECTION 19  
INSOLVENCY AND DEATH

19.01. It is understood and agreed that neither this Lease nor any interest herein or hereunder, nor any estate hereby created in favor of Tenant, shall pass by operation of law under any state or federal insolvency, bankruptcy or inheritance act, or any similar law now or hereafter in effect, to any trustee, receiver, assignee for the benefit of creditors, heir, legatee, devisee, or any other person whomsoever without the express written consent of Landlord first had and obtained therefor.

19.02. Landlord and Tenant hereby acknowledge and recognize that Section 365 of Title 11 of the United States Code (the "Bankruptcy Code") provides that a debtor-in-possession or a trustee, with court approval, may assume or reject an unexpired lease and that in a case under Chapter 11 of the Bankruptcy Code, the court, on request of a party to such unexpired lease, may order the trustee or debtor-in-possession to determine within a specified period of time whether to assume or reject such unexpired lease. Because of the fact that time is of the essence to this Lease, Tenant expressly covenants, agrees and bargains to file or cause to be filed a motion either to assume or to reject this Lease within forty-five (45) days of the filing of a voluntary petition under the Bankruptcy Code or the entry of an order for relief in the event of the filing of an involuntary petition.

19.03. Landlord and Tenant further recognize that Section 365 of the Bankruptcy Code provides for the assumption and assignment, subject to court approval, of unexpired leases. Court approval of such assumption and assignment is pre-conditioned on, among other things, the provision of adequate assurance of future performance. In view of the foregoing, Landlord and Tenant do hereby bargain, covenant and agree that the following, and each of them, specifically and without limiting Tenant's obligations to continue to perform all of the terms of this Lease, are conditions and covenants the fulfillment of which are necessary to provide Landlord with adequate assurance of future performance:

(a) The assumption and assignment of this Lease will not breach any provision, such as a radius, location use or exclusive use provision, in any other lease, financing agreement or master agreement (including the Declaration and any other covenants, conditions and restrictions encumbering the Center) relating to the Center;

(b) The proposed assignee will not increase the burden on the common area and will not use the Leased Property in violation of the terms of this Lease and any restrictive covenant applicable to the Center then in force;

(c) The proposed assignee will, in Landlord's reasonable opinion, be a suitable tenant for a first class shopping center; and

(d) The proposed assignee has adequate financial resources to pay all rent and other consideration due under this Lease and to assume all other obligations of Tenant under this Lease.

## SECTION 20 CONDEMNATION

20.01. Should the whole or any part of the Leased Property be condemned or taken by a competent authority for any public or quasi-public purpose, all awards payable on account of such condemnation and taking shall be payable to Landlord, and Tenant hereby waives any and all interest therein. Tenant, however, may make a separate claim for the taking of its trade fixtures, furniture, and or leasehold improvements, as well as any special damages, such as Tenant's moving expenses.

20.02. If the whole of the Leased Property shall be so condemned and taken, then this Lease shall terminate upon such taking. If greater than one-third (1/3) of the floor space of the Leased Property is condemned or taken, and if the remaining portion thereof will not be reasonably adequate for the operation of Tenant's business after Landlord completes such repairs or alterations as Landlord elects to make, either Landlord or Tenant shall have the option to terminate this Lease by notifying the other party hereto of such election in writing within twenty (20) days after such taking. If by such condemnation and taking one-third (1/3) or less of the Leased Property has been taken, or if only a part of the Leased Property is taken and the remaining part thereof is suitable for the purposes for which Tenant has leased the Leased Property, this Lease shall continue in full force and effect, but the minimum rent shall be reduced in an amount equal to that proportion of the minimum rent which the floor space of the portion taken bears to the total floor space of the Leased Property. In the event a partial taking does not terminate this Lease, Tenant, at Tenant's expense, shall make repairs and restorations to the remaining premises of the nature of Tenant's work required by Exhibit C and shall also repair or replace its stock in trade, fixtures, furniture, furnishings, floor coverings and equipment and if Tenant has closed shall promptly reopen for business. If any part of the Center other than the Leased Property shall be so taken or appropriated, Landlord shall have the right, at its option to terminate this Lease by notifying Tenant within six (6) months of such taking.

20.03. Tenant shall in no case be entitled to compensation from Landlord for damage on account of any annoyance or inconvenience in making repairs hereunder. If this Lease is terminated pursuant to this Section 20 and Tenant is not in default hereunder, rent shall be prorated as of the date of termination, any security deposited with Landlord shall be returned to Tenant and all rights and obligations hereunder shall cease and terminate. Except to the extent provided for in this Section 20, neither the rent payable by Tenant nor any of Tenant's other obligations under any provision of this Lease shall be affected by any condemnation or taking of the Leased Property or the Center or any portion of either.

20.04. For the purposes hereof, a deed in lieu of condemnation shall be deemed a taking. A change in grade of street adjoining the Center shall also be deemed a taking.

## SECTION 21 DESTRUCTION OF LEASED PROPERTY

21.01. In the case of total destruction of the Leased Property, or any portion thereof substantially interfering with Tenant's use of the Leased Property, whether by fire or other casualty, not caused by the fault or negligence of Tenant, its agents, employees, servants, contractors, subtenants, licensees, customers or business invitees, this Lease shall terminate except as herein provided. If Landlord notifies Tenant in writing within forty-five (45) days of such destruction of Landlord's election to repair said damage, and if Landlord proceeds to and does repair such damage with reasonable dispatch, this Lease shall not terminate, but shall continue in full force and effect, except that Tenant shall be entitled to a reduction in the minimum rent in an amount equal to that proportion of the minimum rent which the number of square feet of floor space in the unusable portion bears to the total number of square feet of floor space in the Leased Property. Said reduction shall be prorated so that the rent shall only be reduced for those days any given area is actually unusable. In determining what constitutes reasonable dispatch, consideration shall be given to delays caused by labor disputes, civil commotion, war, warlike operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or control, fire or other casualty, inability to obtain any materials or services, acts of God and other causes beyond Landlord's control. If this Lease is terminated pursuant to this Section 21 and if Tenant is not in default hereunder, rent shall be prorated as of the date of termination, any security deposited with Landlord shall be returned to Tenant, and all rights and obligations hereunder shall cease and terminate.

21.02. Notwithstanding the foregoing provisions, in the event the Leased Property, or any portion thereof, shall be damaged by fire or other casualty due to the fault or negligence of Tenant, its agents, employees, servants, contractors, subtenants, licensees, customers or business invitees, then, without prejudice to any other rights and remedies of Landlord, this Lease shall not terminate, the damage shall be repaired by Tenant, and there shall be no apportionment or abatement of any rent.

21.03. In the event of any damage not limited to, or not including, the Leased Property, such that the building of which the Leased Property is a part is damaged to the extent of twenty-five (25%) percent or more of the cost of replacement, or the buildings (taken in the aggregate) of the Center owned by Landlord shall be damaged to the extent of more than twenty-five percent (25%) of the aggregate cost of replacement, Landlord may elect to terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the occurrence of the event causing the damage.

21.04. The provisions of this Section 21 with respect to Landlord shall be limited to such repair as is necessary to place the Leased Property in the condition specified for Landlord's work by Exhibit C and when placed in such condition the Leased Property shall be deemed restored and rendered tenantable promptly following which time Tenant, at Tenant's expense shall perform Tenant's Work required by Exhibit C and Tenant shall also repair or replace its stock in trade, fixtures, furniture, furnishings, floor coverings and equipment, and if Tenant has closed, Tenant shall promptly reopen for business.

21.05. All insurance proceeds payable under any fire and/or rental insurance shall be payable solely to Landlord and Tenant shall have no interest therein. Tenant shall in no case be entitled to compensation for damages on account of any annoyance or inconvenience in making repairs under any provision of this Lease. Except to the extent provided for in this Section 21, neither the rent payable by Tenant nor any of Tenant's other obligations under any provision of this Lease shall be affected by any damage to or destruction of the Leased Property or any portion thereof by any cause whatsoever.

SECTION 22  
RECORDS AND BOOKS OF ACCOUNT

22.01. Tenant, its subtenants, licensees, concessionaires and any other person, firm or corporation selling merchandise or services in, upon or from the Leased Property or any part thereof shall keep and maintain at the Leased Property complete, accurate and customary records and books of account of all sales, whether for cash or on credit, and all business transactions made in, upon or from the Leased Property during each year, and the same shall be retained intact for a period of not less than three (3) years after the end of the year to which said records and books of account pertain. Landlord shall be entitled at all times during business hours, at the Leased Property, through Landlord's duly authorized agents, attorneys or accountants, to inspect and make copies of any and all such records and books of account, including copies of any sales tax or information returns required by or furnished to any governmental authority, together with any and all other records and documents in any way bearing on Tenant's gross sales as herein defined.

22.02. If percentage rent is included in the Lease, Landlord shall be entitled at any time to cause an audit to be made by any person authorized by Landlord of all records and books of account required to be kept hereunder together with any other records and data which Landlord believes would be of assistance in such audit, and if such audit discloses that Tenant's gross sales as previously reported for the period audited were understated, Tenant shall immediately pay to Landlord the additional percentage rental due for the period audited, together with interest at twelve percent (12%) per annum on such shortage of rental from the time such rental became due. If such shortage was in excess of two percent (2%) of the actual percentage rental due as disclosed by such audit, Tenant shall immediately pay to Landlord the cost of such audit. If such shortage was in excess of five percent (5%) of said actual percentage rental due, in addition to the monies due as provided herein, said shortage shall, at the option of the Landlord, terminate this Lease.

