

IN THE SUPREME COURT OF THE STATE OF NEVADA

BOCA PARK MARKETPLACE
SYNDICATIONS GROUP, LLC, a
Nevada limited liability company,

Appellant,

v.

HIGCO, INC., a Nevada corporation,

Respondent.

Case No. 71085

District Court Case No. 14-1750780-B

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APPENDIX
TO
APPELLANT'S OPENING BRIEF

VOLUME I

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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., 9th Floor
Las Vegas, NV 89169
(702) 796-5555

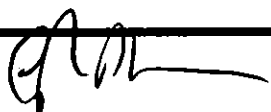
Defendant(s) (name/address/phone):

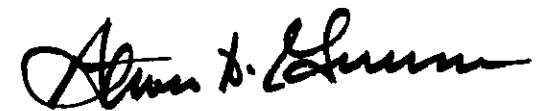
BOCA PARK PARCELS, LLC, a revoked Nevada limited liability company; BOCA PARK MARKETPLACE LV, LLC, a Nevada limited liability company; BOCA PARK MARKETPLACE LV SYNDICATIONS GROUP MM, INC., a Nevada corporation; BOCA PARK MARKETPLACE SYNDICATIONS GROUP, LLC, a Nevada limited liability company; and DOES 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"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence - Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <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"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <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"/> Civil Petition for Judicial Review <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"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <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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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 ...

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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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Fax: (702) 369-2666
Attorneys for Plaintiff, Higco, Inc.

EXHIBIT 1

EXHIBIT 1

LEASE

THIS LEASE is made and entered into as of this 5th 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.

(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)

526
[Signature]

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 15th 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: _____

Its: _____

Sean J. Higgins
Name: *Sean J. Higgins*
Its: *President*

"LANDLORD"

BOCA PARK PARCELS, LLC
a Nevada limited liability company

By: _____

John M. McCall

Manager; Corporate Counsel

[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.

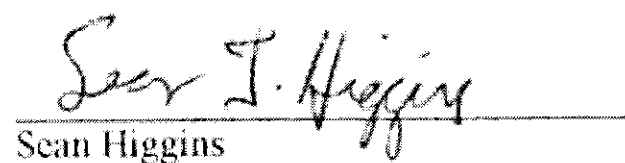
The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Guaranty. The venue for any disagreement, dispute or litigation shall be the State of Nevada, County of Clark and City of Las Vegas.

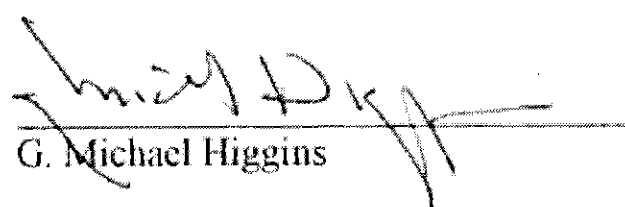
Should Guarantor consist of more than one person or entity, then, in such event, all such persons and entities shall be jointly and severally liable as Guarantor hereunder. In any action brought by Landlord to enforce any of its rights under or arising from this Guaranty, Landlord shall be entitled to 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 5th day of November, 2002.

"GUARANTORS"


Kevin Higgins


Sean Higgins


G. Michael Higgins