

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

Electronically Filed
Feb 22 2017 08:27 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**APPENDIX
TO
APPELLANT'S OPENING BRIEF**

VOLUME I (Part 2 - APP 000040-80)

Charles H. McCrea (SBN #104)
HEJMANOWSKI & McCREA LLC
520 South Fourth Street, Suite 320
T 702.834.8777 | F 702.834.5262
chm@hmlawlv.com

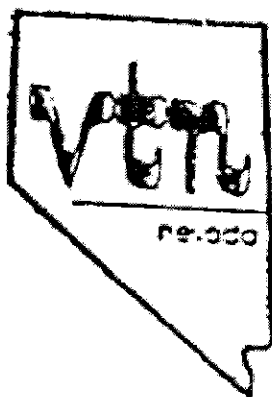
Attorneys for Appellant

**APPELLANT'S APPENDIX
TABLE OF CONTENTS**

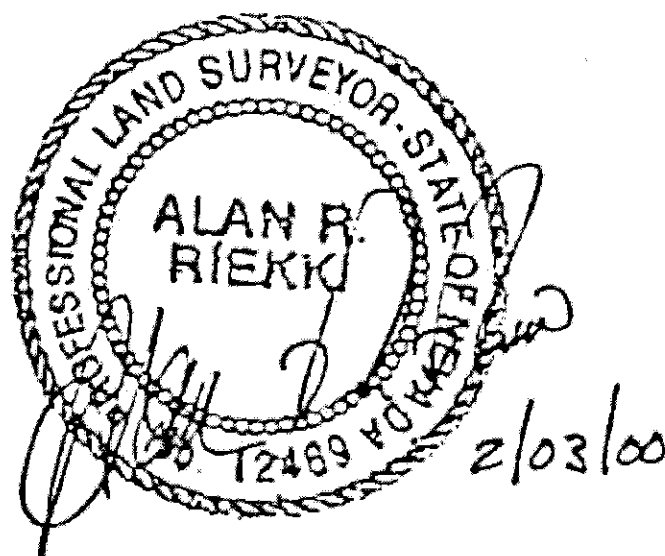
<u>Description</u>	<u>Date</u>	<u>Vol.</u>	<u>Pages</u>
Complaint – Case No. A-12-660548-B	4/23/12	I	APP 000001-58
Order Granting Plaintiff's Motion for Summary Judgment – Case No. A-12-660548-B	11/07/12	I	APP 000059-64
Complaint – Case No. A-14-710780-B	12/05/14	I	APP 000065-187
Motion to Dismiss with Prejudice – Case No. A-14-710780-B	1/26/15	I	APP 000188-195
Opposition to Motion to Dismiss – Case No. A-14-710780-B	2/12/15	I	APP 000196-206
Reply in Support of Motion to Dismiss - Case No. A-14-710780-B	2/19/15	I	APP 000207-232
Order Denying Defendant's Motion to Dismiss – Case No. A-14-710780-B	3/5/15	I	APP 000233-234
Findings of Fact, Conclusions of Law and Judgment – Case No. A-14-710780-B	8/2/16	I	APP 000235-246
Transcript of Trial	11/28/16	II	APP 000247-594
Order Denying Petition for Writ of Mandamus or Prohibition – Case No. 67525	5/25/15	II	APP 000595-596

EXHIBIT A-1
LEGAL DESCRIPTION OF CENTER

See Attached



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



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

EXPLANATION:

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

**LEGAL DESCRIPTION
PHASE 1**

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

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

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

LEGAL DESCRIPTION CONTINUED

W.O.5334-1

10/15/98

PAGE 2 OF 2

REVISED: 5/27/99

REVISED: 2/03/00

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

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

BASIS OF BEARINGS:

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

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

END OF DESCRIPTION.

G:\C\S\5334\5334PHS3REV4.DOC

RAMPART BOULEVARD
BASIS OF BEARINGS

T20S R60E
W 1/16 S 32
T21S R60E

P.O.C.

P.O.B.