SECTION 23  
RIGHT OF ACCESS

23.01. Landlord and its authorized agents and representatives shall be entitled to enter the Leased Property at any reasonable time for the purpose of observing, posting or keeping posted thereon notices provided for hereunder, and such other notices as Landlord may deem necessary or appropriate for protection of Landlord, its interest or the Leased Property; for the purpose of inspecting the Leased Property or any portion thereof; and for the purpose of making repairs to the Leased Property or any other portion of the Center and performing any work therein or thereon which Landlord may elect or be required to make hereunder, or which may be necessary to comply with any laws, ordinances, rules, regulations or requirements of any public authority or any applicable standards that may, from time to time, be established by the insurance services office or any similar body, or which Landlord may deem necessary or appropriate to prevent waste, loss, damage or deterioration to or in connection with the Leased Property or any other portion of the Center or for any other lawful purpose. Landlord shall have the right to use any means that Landlord may deem proper to open all doors in the Leased Property in an emergency. Entry into the Leased Property obtained by Landlord by any such means shall not be deemed to be forcible or unlawful entry into, or a detainer of, the Leased Property, or an eviction of Tenant from the Leased Property or any portion thereof. Nothing contained herein shall impose any duty on the part of Landlord to do any work or repair, maintenance, reconstruction or restoration, which under any provision of this Lease is required to be done by Tenant; and the performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to do the same.

23.02. Landlord may, during the progress of any work on the Leased Property, keep and store upon the Leased Property all necessary materials, tools and equipment and may erect scaffolding and other similar structures. Landlord shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business or quiet enjoyment, or other damage or loss to Tenant by reason of making any such repairs or performing any such work upon the Leased Property, or on account of bringing materials, supplies and equipment into, upon or through the Leased Property during the course thereof or erecting such structures, and the obligations of Tenant under this Lease shall not thereby be affected in any manner whatsoever. Landlord shall, however, in connection with the performance of such work, cause as little inconvenience, disturbance or other damage or loss to Tenant as may be reasonably possible under the circumstances.

23.03. Landlord, and/or its authorized agents and representatives, shall be entitled to enter the Leased Property at all reasonable times for the purpose of exhibiting the same to prospective purchasers and lenders and, during the final six (6) months of the term of this Lease, Landlord shall be entitled to exhibit the Leased Property for lease and post signs therein announcing the same.

#### SECTION 24 EXPENDITURES BY LANDLORD

Whenever under any provision of this Lease Tenant shall be obligated to make any payment or expenditure, or to do any act or thing, or to incur any liability whatsoever, and Tenant fails, refuses or neglects to perform as herein required, Landlord shall be entitled, but shall not be obligated, to make any such payment or to do any such act or thing, or to incur any such liability, all on behalf of and at the cost and for the account of Tenant. In such event, the amount thereof, together with the greater of (i) ten percent (10%) of the amount due and (ii) interest thereon at the rate of fifteen percent (15%) per annum, shall constitute and be collectable as additional rent on demand.

#### SECTION 25 OFFSET STATEMENT

Tenant agrees that within five (5) days of any demand therefor by Landlord, Tenant will execute and deliver to Landlord and/or Landlord's designee a recordable certificate stating that this Lease is unmodified and in full force and effect, such defenses or offsets as are claimed by Tenant, if any, the date to which all rentals have been paid, and such other information including financial statements, concerning the Lease, the Leased Property and Tenant as Landlord or said designee may request.

#### SECTION 26 DEFAULT

26.01.1. Tenant's compliance with each and every covenant and obligation hereof on its part to be performed hereunder is a condition precedent to each and every covenant and obligation of Landlord hereunder.

26.01.2. Landlord shall have all the rights and remedies provided in this Section or elsewhere herein, in the event that:

(a) Tenant shall default in the payment of any sum of money required to be paid hereunder and such default continues for ten (10) days after written notice thereof from Landlord to Tenant; or

(b) Tenant shall default in the performance of any other term, covenant or condition of this Lease on the part of Tenant to be kept and performed and Tenant fails to cure such default as soon as reasonably possible under the circumstances, not to exceed fifteen (15) days; provided, however, that if the default complained of in such notice is of such a nature that the same can be rectified or cured, but cannot with reasonable diligence be done within said fifteen (15) day period, then such default shall be deemed to be rectified or cured if Tenant shall, as soon as reasonably possible within said fifteen (15) day period, commence to rectify and cure the same and shall thereafter complete such rectification and cure with all due diligence, and in any event, within sixty (60) days from the date of giving of such notice; or

(c) Tenant should vacate or abandon the Leased Property during the term of this Lease. Tenant shall be deemed to have "vacated" or "abandoned" the Leased Property if Tenant fails to open its business to the public for three (3) consecutive days, except, with Landlord's prior written consent, closure due to renovation, remodeling, force majeure, or damage or destruction as set forth in Section 21 above; or

(d) Tenant should default under any other agreement with, or for the benefit of, Landlord; or

(e) There is commenced any case in bankruptcy against the original named Tenant, any assignee or sublessee of the original named Tenant, any then occupant of the Leased Property or any guarantor of all or any of



Tenant's obligations hereunder (collectively "Key Persons") or an order for relief is entered with respect to any Key Person or there is appointed a receiver or trustee to take possession of any of the assets of any Key Person or the Leased Property or any Key Person applies for or consents to such appointment, or there is a general assignment by any Key Person for the benefit of creditors, or any action is taken by or against any Key Person under any state or federal insolvency or bankruptcy act, or any similar law now or hereafter in effect or any property of any Key Person is taken or seized under levy of execution or attachment, or any Key Person admits in writing its inability to pay its debts as they mature; provided, however, that the filing of a petition in bankruptcy or any other action taken against any Key Person without the Key Person's consent by an independent third party adverse in interest to the Key Person, except seizure under levy of execution or attachment, shall not be a default hereunder unless the same shall continue in effect for sixty (60) days.

26.01.3. All cure periods provided herein shall run concurrently with any periods provided by law.

26.02. In the event of default as designated in this Section or elsewhere herein, in addition to any other rights or remedies provided for herein or at law or in equity, Landlord, at its sole option, shall have the following rights:

(a) The right to declare the term of this Lease ended and to reenter the Leased Property and take possession thereof, and to terminate all of the rights of Tenant in and to the Leased Property;

(b) The right, without declaring the term of this Lease ended, to reenter the Leased Property and to occupy and/or relet the same, or any portion thereof, for and on account of Tenant as hereinafter provided, and Tenant shall be liable for and pay to Landlord on demand all such expenses as Landlord may have paid, assumed or incurred in recovering possession of the Leased Property, including costs, expenses, attorneys' fees, and expenditures placing the same in good order and condition, or preparing or altering the same for reletting, and all other expenses, commissions and charges paid, assumed or incurred by Landlord in or in connection with reletting the Leased Property. Any such reletting as provided for herein may be for the remainder of the term of this Lease or for a longer or shorter period. Such reletting shall be for such rent and on such other terms and conditions as Landlord, in its sole discretion, deems appropriate. Landlord may execute any lease made pursuant to the terms hereof either in Landlord's own name or in the name of Tenant, or assume Tenant's interest in and to any existing subleases to any tenant of the Leased Property, as Landlord may see fit, and Tenant shall have no right or authority whatsoever to collect any rent from such tenants, subtenants, licensees or concessionaires on the Leased Property. In any case, and whether or not the Leased Property or any part thereof be relet, Tenant, until the end of what would have been the term of this Lease in the absence of such default and whether or not the Leased Property or any part thereof shall have been relet, shall be liable to Landlord and shall pay to Landlord monthly an amount equal to the amount due as rent hereunder, less the net proceeds for said month, if any, of any reletting effected for the account of Tenant pursuant to the provisions of this paragraph, after deducting from said proceeds all of Landlord's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorneys' fees, expenses of employees, alteration costs, and expenses of preparation for such reletting (all said costs are cumulative and shall be applied against proceeds of reletting until paid in full). Landlord reserves the right to bring such actions for the recovery of any deficits remaining unpaid by Tenant to Landlord hereunder as Landlord may deem advisable from time to time without being obligated to await the end of the term hereof for a final determination of Tenant's account and the commencement or maintenance of one or more actions by Landlord in this connection shall not bar Landlord from bringing any subsequent actions for further accruals pursuant to the provisions of this Section 26. In no event shall Tenant be entitled to any excess rental received by Landlord over and above that which Tenant is obligated to pay hereunder. Notwithstanding anything herein to the contrary, in the event Landlord takes possession of the Leased Property as permitted by this paragraph, then Tenant shall not remove any of Tenant's property from the Leased Property, including, without limitation, Tenant's trade fixtures, unless Landlord requires Tenant to remove such property;

(c) The right, even though it may have relet all or any portion of the Leased Property in accordance with the provisions of subparagraph (b) of this Section, to thereafter at any time elect to terminate this Lease for such previous default on the part of Tenant, and to terminate all of the rights of Tenant in and to the Leased Property;



(d) The right to recover or obtain rental compensation for any periods of free rent, including, but not limited to, any Tenant fixturing or Tenant improvement period; and

(e) The right to take any action on behalf of Tenant and to charge to Tenant the cost of such action.

26.03. Pursuant to the rights of re-entry provided above, Landlord may remove all persons from the Leased Property and may, but shall not be obligated to, remove all property therefrom, and may, but shall not be obligated to, enforce any rights Landlord may have against said property or store the same in any public or private warehouse or elsewhere at the cost and for the account of Tenant or the owner or owners thereof. Tenant agrees to hold Landlord free and harmless from any liability whatsoever for the removal and/or storage of any such property, whether of Tenant or any third party whomsoever. Anything contained herein to the contrary notwithstanding, Landlord shall not be deemed to have terminated this Lease or the liability of Tenant to pay any rent or other sum of money thereafter to accrue hereunder, or Tenant's liability for damages under any of the provisions hereof, by any such reentry, or by any action in unlawful detainer or otherwise to obtain possession of the Leased Property, unless Landlord shall have specifically, with reference to this Section, notified Tenant in writing that it has so elected to terminate this Lease. Tenant covenants and agrees that the service by Landlord of any notice pursuant to the unlawful detainer statutes of the State of Nevada and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of, or at any time subsequent to, the service of such notice to Tenant) be deemed to be a termination of this Lease, or the termination of any liability of Tenant hereunder to Landlord.

