

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. 14-150780-B

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APPENDIX
TO
APPELLANT'S OPENING BRIEF

VOLUME I (Part 1 - APP 000001-39)

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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

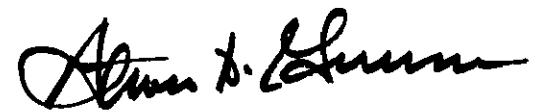
Plaintiff(s) (name/address/phone): Higco, Inc.	Defendant(s) (name/address/phone): BOCA PARK PARCELS, LLC, a revoked Nevada limited liability company; BOCA PARK MARKETPLACE LV, LLC, a Nevada limited liability company; BOCA PARK MARKETPLACE LV SYNDICATIONS GROUP MM, INC., a Nevada corporation; BOCA PARK MARKETPLACE SYNDICATIONS GROUP, LLC, a Nevada limited liability company; and DOES I-X, and ROE ENTITIES I-X, inclusive,
Attorney (name/address/phone): Eric R. Olsen Gordon Silver 3960 Howard Hughes Pkwy., 9 th Floor Las Vegas, NV 89169 (702) 796-5555	

II Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ Arbitration Requested

Civil Cases

Real Property	Negligence	Torts
☐ Landlord/Tenant ☐ Unlawful Detainer ☐ Title to Property ☐ Foreclosure ☐ Liens ☐ Quiet Title ☐ Specific Performance ☐ Condemnation/Eminent Domain ☐ Other Real Property ☐ Partition ☐ Planning/Zoning	☐ Negligence – Auto ☐ Negligence – Medical/Dental ☐ Negligence – Premises Liability (Slip/Fall) ☐ Negligence - Other	☐ Product Liability ☐ Product Liability/Motor Vehicle ☐ Other Torts/Product Liability ☐ Intentional Misconduct ☐ Torts/Defamation (Libel/Slander) ☐ Interfere with Contract Rights ☐ Employment Torts (Wrongful termination) ☐ Other Torts ☐ Anti Trust ☐ Fraud/Misrepresentation ☐ Insurance ☐ Legal Tort ☐ Unfair Competition
Probate	Other Civil Filing Types</	



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,

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.

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exclusives) within Boca Park Phase I; and

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

Dated this 20th day of April, 2012.

GORDON SILVER



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Attorneys for Plaintiff, Higco, Inc.

EXHIBIT 1

EXHIBIT 1

LEASE

THIS LEASE is made and entered into as of this 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	

- (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.

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.

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

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

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

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

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

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

SECTION 36 QUEING AND CROWD CONTROL

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

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

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

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

(SIGNATURE PAGE FOLLOWS)

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

"TENANT"

HIGCO, INC.
a Nevada corporation

By: _____

Name: _____

Its: _____

Sean J. Higgins
Sean J. Higgins
President

"LANDLORD"

BOCA PARK PARCELS, LLC
a Nevada limited liability company

By: _____

John M. McCall

Manager; Corporate Counsel

[Signature]

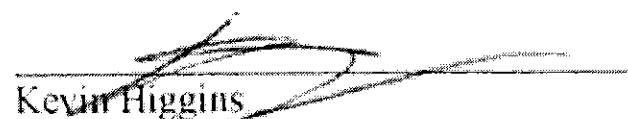
This Guaranty shall be construed in accordance with its intent and without regard to any presumption or other rule requiring construction against the party causing the same to be drafted.

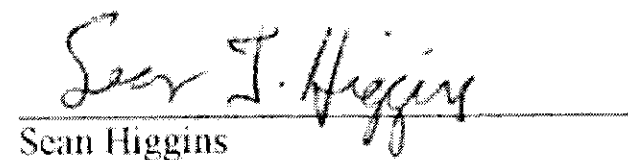
The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Guaranty. The venue for any disagreement, dispute or litigation shall be the State of Nevada, County of Clark and City of Las Vegas.

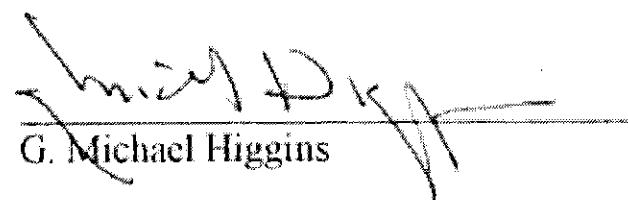
Should Guarantor consist of more than one person or entity, then, in such event, all such persons and entities shall be jointly and severally liable as Guarantor hereunder. In any action brought by Landlord to enforce any of its rights under or arising from this Guaranty, Landlord shall be entitled to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