CHARLESTON BOULEVARD

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

T20S R60E
1/4 S 32
T21S R60E

MERIALDO LANE

T20S R60E
E1/16 S5
T21S R60E



EXHIBIT TO ACCOMPANY
LEGAL DESCRIPTION
PHASE 1

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

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

Project: 5334srvy
Lot Map Check

Thu Feb 03 10:58:52 2000

Lot name: PHASE1NEW

North: 16123.28 East: 17690.35
Line Course: N 00-33-39 W Length: 124.06
North: 16247.33 East: 17689.14
Line Course: N 07-45-20 E Length: 60.83
North: 16307.60 East: 17697.34
Line Course: N 01-42-24 W Length: 81.44
North: 16389.01 East: 17694.92
Line Course: N 15-44-35 W Length: 41.23
North: 16428.69 East: 17683.73
Line Course: N 01-42-24 W Length: 118.57
North: 16547.21 East: 17680.20
Line Course: N 00-33-39 W Length: 457.05
North: 17004.24 East: 17675.73
Curve Length: 547.45 Radius: 1650.00
Delta: 19-00-36 Tangent: 276.26
Chord: 544.94 Course: N 08-56-39 E
Course In: N 89-26-21 E Course Out: N 71-33-03 W
RP North: 17020.39 East: 19325.65
End North: 17542.55 East: 17760.45
Line Course: S 71-33-03 E Length: 15.00
North: 17537.81 East: 17774.68
Line Course: S 72-37-30 E Length: 200.04
North: 17478.07 East: 17965.59
Line Course: S 04-29-51 E Length: 151.87
North: 17326.67 East: 17977.50
Line Course: N 89-26-21 E Length: 681.46
North: 17333.34 East: 18658.93
Line Course: S 00-24-22 E Length: 131.38
North: 17201.96 East: 18659.86
Line Course: N 89-26-21 E Length: 782.86
North: 17209.62 East: 19442.68
Line Course: S 00-19-57 E Length: 530.10
North: 16679.53 East: 19445.76
Line Course: N 89-40-03 E Length: 125.00
North: 16680.26 East: 19570.76
Line Course: S 00-19-57 E Length: 541.00
North: 16139.27 East: 19573.90
Curve Length: 84.82 Radius: 54.00
Delta: 90-00-00 Tangent: 54.00
Chord: 76.37 Course: S 44-40-03 W
Course In: S 89-40-03 W Course Out: S 00-19-57 E
RP North: 16138.95 East: 19519.90
End North: 16084.95 East: 19520.21
Line Course: S 89-40-03 W Length: 559.98
North: 16081.70 East: 18960.24
Line Course: S 89-26-21 W Length: 1215.42
North: 16069.81 East: 17744.88
Curve Length: 84.82 Radius: 54.00