26.04. Intentionally omitted.

26.05. Intentionally omitted.

26.06. In any action brought by Landlord to enforce any of its rights under or arising from this Lease, Landlord shall be entitled to receive its costs and legal expenses including reasonable attorneys' fees, whether such action is prosecuted to judgment or not. If Landlord shall engage the services of an attorney for the purpose of collecting any rental due from Tenant, Tenant shall pay the reasonable fees of such attorney for his or her services regardless of the fact that no legal proceeding or action may have been filed or commenced. The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with the Lease, the relationship of landlord and tenant, Tenant's use of occupancy of the Leased Property, and/or any claim of injury or damage. In the event Landlord commences any proceedings for nonpayment of any rent, Tenant will not interpose any counterclaim of whatever nature or description in any such proceedings. This shall not, however, be construed as a waiver of the Tenant's right to assert such claims in any separate action or actions brought by Tenant.

26.07. The waiver by Landlord of any default or breach of any of the terms, covenants or conditions hereof on the part of Tenant to be kept and performed shall not be a waiver of any preceding or subsequent breach of the same or any other term, covenant or condition contained herein. The subsequent acceptance of rent or any other payment hereunder by Tenant to Landlord shall not be construed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease other than the failure of Tenant to pay the particular rental or other payment or portion thereof so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rental or other payment. No payment by Tenant or receipt by Landlord of a lesser amount than the rent herein provided shall be deemed to be other than on account of the earliest rent due and payable hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and a satisfaction, and Landlord may accept any such check or payment without prejudice to Landlord's rights to recover the balance of such rent or pursue any other remedy in or under this Lease. The consent by Landlord to any matter or event requiring Landlord's consent shall not constitute a waiver of the necessity for such consent to any subsequent matter or event. This Section 26.07 may not be waived.

26.08. Nothing contained herein shall constitute a waiver of Landlord's right to recover damages by reason of Landlord's efforts to mitigate the damage to it caused by Tenant's default; nor shall anything in this Section adversely affect Landlord's right, as in this Lease elsewhere provided, to indemnification against liability for injury or damage to persons or property occurring prior to a termination of this Lease.

26.09. In the event of termination of this Lease pursuant to this Section, Landlord may recover from Tenant:

(a) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(b) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

As used in subparagraphs (a) and (b) above, the "worth at the time of award" is computed by allowing interest at the Default Rate per annum. As used in subparagraph (c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

#### SECTION 27 HAZARDOUS WASTE

27.01. As used in this Section, the term "Hazardous Waste" means:

(a) Those substances defined as "hazardous substances," "hazardous materials," "toxic substances," "regulated substances," or "solid waste" in the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq., as now amended or hereafter amended, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as now amended or hereafter amended, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., as now amended or hereafter amended, The Federal Hazardous Substances Act, 15 U.S.C. § 1261 et seq., as now amended or hereafter amended, the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., as now amended or hereafter amended, the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., as now amended or hereafter amended, and the rules and regulations now in effect or promulgated hereafter pursuant to each law referenced above;

(b) Those substances defined as "hazardous waste," "hazardous material," or "regulated substances" in Chapters 363, 459 and 598 of the Nevada Revised Statutes ("NRS"), or in the regulations now existing or hereafter promulgated pursuant thereto, or in the Uniform Fire Code, 1988 edition;

(c) Those substances listed in the United States Department of Transportation table (49 CFR § 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); and

(d) Such other substances, mixtures, materials and waste which are regulated under applicable local, state or federal law, or which are classified as hazardous or toxic under federal, state or local laws or regulations (all laws, rules and regulations referenced in paragraphs (a), (b), (c) and (d) are collectively referred to as "Environmental Laws").

27.02. Tenant does not intend to and Tenant will not, nor will Tenant allow any other person (including partnerships, corporations and joint ventures) to, during the term of this Lease, manufacture, process, store, distribute, use, discharge or dispose any Hazardous Waste in, under or on the Leased Property, the common areas, the Center or any property adjacent thereto.

(a) Tenant shall notify Landlord promptly in the event of any spill or release of Hazardous Waste into, on or onto the Leased Property, the common areas or the Center regardless of the source of spill or release, whenever Tenant knows or suspects that such a release occurred.

(b) Tenant will not be involved in operations at or near the Leased Property which could lead to the imposition on the Tenant or the Landlord of liability or the creation of a lien on the Leased Property or the Center under the Environmental Laws.

(c) Tenant shall, upon twenty-four (24) hour prior notice by Landlord, permit Landlord or Landlord's agent access to the Leased Property to conduct an environmental site assessment with respect to the Leased Property.

27.03. Tenant for itself and its successors and assigns undertakes to protect, indemnify, save and defend Landlord, its agents, employees, directors, officers, shareholders, affiliates, consultants, independent contractors, successors and assigns (collectively, the "Indemnitees") harmless from any and all liability, loss, damage and expense, including attorneys' fees, claims, suits and judgments that Landlord or any other Indemnitee, whether as Landlord or otherwise, may suffer as a result of, or with respect to:

(a) Any Environmental Law, including the assertion of any lien thereunder and any suit brought or judgment rendered regardless of whether the action was commenced by a citizen (as authorized under the Environmental Laws) or by a government agency;

(b) Any spill or release of or the presence of any Hazardous Waste affecting the Leased Property, the common areas or the Center, whether or not the same originates or emanates from the Leased Property or any contiguous real estate, including any loss of value of the Leased Property, the common areas or the Center as a result of a spill or release of or the presence of any Hazardous Waste;

(c) Any other matter affecting the Leased Property, the common areas or the Center within the jurisdiction of the United States Environmental Protection Agency, the Nevada State Environmental Commission, the Nevada Department of Conservation and Natural Resources, or the Nevada Department of Commerce, including costs of investigations, remedial action, or other response costs whether such costs are incurred by the United States Government, the State of Nevada, or any Indemnitee;

(d) Liability for clean-up costs, fines, damages or penalties incurred pursuant to the provisions of any applicable Environmental Law; and

(e) Liability for personal injury or property damage arising under any statutory or common-law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance, or for the carrying of an abnormally dangerous activity, and response costs.

27.04. In the event of any spill or release of or the presence of any Hazardous Waste affecting the Leased Property, the common areas or the Center caused by Tenant, whether or not the same originates or emanates from the Leased Property or any contiguous real estate, and/or if Tenant shall fail to comply with any of the requirements of any Environmental Law, Landlord may, without notice to Tenant, at its election, but without obligation so to do, give such notices and/or cause such work to be performed at the Leased Property, the common areas or the Center, as the case may be, and/or take any and all other actions as Landlord shall deem necessary or advisable in order to remedy said spill or release of Hazardous Waste or cure said failure of compliance and any amounts paid as a result thereof, together with interest at the rate of fifteen percent (15%) per annum, from the date of payment by Landlord, shall be immediately due and payable by Tenant to Landlord.

27.05. Landlord upon giving Tenant ten (10) days prior notice, shall have the right in good faith to pay, settle or compromise, or litigate any claim, demand, loss, liability, cost, charge, suit, order, judgment or adjudication under the belief that it is liable therefor, whether liable or not, without the consent or approval of Tenant unless Tenant within said ten (10) day period shall protest in writing and simultaneously with such protest deposit with Landlord collateral

satisfactory to Landlord sufficient to pay and satisfy any penalty and/or interest which may accrue as a result of such protest and any judgment or judgments as may result, together with attorney's fees and expenses, including, but not limited to, environmental consultants.

#### SECTION 28 QUIET POSSESSION

Tenant, upon paying the rentals and other payments herein required from Tenant, and upon Tenant's performance of all of the terms, covenants and conditions of this Lease on its part to be kept and performed, may quietly have, hold and enjoy the Leased Property during the term of this Lease without any disturbance from Landlord or from any other person claiming through Landlord.

#### SECTION 29 SALE BY LANDLORD

In the event of any sale, transfer or exchange of the Leased Property by Landlord, Landlord shall be and is hereby 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, occurrence or omission relating to the Leased Property occurring after consummation of such sale or exchange. Tenant agrees to attorn to such purchaser or grantee.

#### SECTION 30 DEFAULT BY LANDLORD

In the event Landlord fails or refuses to perform any of the provisions, covenants or conditions of this Lease on Landlord's part to be kept or performed, Tenant, prior to exercising any right or remedy Tenant may have against Landlord on account of such default, shall give written notice to Landlord of such default, specifying in said notice the default with which Landlord is charged and Landlord shall not be deemed in default if the same is cured within thirty (30) days of receipt of said notice. Notwithstanding any other provision hereof, Tenant agrees that if the default complained of in the notice provided for by this Section 30 is of such a nature that the same can be rectified or cured by Landlord, but cannot with reasonable diligence be rectified or cured within said thirty (30) day period, then such default shall be deemed to be rectified or cured if Landlord within said thirty (30) day period shall commence the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing to proceed.

#### SECTION 31 FORCE MAJEURE

Whenever a day is appointed herein on which, or a period of time is appointed in which, either party is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days on or during which such party is prevented from, or is reasonably interfered with, the doing or completion of such act, matter or thing because of labor disputes, civil commotion, war, warlike operation, sabotage, governmental regulations or control, fire or other casualty, inability to obtain any materials, or to obtain fuel or energy, weather or other acts of God, or other causes beyond such party's reasonable control (financial inability excepted); provided, however, that nothing contained herein shall excuse Tenant from the prompt payment of any rent or charge required of Tenant hereunder.

#### SECTION 32 NO PARTNERSHIP

Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant. Neither the method of computation of rent nor any other provisions contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

### SECTION 33 SERVICE OF NOTICES

33.01. Any and all notices and demands by either party hereto to the other party, required or desired to be given hereunder, shall be in writing and shall be validly given only if personally delivered, deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, or if made by Federal Express or similar delivery service which keeps records of deliveries and attempted deliveries, or if made by facsimile machine with electronic confirmation of receipt (receipt of which is acknowledged or if a copy thereof is promptly delivered by certified mail or a delivery service which keeps records of deliveries and attempted deliveries). Service shall be conclusively deemed made on the first business day delivery is attempted or upon receipt, whichever is sooner, and addressed to the addresses set forth in Section (l) of the Fundamental Lease Provisions above.

33.02. Any party hereto may change its address for the purpose of receiving notices or demands as herein provided by a written notice given in the manner aforesaid to the other party hereto, which notice of change of address shall not become effective, however, until the actual receipt thereof by the other party.

### SECTION 34 BROKERS

34.01. Landlord and Tenant hereby acknowledge and agree that, in connection with the transactions contemplated by this Agreement, the brokers listed in Section (m) of the Fundamental Lease Provisions above shall receive a commission pursuant to a separate agreement, payable within thirty (30) days after Tenant opens for business to the public from the Leased Property.

34.02. Landlord represents and warrants to Tenant, and Tenant represents and warrants to Landlord, that no broker or finder, other than those brokers set forth in Section (m) of the Fundamental Lease Provisions above, if any, has been engaged by them in connection with any of the transactions contemplated by this Agreement. Landlord and Tenant will indemnify, save harmless and defend the other from any liability, cost or expense arising out of or connected with any claim for any commission or compensation made by any person or entity claiming to have been retained or contacted by them in connection with this transaction, other than those brokers set forth in Section 34.01.

### SECTION 35 MISCELLANEOUS

35.01. The captions appearing at the commencement of the sections hereof are descriptive only and for convenience in reference to this Lease and in no way whatsoever define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

35.02. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein which the context requires such substitution or substitutions.

35.03. The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Lease. The parties hereto agree that the venue for any disagreement, dispute or litigation shall be the State of Nevada, County of Clark, and City of Las Vegas.

35.04. Whenever in this Lease any words of obligation or duty are used in connection with either party, such words shall have the same force and effect as though framed in the form of express covenants on the part of the party obligated.

35.05. In the event Tenant now or hereafter shall consist of more than one person, firm or corporation, then and in such event, all such persons, firms or corporations shall be jointly and severally liable as Tenant hereunder.

35.06. The submission of this Lease for examination and/or execution hereof by Tenant does not constitute a reservation of or option for the Leased Property and this Lease becomes effective as a Lease only upon execution and delivery thereof by Landlord and Tenant.

35.07. Should any claim or lien be filed against the Leased Property, or any action or proceeding is instituted affecting the title to the Leased Property, Tenant shall give Landlord written notice thereof as soon as Tenant obtains actual or constructive knowledge thereof.

35.08. This Lease shall not be construed either for or against Landlord or Tenant, but shall be interpreted in accordance with the general tenor of its language and as if drafted mutually.

35.09. Notwithstanding any other provision of this Lease, in the event the term of this Lease shall not have commenced within twenty-one (21) years from the date of execution hereof, this Lease shall become null and void, and Landlord and Tenant shall thereupon be released from any and all obligations with respect thereto.

35.10. Tenant shall pay all costs, expenses and reasonable attorneys' fees that may be incurred or paid by Landlord in processing, documenting or administering any request of Tenant for Landlord's consent required pursuant to this Lease, including, without limitation, requests to assign or sublet the Lease.

35.11. If Tenant hereunder is a corporation, the parties executing this Lease on behalf of Tenant represent and warrant to Landlord: that Tenant is a valid and existing corporation; all things necessary to qualify Tenant to do business in Nevada have been accomplished prior to the date of this Lease; that all franchise and other corporate taxes have been paid to the date of this Lease; that all forms, reports, fees, and taxes required to be filed or paid by said corporation in compliance with applicable laws will be filed and paid when due.

35.12. Landlord reserves the absolute right to effect such other tenancies in the Center as Landlord, in the exercise of its own business judgment, shall determine. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or number of tenants shall, during the term of this Lease or any extension thereof, occupy any space in the Center. There are no other representations or warranties between the parties hereto, and all reliance with respect to representations is solely on such representations and agreements as are contained in this Lease.

35.13. The various rights, options, elections and remedies of Landlord contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law and not expressly waived in this Lease.

35.14. The obligations of Landlord under this Lease do not constitute personal obligations of the individual members, managers, partners, directors, officers, shareholders or similar positions of Landlord, and Tenant shall not seek recourse against the individual partners, directors, officers, members, managers or shareholders of Landlord or any of their personal assets for satisfaction of any liability in respect to this Lease.

35.15. The terms, provisions, covenants and conditions contained in this Lease shall apply to, bind and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns (where assignment is permitted) of Landlord and Tenant, respectively.

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

35.17. Time is of the essence of this Lease and all of the terms, covenants and conditions hereof.

35.18. This Lease contains the entire agreement between the parties and cannot be changed or terminated orally.

35.19. Tenant acknowledges that the site plan attached hereto as Exhibit A-2 is for the purposes of convenience only and that Landlord reserves the right at any time during initial construction or thereafter to expand, reduce, remove, demolish, change, renovate or construct any existing or new improvements at the Center.

35.20. The parties hereto understand that this is a legal document and each acknowledges that they have had the opportunity to seek independent legal counsel to review this Lease.

35.21. Upon Landlord's request, and within thirty (30) days thereof, Tenant agrees to modify this Lease to meet the reasonable requirements of a lender selected by Landlord who demands such modification as a condition precedent to granting a loan and placing a deed of trust or other mortgage encumbrance upon the Parcel or the Leased Property; provided such modification does not increase the monthly minimum rent, percentage rent or any other monetary obligation of Tenant under this Lease; provided further, that such lender agrees to execute an attornment and non-disturbance agreement in favor of Tenant concurrently with Tenant's execution of any documents required under this Section 35.21.

#### SECTION 36 QUEING AND CROWD CONTROL

36.01. Orderly Queuing and Crowd Control. Tenant agrees to (i) maintain all queuing, which occurs due to the Permitted Use of the Leased Property, in an orderly fashion whether such queuing occurs inside or outside the Leased Property or the Center; and (ii) keep all crowds, which may gather due to the Permitted Use of the Leased Property under control whether such crowds gather inside or outside the Leased Property or the Center.

36.02. Additional Measures. If Landlord determines, in its sole judgement, that Tenant has not complied with Paragraph a hereof, Tenant will, upon Landlord's direction and at Tenant's sole cost and expense (i) hire a security guard or guards; and/or (ii) install temporary and removable crowd control devices in areas designated by Landlord.

36.03. Other Directions by Landlord. Tenant agrees to follow Landlord's other directions regarding orderly queuing and crowd control.

36.04. Self-help. If Tenant fails to comply with Landlord's directions pursuant to Sections 36.02 and 36.03 hereof, Landlord shall have the right to do so on Tenant's behalf, and Tenant shall concurrently reimburse Landlord for the cost and expense of doing so.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first set forth above.

"TENANT"

HIGCO, INC.  
a Nevada corporation

By: Sean J. Higgins  
Name: Sean J. Higgins  
Its: President

"LANDLORD"

BOCA PARK PARCELS, LLC  
a Nevada limited liability company

By: John M. McCall  
John M. McCall  
Manager, Corporate Counsel



## GUARANTY

GUARANTY OF LEASE dated \_\_\_\_\_ by and between Boca Park Parcels, LLC, a Nevada limited liability company, as Landlord, and Higo, Inc., a Nevada corporation, as Tenant.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned Guarantor hereby unconditionally and irrevocably guarantees the full and faithful performance by Tenant of all the terms, covenants and conditions of the above-referenced Lease. This Guaranty shall remain in full force and effect regardless of any amendment, modification, extension, compromise or release of any term, covenant or condition of the Lease or of any party, assignee or subtenant thereto, as the case may be.

The undersigned agrees to indemnify Landlord against any and all liability, loss, costs, charges, penalties, obligations, expenses, attorneys' fees, litigation, judgments, damages, claims and demands of any kind whatsoever in connection with, arising out of or by reason of the assertion by Tenant of any defense to its obligations under the Lease or the assertion by Guarantor of any defense to its obligations hereunder. Guarantor waives any right or claim or rights to cause a marshalling of Tenant's assets or to proceed against Guarantor or Tenant or any security for the Lease or this Guaranty in any particular order and Guarantor agrees that any payments or performance required to be made hereunder shall become due upon demand in accordance with the terms hereof immediately upon the happening of a default under the Lease, whether or not Guarantor has been given notice of such default, and Guarantor hereby expressly waives and relinquishes all rights and remedies accorded by applicable law to guarantors, including, but not limited to, notice of demand, notice of default, any failure to pursue Tenant or its property, any defense arising out of the absence, impairment or loss of any right of reimbursement or subrogation and any defense arising by reason of any defense of Tenant or by reason of the cessation of the liability of Tenant or any defense by reason of the assertion by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease, or by reason of summary or other proceedings against Tenant.

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

Guarantor agrees that any judgment rendered against Tenant for monies or performance due Landlord shall in every and all respects bind and be conclusive against Guarantor to the same extent as if Guarantor had appeared in any such proceedings and judgment therein had been rendered against Guarantor. Guarantor agrees that Landlord may seek any and all damages and/or remedies from Guarantor directly without first having to seek damages and/or remedies from Tenant.

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

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

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

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

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

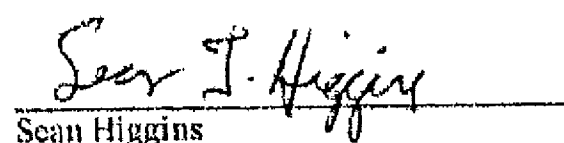
The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Guaranty. The venue for any disagreement, dispute or litigation shall be the State of Nevada, County of Clark and City of Las Vegas.

Should Guarantor consist of more than one person or entity, then, in such event, all such persons and entities shall be jointly and severally liable as Guarantor hereunder. In any action brought by Landlord to enforce any of its rights under or arising from this Guaranty, Landlord shall be entitled to receive its costs and legal expenses including reasonable attorneys' fees, whether such action is prosecuted to judgment or not. If Landlord shall engage the services of any attorney for the purpose of collecting any rental due from Tenant, having first given Tenant five (5) days' notice of its intention so to do, Tenant shall pay the reasonable fees of such attorney for his services regardless of the fact that no legal proceeding or action may have been filed or commenced.

Dated this 5<sup>th</sup> day of November, 2002.

"GUARANTORS"

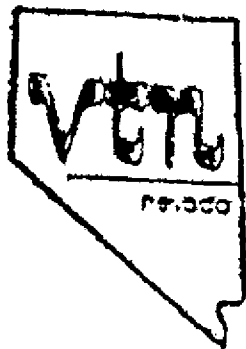
  
Kevin Higgins

  
Sean Higgins

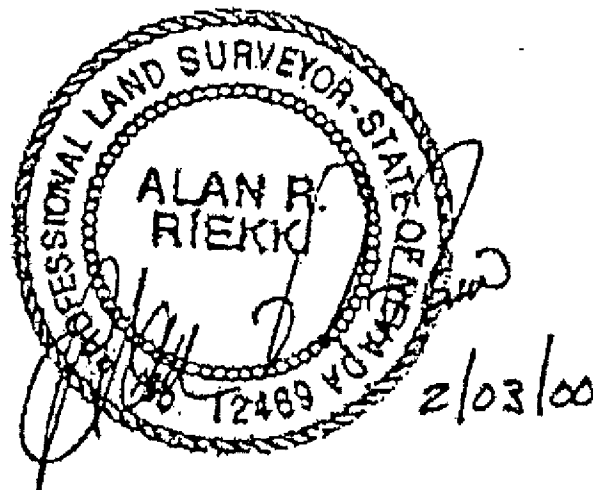
  
G. Michael Higgins

EXHIBIT A-1  
LEGAL DESCRIPTION OF CENTER

See Attached



CONSULTING ENGINEERS • PLANNERS • SURVEYORS  
PROVIDING QUALITY PROFESSIONAL  
SERVICES SINCE 1960



W.O. 5334-1  
OCTOBER 15, 1998  
BY: TZ / ARR  
P.R. BY: ARR  
PAGE 1 OF 2  
REVISED: 5/27/99  
REVISED: 2/03/00

EXPLANATION:

THIS LEGAL DESCRIBES A PARCEL OF LAND GENERALLY LOCATED  
NORTHEASTERLY OF RAMPART BOULEVARD AND CHARLESTON BOULEVARD.

LEGAL DESCRIPTION  
PHASE 1

BEING A PORTION OF LOT 1, BLOCK 1 OF THAT COMMERCIAL SUBDIVISION  
KNOWN AS "PECCOLE RANCH TOWN CENTER" ON FILE IN THE OFFICE OF  
THE COUNTY RECORDER, CLARK COUNTY, NEVADA, IN BOOK 86 OF PLATS,  
AT PAGE 23, LOCATED WITHIN THE SOUTH HALF (S 1/2) OF SECTION 32,  
TOWNSHIP 20 SOUTH, RANGE 60 EAST, M.D.M., CITY OF LAS VEGAS,  
CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST SIXTEENTH SECTION CORNER OF SAID SECTION  
32, BEING ON THE CENTERLINE OF RAMPART BOULEVARD; THENCE NORTH  
00°33'39" WEST, ALONG THE CENTERLINE OF SAID RAMPART BOULEVARD,  
119.00 FEET; THENCE NORTH 89°26'21" EAST, DEPARTING SAID  
CENTERLINE, 56.00 FEET TO THE EASTERLY RIGHT-OF-WAY OF SAID  
RAMPART BOULEVARD, SAME BEING THE POINT OF BEGINNING;

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY, THE FOLLOWING COURSES:  
NORTH 00°33'39" WEST, 124.06 FEET; THENCE NORTH 07°45'20" EAST,  
60.83 FEET; THENCE NORTH 01°42'24" WEST, 81.44 FEET; THENCE  
NORTH 15°44'35" WEST, 41.23 FEET; THENCE NORTH 01°42'24" WEST,  
118.57 FEET; THENCE NORTH 00°33'39" WEST, 457.05 FEET TO THE  
BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF  
1650.00 FEET; THENCE NORTHEASTERLY, 547.45 FEET ALONG SAID  
RIGHT-OF-WAY AND SAID CURVE THROUGH A CENTRAL ANGLE OF  
19°00'36"; THENCE SOUTH 71°33'03" EAST, DEPARTING SAID EASTERLY  
RIGHT-OF-WAY, 15.00 FEET; THENCE 72°37'30" EAST, 200.04 FEET;  
THENCE SOUTH 04°29'51" EAST, 151.87 FEET; THENCE NORTH 89°26'21"  
EAST, 681.46 FEET; THENCE SOUTH 00°24'22" EAST, 131.38 FEET;  
THENCE NORTH 89°26'21" EAST, 782.86 FEET; THENCE SOUTH 00°19'57"  
EAST, 530.10 FEET; THENCE NORTH 89°40'03" EAST, 125.00 FEET TO  
THE WESTERLY RIGHT-OF-WAY OF MERIALDO LANE; THENCE SOUTH  
00°19'57" EAST, ALONG SAID WESTERLY RIGHT-OF-WAY, 541.00 FEET TO

LEGAL DESCRIPTION CONTINUED

W.O.5334-1

10/15/98

PAGE 2 OF 2

REVISED: 5/27/99

REVISED: 2/03/00

THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 54.00 FEET; THENCE SOUTHWESTERLY, 84.82 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" TO THE NORTHERLY RIGHT-OF-WAY OF CHARLESTON BOULEVARD; THENCE SOUTH 89°40'03" WEST, ALONG SAID NORTHERLY RIGHT-OF-WAY, 559.98 FEET; THENCE SOUTH 89°26'21" WEST, CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY, 1215.42 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 54.00 FEET; THENCE NORTHWESTERLY, 84.82 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" TO THE POINT OF BEGINNING, AS SHOWN ON THE "EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION" ATTACHED HERETO AND MADE A PART HEREOF.

CONTAINING 51.11 ACRES, MORE OR LESS, AS DETERMINED BY COMPUTER METHODS.

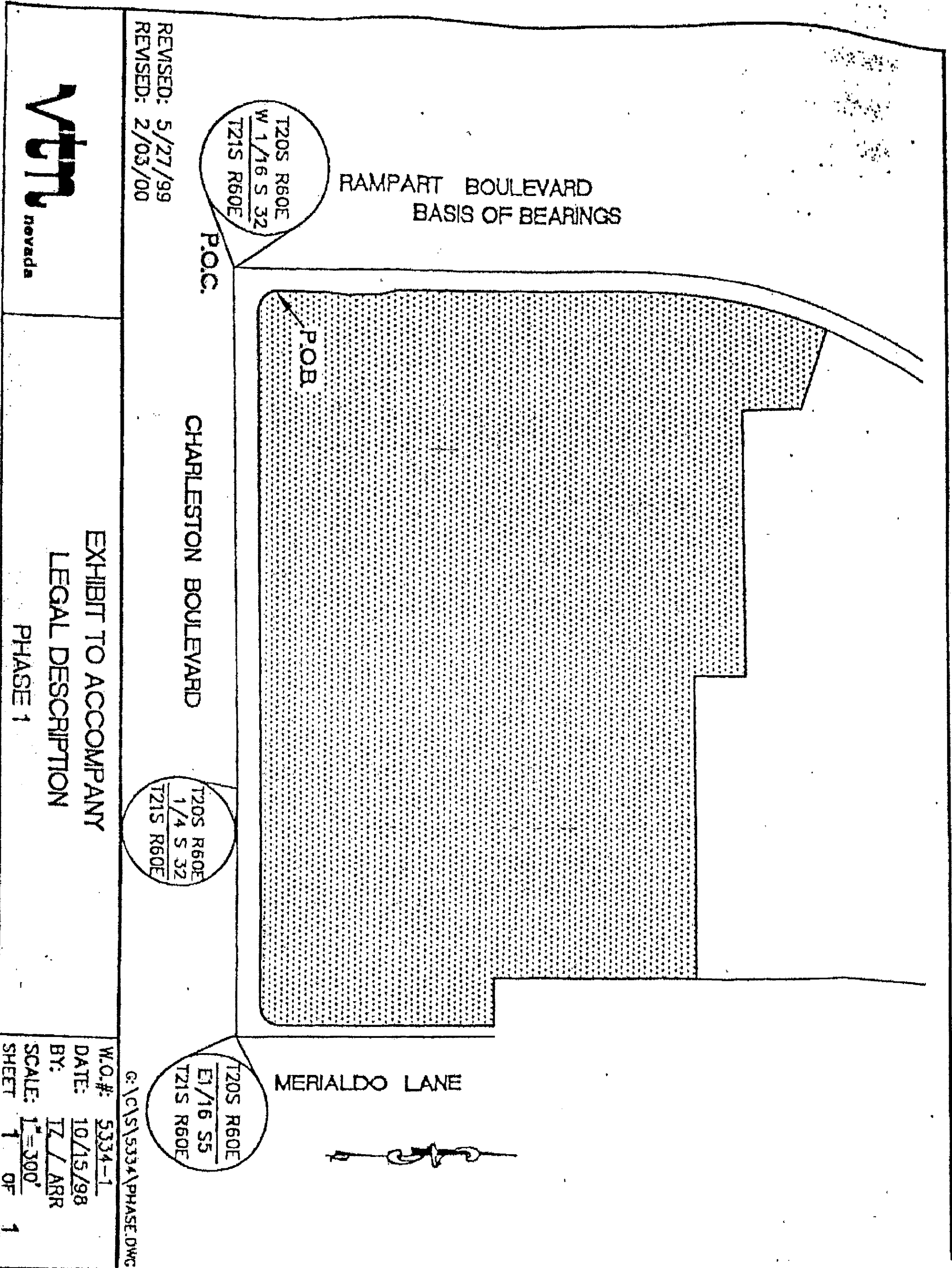
BASIS OF BEARINGS:

NORTH 00°33'39" WEST, BEING THE BEARING ON THE CENTERLINE OF RAMPART BOULEVARD, AS SHOWN ON THAT CERTAIN PARCEL MAP ON FILE IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA, IN FILE 82 OF PARCEL MAPS, AT PAGE 11.

NOTE: THIS LEGAL DESCRIPTION IS PROVIDED AS A CONVENIENCE AND IS NOT INTENDED FOR THE PURPOSE OF SUBDIVIDING LAND NOT IN CONFORMANCE WITH NEVADA REVISED STATUTES.

END OF DESCRIPTION.

G:\C\S\5334\5334PHS3REV4.DOC



Project: 5334srvy  
Lot Map Check

Thu Feb 03 10:58:52 2000

Lot name: PHASE1NEW

North: 16123.28 East: 17690.35  
 Line Course: N 00-33-39 W Length: 124.06  
     North: 16247.33 East: 17689.14  
 Line Course: N 07-45-20 E Length: 60.83  
     North: 16307.60 East: 17697.34  
 Line Course: N 01-42-24 W Length: 81.44  
     North: 16389.01 East: 17694.92  
 Line Course: N 15-44-35 W Length: 41.23  
     North: 16428.69 East: 17683.73  
 Line Course: N 01-42-24 W Length: 118.57  
     North: 16547.21 East: 17680.20  
 Line Course: N 00-33-39 W Length: 457.05  
     North: 17004.24 East: 17675.73  
 Curve Length: 547.45 Radius: 1650.00  
     Delta: 19-00-36 Tangent: 276.26  
     Chord: 544.94 Course: N 08-56-39 E  
     Course In: N 89-26-21 E Course Out: N 71-33-03 W  
     RP North: 17020.39 East: 19325.65  
     End North: 17542.55 East: 17760.45  
 Line Course: S 71-33-03 E Length: 15.00  
     North: 17537.81 East: 17774.68  
 Line Course: S 72-37-30 E Length: 200.04  
     North: 17478.07 East: 17965.59  
 Line Course: S 04-29-51 E Length: 151.87  
     North: 17326.67 East: 17977.50  
 Line Course: N 89-26-21 E Length: 681.46  
     North: 17333.34 East: 18658.93  
 Line Course: S 00-24-22 E Length: 131.38  
     North: 17201.96 East: 18659.86  
 Line Course: N 89-26-21 E Length: 782.86  
     North: 17209.62 East: 19442.68  
 Line Course: S 00-19-57 E Length: 530.10  
     North: 16679.53 East: 19445.76  
 Line Course: N 89-40-03 E Length: 125.00  
     North: 16680.26 East: 19570.76  
 Line Course: S 00-19-57 E Length: 541.00  
     North: 16139.27 East: 19573.90  
 Curve Length: 84.82 Radius: 54.00  
     Delta: 90-00-00 Tangent: 54.00  
     Chord: 76.37 Course: S 44-40-03 W  
     Course In: S 89-40-03 W Course Out: S 00-19-57 E  
     RP North: 16138.95 East: 19519.90  
     End North: 16084.95 East: 19520.21  
 Line Course: S 89-40-03 W Length: 559.98  
     North: 16081.70 East: 18960.24  
 Line Course: S 89-26-21 W Length: 1215.42  
     North: 16069.81 East: 17744.88  
 Curve Length: 84.82 Radius: 54.00



Thu Feb 03 10:58:52 2000

Project: 5334srvy

Lot Map Check

Delta: 90-00-00

Chord: 76.37

Course In: N 00-33-39 W

RP North: 16123.80

End North: 16123.28

Tangent: 54.00

Course: N 45-33-39 W

Course Out: S 89-26-21 W

East: 17744.35

East: 17690.35

Perimeter: 6534.39 Area: 2,226,298.754 sq.ft. 51.109 acres

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.00

Course: S 50-22-28 E

Error North: -0.001

East: 0.001

Precision 1: 3,557,022.19

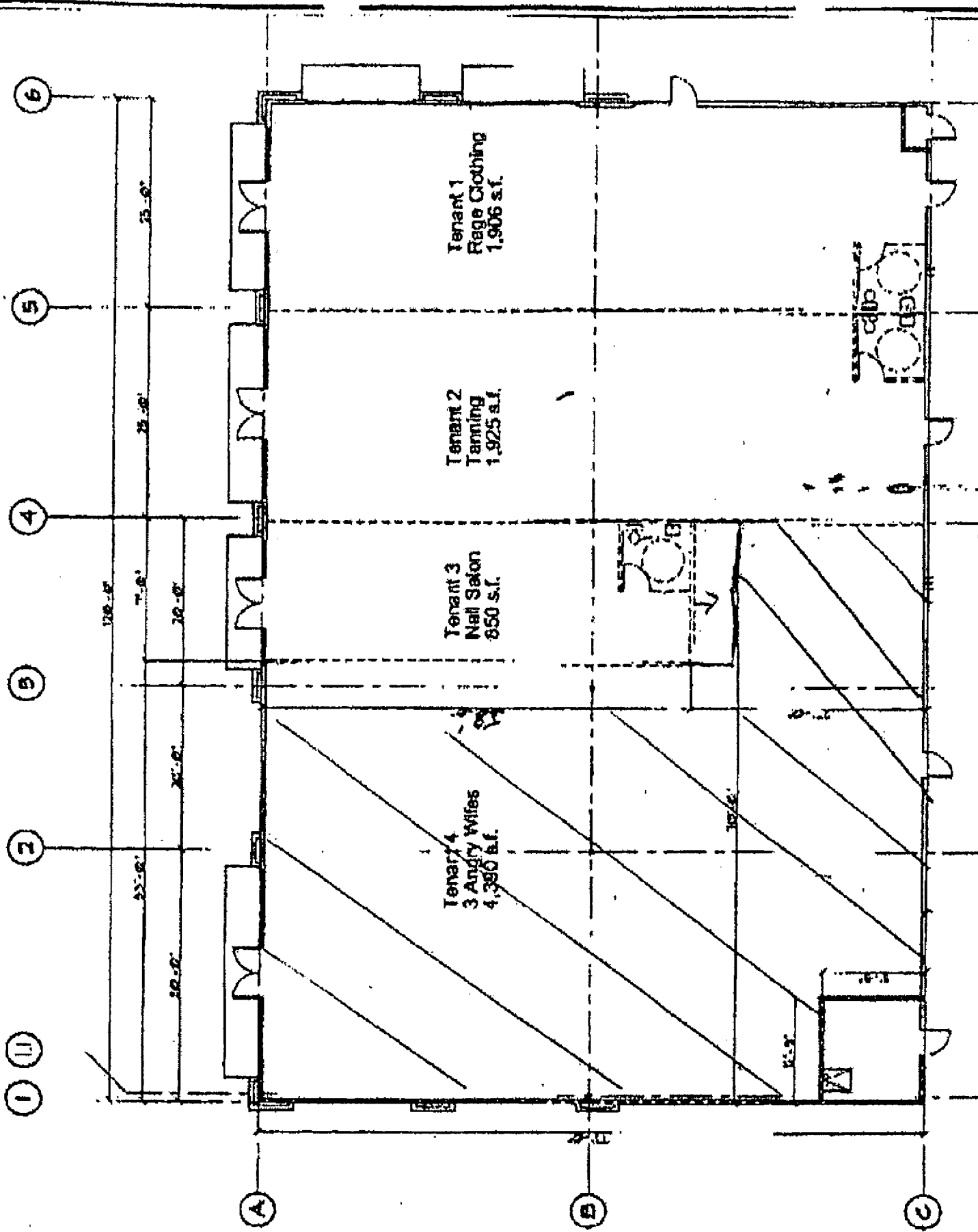
EXHIBIT A-2

SITE PLAN

See Attached

# Building Information

Building Area	9,240 gsf	
Building Size	120' x 77'	
Tenant 1	57'-4" x 77'	4,390 sf
Tenant 2	17' x 50'	850 sf
Tenant 3	25' x 77'	1,925 sf
Tenant 4	25' x 77'	1,906 sf
Total Retail		9,071 sf
Common		169 sf
		9,240 sf



*[Handwritten signature]*



PERLMAN ARCHITECTS, INC.  
2230 CORPORATE CIRCLE, SUITE 200  
HENDERSON, NEVADA 89074  
702.690.3900 702.932.3222 fax

Scale: 1" = 20'

Triple Five Nevada Dev. Corp.  
Las Vegas, Nevada 702-242-6937

# Pad J @ Boca Park I

As: This Layout is Conceptual in Nature and No Guarantees of Accuracy to Any Job.  
All dimensions and sites are Preliminary and Subject to Change

Date: July 29, 2002  
Project Number: 190021

10 20

EXHIBIT B  
COMMENCEMENT DATE

Sean T. Higgins  
Higeo, Inc.  
10273 Garden Glen Lane  
Las Vegas, Nevada 89135

Re: *Three Angry Wives – Boca Park Marketplace  
Commencement Date Memorandum*

Dear Mr. Higgins:

The commencement date of that Lease dated as of \_\_\_\_\_, 200\_\_\_\_, by and between Boca Park  
Parcels, LLC, a Nevada limited liability company, as Landlord, and Higeo, Inc., a Nevada corporation, as Tenant, was  
the \_\_\_\_\_ of \_\_\_\_\_, 200\_\_\_\_.

"LANDLORD"

BOCA PARK PARCELS, LLC  
a Nevada limited liability company

By: \_\_\_\_\_  
John M. McCall  
Manager, Corporate Counsel

## EXHIBIT C

### DESCRIPTION OF WORK

When Landlord's architect has completed drawings of the basic shell of the building (or if such drawings have already been completed, then promptly after the execution of this Lease), Landlord shall deliver a floor plan of the Leased Property to Tenant showing the columns and other structural work in the Leased Property.

Within fifteen (15) days after receipt of said floor plan, Tenant shall submit to Landlord four (4) sets of fully dimensioned scale drawings of the interior space of the Leased Property, prepared by Tenant's registered architect at Tenant's expense. Said drawings shall indicate the specific requirement of Tenant's space showing clearly interior partitions, trade fixture plans, location and layout of the bar, restrooms, telephones and post locations ("Interior Plans"). Tenant shall also deliver to Landlord specifications for all such trade fixtures. Landlord, at landlord's sole cost and expense, shall, using the Interior Plans complete all architectural, mechanical, electrical and plumbing drawings. Landlord shall allow Tenant to review said plans and the parties shall both sign off on the final drawings. These shall be the "Approved Plans". The Approved Plans shall be completed by Landlord in conformity with this Exhibit C and all applicable permits, authorizations, building regulations, zoning laws and all other governmental rules, regulations, ordinances, statutes and laws. In addition, Landlord, at landlord's sole cost and expense, shall apply for and obtain all necessary permits from all government agencies required to complete Landlord's Work. Such plans shall also indicate the work to be done by Landlord at Landlord's expense, as provided in Section I hereof ("Landlord's Work"), the work to be done by Landlord at Tenant's expense and the work to be done by Tenant at Tenant's expense (any work that is not Landlord's Work as provided in Section I hereof, shall be referred to as "Tenant's Work"). Any engineering services required for Tenant's Work or any re-engineering services required of Landlord's Work because of Tenant's Work shall be at the expense of Tenant.

Unless provided otherwise in this Exhibit C, Tenant shall complete or arrange for the completion of Tenant's Work, at Tenant's expense, in accordance with the Approved Plans. Tenant agrees and acknowledges that any and all contractors, subcontractors and materialmen utilized, directly or indirectly, by Tenant or any agent of Tenant shall at all times comply with all applicable laws, ordinances and regulations, including, without limitation, compliance with State Industrial Insurance System and State Contractors Board requirements. Tenant shall obtain Landlord's prior written approval of the contractor and any subcontractor or subtrade who is to perform the construction work, or any portion thereof. Tenant and/or its contractor shall diligently and aggressively pursue, obtain and pay for all required inspections, licenses, authorizations, building permits, fees and occupancy certificates required for Tenant's Work or for Tenant to open for business after all work has been completed. Tenant may not enter upon the Leased Property until plans and specifications have been adopted as hereinafter provided and Landlord notifies Tenant that the Leased Property is ready for Tenant to perform its work. Tenant shall not conduct its work in such a manner as to interfere with Landlord performing Landlord's Work hereunder. Tenant may request that Landlord complete all or any part of Tenant's Work at Tenant's expense, subject to Landlord's acceptance of the job and the terms and conditions thereof and that Tenant's request specifically state in writing the scope of Tenant's Work to be undertaken by Landlord at Tenant's expense.

In the event that, based on the final plans and specifications, Tenant desires that Landlord not undertake a specific element of Landlord's Work, Landlord will provide Tenant a credit to Tenant for that portion of Landlord's Work not performed by Landlord. Such credit shall not exceed the actual cost to Landlord had Landlord provided that omitted portion of Landlord's Work. Any credits provided in this Exhibit C shall be paid to Tenant upon the Commencement date of the Lease.

Landlord has agreed to modify the exterior store front design of the Leased Property, removing all windows and allowing for a larger exterior door. Any further modifications by Tenant must be previously approved by Landlord in writing.

Any additional charges, expenses (including architectural and engineering fees) or costs arising by

reason of any subsequent change, modification or alteration in said Approved Plans and specifications made at the request of Tenant shall be at the sole cost and expense of Tenant, and Landlord shall have the right to demand immediate payment for such change, modification or alteration prior to Landlord's performance of any work in the Leased Property to the extent that such request affects the work Landlord is to perform hereunder. No such changes, modifications or alterations in said Approved Plans and specifications can be made without the written consent of Landlord after the written request thereof by Tenant. No part of the cost of any trade fixture or personal property for Tenant shall be payable by Landlord.

The fact that Tenant may enter into possession of the Leased Property prior to the actual completion of the building for the purpose of installing trade fixtures and equipment shall not be deemed an acceptance by Tenant of completion by the Landlord until actual completion shall have taken place; provided, however, in such event, Tenant shall hold Landlord harmless and indemnify Landlord for any loss or damage to Tenant's fixtures, equipment and merchandise and for injury to any person.

Where the Approved Plans and specifications are in conflict with this Exhibit C, the provisions of this Exhibit C shall prevail.

#### I. WORK DONE BY LANDLORD AT LANDLORD'S EXPENSE

Landlord shall deliver to Tenant the Leased Property as agreed upon in this Exhibit C ("Landlord's Work") which shall include:

##### A. STRUCTURE

1. Frame, etc.: The building shall be of steel frame, reinforced concrete, masonry, wood, or bearing wall or any combination construction designed in accordance with governing building codes.
2. Exterior Walls: The exterior walls shall be of masonry or such other material or materials as selected by Landlord's architect or agent.
3. Clear Heights: Clear height between floor slab and Tenant's ceiling shall be no less than nine feet (9') and, no lower than the top of any window frame, and shall otherwise be governed by structural design.
4. Floor Construction: Floors shall be of concrete slab on grade, smooth finish, including restrooms
5. Roof: The roof shall be composition gravel, tile or as otherwise specified by Landlord's architect or agent.
6. Ceilings: Finished ceiling in restrooms, suspended t-bar acoustical ceiling over balance of ceiling area, including ceiling as required by code in the kitchen.
7. Insulation: Landlord shall furnish all insulation for walls and ceilings.
8. Demising Walls: Landlord shall provide the wood frame, metal frame or masonry fire wall, as required by code, separating the leased suites within the same building. Landlord shall also provide standard drywall unpainted and ready for tenant's décor, and insulation, as

required by code, for such demising walls. Landlord shall also install an interior partition of up to eighty (80) linear feet, not including restroom walls, separating the storage and kitchen area from the sales area.

9. Exits: Exits shall be in accordance with governing codes, however, the exact location shall be determined after reviewing Tenant's Interior Plans.
10. Dimensions: Frontage Dimension: Interior stores shall be measured from center line to center line of party walls; exterior stores shall be measured from center line of party walls to outside face of exterior walls. Depth shall be measured from outside face of exterior walls and window mullions.
11. Door Frames: Exterior door frames will be hollow metal construction or as otherwise specified by Landlord's architect or agent.
12. Doors: Exterior service doors will be hollow metal, which shall generally be located at the rear of the Leased Property.
13. Parapets, etc.: Landlord reserves the right to require a 12' neutral strip between stores, centered on the line defining Leased Property.

#### B. STORE FRONTS

1. Design: As agreed upon by the Landlord and Tenant.

#### C. UTILITIES

1. Water and Sewer: Landlord will furnish to designated points in the Leased Property, as determined by the Approved Plans, water and sewer service as required for two restrooms with three (3) stalls each and to all designated points for Tenant's bar per Approved Plans. All installation beyond these facilities shall not be part of the Landlord's responsibility. Landlord may install, at Tenant's expense, a check, sub or flow meter, as applicable, to monitor Tenant's water usage at the Leased Property.
2. Grease Trap: Landlord shall install, at Tenant's expense one (1) pre-cast type exterior grease interceptor(s) sized per requirements of applicable codes and in accordance with the size of Tenant's restaurant at location designated by Landlord's. Tenant, however, shall maintain said grease interceptors and Landlord shall have no liability for said grease interceptor.
3. Gas: Landlord shall install and furnish such utility to designated points in the Leased Property per the Approved Plans. Cost of the gas meter shall be Tenant's responsibility based upon Tenant's credit with the gas company.
4. Electricity: Landlord will furnish panels, as well as, sufficient conduit and wiring to the Leased Property to a maximum 600 amp. meter socket. Any and all fixtures, panel, breakers or equipment and the distribution of electrical service throughout the Leased Property, in accordance with the mutually Approved Plans and specifications, shall be Landlord's responsibility at Landlord's expense. Landlord shall also provide forty five (45) light fixtures capped at a maximum of \$120.00 per light, up to fifty (50) wall or ceiling outlets and four (4) telephone boxes.
5. Telephone, Data and Cable: Landlord shall furnish a conduit and wiring for telephone, data and cable to designated points in the Leased Property per the Approved Plans. All conduit systems and wiring from the telephone, data and cable throughout the Leased Property shall



be undertaken by Landlord at Landlord's expense.

6. Exterior Signage: Landlord shall provide all j-boxes and other equipment necessary for the installation of Tenant's signage on three (3) sides of the building facia, at Landlord's sole cost and expense, per Tenant's mutually approved Signage Plan. Landlord shall provide signage criteria from Perlman Architects who handles the approvals.
7. HVAC: Landlord will furnish Tenant with air conditioning unit(s) at the rate of one (1) ton for every 200 square feet of floor space. The HVAC unit(s) will be placed on the roof, with a plenum duct into the Leased Property. All wiring and distribution of the HVAC, in accordance with the Approved Plans and specifications, shall be undertaken by Landlord, at Landlord's expense.

D. FIRE SPRINKLERS

Landlord will furnish fire sprinklers as required for the building shell only.

E. RESTROOMS

Landlord shall furnish two (2) restrooms, located per Tenant's Interior Plan. The men's' room shall contain: one (1) water closet, partitioned with a door, two (2) urinals, two (2) hot/cold water sinks, exhaust fan, light switch and fixture, and one mirror. The women's room shall contain: three (3) water closets, partitioned with doors; two cold/hot water sinks, exhaust fan, light switch and fixture and one mirror. Such restrooms shall meet the requirements of the Americans with Disabilities Act. Landlord shall be responsible for the water and sewer connection fees associated with said restroom.

F. ROUGH PLUMBING

Landlord shall provide one (1) mop sink, eight (8) flood drains per Approved Plans.

G. Permits: All required building permits and fees to build the building shall be Landlord's responsibility, however, the Certificate of Occupancy and permits and fees for Tenant's Work shall be paid by Tenant.

H. TENANT IMPROVEMENT ALLOWANCE:

Landlord shall, in addition to all work contemplated by this Section I of Exhibit C, also provide Tenant with an allowance of ten dollars (\$10.00) per square foot of the Leased Property, which may be used for additional tenant improvements on the Leased Property. Landlord shall pay this allowance to tenant thirty days following Tenant's opening of the business to the public upon invoice upon the Commencement Date of the Lease.

II. WORK DONE AT TENANT'S EXPENSE

All work provided for in the plans and specifications, as mutually agreed upon by Landlord and Tenant that is not specifically set forth as "Landlord's Work" in Section I of this Exhibit C ("Tenant's Work"). All Tenant's Work shall be in full compliance with any and all applicable federal, state or local laws, ordinances, regulations and rules. Tenant's Work shall include, without limitation, the cost of any architectural, permitting or engineering services or expenses required for any work beyond Landlord's Work and the following:

- A. Electrical Fixtures and Equipment: All meters, electric fixtures (lighting fixtures), equipment, except as provided in Section I (C) above, "Work Done by Landlord."
- B. Gas Connections: The cost of all gas meters.

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

BOCA PARK MARKETPLACE  
SYNDICATIONS GROUP, LLC, A NEVADA  
LIMITED LIABILITY COMPANY,  
Appellant,

vs.

HIGCO, INC., A NEVADA CORPORATION,  
Respondent.

No. Supreme Court Docket 71085 Electronically Filed  
District Court Case No. Aug 25 2016 04:02 p.m.  
DOCKETING STATEMENT  
CIVIL APPEALS  
Tracie K. Lindeman  
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

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

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

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

1. Judicial District EIGHTH Department XI  
County CLARK Judge The Honorable Elizabeth Gonzalez  
District Ct. Case No. A710780

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

Attorney Charles H. McCrea (SBN #104) Telephone 702-834-8777  
Firm HEJMANOWSKI & McCREA LLC  
Address 520 South Fourth Street, Suite 320  
Las Vegas, Nevada 89101

Client(s) BOCA PARK MARKETPLACE SYNDICATIONS GROUP, LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

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

Attorney Eric R. Olsen (SBN #3127) Telephone 725-777-3000  
Firm GARMAN TURNER GORDON LLP  
Address 650 White Drive, Suite 100 Las  
Vegas, NV 89119

Client(s) HIGCO, INC.

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

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

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

**5. Does this appeal raise issues concerning any of the following?    No.**

- ☐ Child Custody  
☐ Venue  
☐ Termination of parental rights

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

On March 6, 2015, appellant filed a Petition for Writ of Prohibition or, in the Alternative, for Writ of Mandamus ("Writ Petition") with the Nevada Supreme Court, Docket No. 67525, captioned *Boca Park Marketplace LV Syndications Group MM, Inc., et al. v. The Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, et al.* seeking review of the district court's order denying appellant's motion to dismiss premised on the doctrines of "claim preclusion" and impermissible "claim splitting" arising from the final judgment entered by Judge Denton in a prior action between the same parties concerning the same transaction, Case No. A-12-660548. On May 21, 2015, the Nevada Supreme Court denied the Writ Petition stating it "was not persuaded that [defendants/appellant] met their burden to demonstrate that our extraordinary intervention is warranted."

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

See *Higco, Inc. v. Boca Park Parcels, LLC, et al.*, Case No. A660548, brought in the Eighth Judicial District Court of the State of Nevada in and for the County of Clark. The prior action was between the same parties and involved the same lease and lease provisions that are the subject of the instant action. Final judgment in the prior action was entered November 7, 2012. Notice of Entry of the judgment was served on November 9, 2012. No post judgment proceeding or appeal was taken in the prior action.

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

The instant action sought money damages for breach of an exclusive use provision in a commercial lease. On November 7, 2012, in a prior declaratory relief action (*Higco, Inc. v. Boca Park Parcels, LLC*, Case No. A-12-660548) between the same parties, the district court (Judge Denton) entered a final judgment in favor of plaintiff/respondent (tenant) declaring defendant/appellant (landlord) to be in violation of the exclusive use provision in the lease. Notice of Entry of the judgment entered by Judge Denton was served on November 9, 2012. The judgment entered by Judge Denton was never appealed. The instant action was commenced on December 5, 2014 seeking money damages for the breach of the lease declared by Judge Denton in the prior action. On August 2, 2016, following a bench trial, the district court in the instant action entered final judgment in favor of plaintiff/respondent (tenant) against defendant/appellant (landlord) in the amount of \$499,997.70 as damages for breach of the exclusive use provision in the lease. This is an appeal of that judgment.

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

The issues on appeal are:

- Whether the doctrines of claim preclusion and/or impermissible claim-splitting prohibit a party from prosecuting a declaratory relief action to final judgment and then, years later, prosecuting a second action against the same parties alleging the same wrongful conduct seeking money damages.
- Whether the district court applied the proper measure of damages.
- Whether the evidence before the district court was sufficient to enable the court to ascertain with a reasonable degree of certainty the amount of damages that may have been sustained by plaintiff/respondent as a result of the breach of the exclusive use provision in the lease by defendant/appellant.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised: Not aware.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

☒ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

To affirm the judgment entered by the district court in this case would require this Court reverse or overrule *Five Star Capital Corp. v. Ruby*, 124 Nev. 11048, 194 P.3d 709 (2008) (claim preclusion); *Weddell v. Sharp*, 131 Nev. Adv. Op 28, 350 P.3d 80 (2015) (claim preclusion); *Smith v. Hutchins*, 93 Nev. 431, 566 P2d 1136 (1977) (claim-splitting); *Reno Club, Inc. v. Harrah*, 70 Nev. 125, 260 P2d 304 (1953) (claim-splitting).

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

This case is presumptively retained by the Supreme Court as it originated in the business court. NRAP 17(a)(10).

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 2 1/2

Was it a bench or jury trial? Bench.

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? No.



## TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from August 2, 2016

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served August 3, 2016

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☒ NRCP 52(b)      Date of filing August 17, 2016

☒ NRCP 59      Date of filing August 17, 2016

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

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** August 16, 2016

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

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

---

### **SUBSTANTIVE APPEALABILITY**

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

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify) _____    |                                       |

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

**This is an appeal from a final judgment entered in an action commenced in the court in which the judgment is rendered.**

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

(a) Parties:

**Plaintiff: HIGCO, INC.**

**Defendants: BOCA PARK PARCELS, LLC,  
BOCA PARK MARKETPLACE LV, LLC,  
BOCA PARK MARKETPLACE LV SYNDICATIONS GROUP MM, INC.  
BOCA PARK MARKETPLACE SYNDICATIONS GROUP, LLC**

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

Apparently, when plaintiff commenced the underlying action it was unaware of the name of the entity that was the current landlord under the lease that is the subject of the action and out of an abundance of caution named a number of affiliated entities one of which plaintiff hoped to be the current landlord.

The final judgment was entered against the current landlord BOCA PARK MARKETPLACE SYNDICATIONS GROUP, LLC.

**23. Give a brief description (8 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Plaintiff HIGCO, INC. asserted two claims: breach of contract and breach of the implied covenant of good faith and fair dealing. The date of the formal disposition on these claim was August 2, 2016.

There were no counterclaims, cross-claims or third-party claims.

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

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

**Not applicable.**

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

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

#### **INDEX TO ATTACHMENTS**

<b>EXHIBIT A</b>	<b>COMPLAINT</b>
<b>EXHIBIT B</b>	<b>MOTION TO AMEND FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT FILED AUGUST 17, 2016</b>
<b>EXHIBIT C</b>	<b>NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT</b>
<b>EXHIBIT D</b>	<b>ORDER DENYING DEFENDANTS' MOTION TO DISMISS</b>

## VERIFICATION

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

**BOCA PARK MARKETPLACE SYNDICATIONS  
GROUP, LLC**

Name of appellant

**August 25, 2016**

Date

**State of Nevada  
County of Clark**

State and county where signed

**Charles H. McCrea (SBN #104)**

Name of counsel of record



Signature of counsel of record

## CERTIFICATE OF SERVICE

I certify that on the 25th day of August, 2016, I served a copy of this completed docketing statement upon all counsel of record:

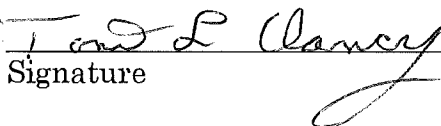
☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

**Eric R. Olsen (SBN #3127)  
eolsen@gtg.legal  
Garman Turner Gordon  
650 White Drive, Suite 100  
Las Vegas, Nevada 89119**

**Dylan T. Ciciliano (SBN #12348)  
dciciliano@gtg.legal  
Garman Turner Gordon  
650 White Drive, Suite 100  
Las Vegas, Nevada 89119**

Dated this 25th day of August, 2016

  
Signature