Project: 5334srvy

Lot Map Check

Thu Feb 03 10:58:52 2000

Delta: 90-00-00

Tangent: 54.00

Chord: 76.37

Course: N 45-33-39 W

Course In: N 00-33-39 W

Course Out: S 89-26-21 W

RP North: 16123.80

East: 17744.35

End North: 16123.28

East: 17690.35

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

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

Error Closure: 0.00

Course: S 50-22-28 E

Error North: -0.001

East: 0.001

Precision 1: 3,557,022.19

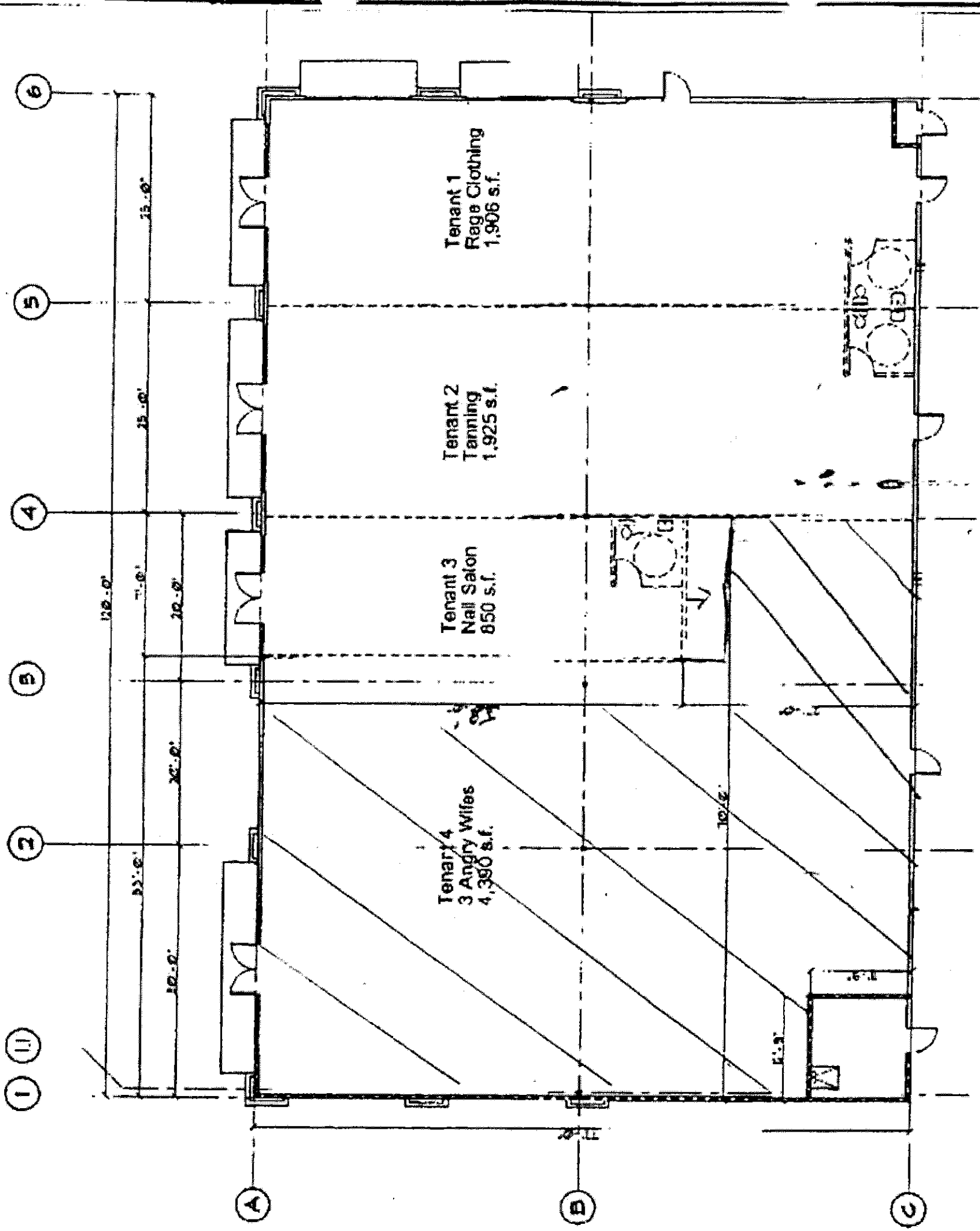
EXHIBIT A-2

SITE PLAN

See Attached

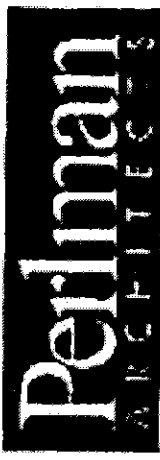
Building Information

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



Pad J @ Boca Park I

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



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

Scale: 1" = 20'

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

Date: July 20, 2002
Project Number: 102011

10 20

20

EXHIBIT B

COMMENCEMENT DATE

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

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

Dear Mr. Higgins:

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

"LANDLORD"

BOCA PARK PARCELS, LLC
a Nevada limited liability company

By: _____
John M. McCall
Manager, Corporate Counsel

EXHIBIT C

DESCRIPTION OF WORK

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

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

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

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

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

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

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

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

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

I. WORK DONE BY LANDLORD AT LANDLORD'S EXPENSE

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

A. STRUCTURE

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

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

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

B. STORE FRONTS

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

C. UTILITIES

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

be undertaken by Landlord at Landlord's expense.

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

D. FIRE SPRINKLERS

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

E. RESTROOMS

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

F. ROUGH PLUMBING

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

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

H. TENANT IMPROVEMENT ALLOWANCE:

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

II. WORK DONE AT TENANT'S EXPENSE

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

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

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

W. Insulation: Intentionally omitted.

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

EXHIBIT D

RULES AND REGULATIONS

Tenant agrees as follows:

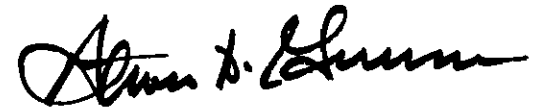
1. All loading and unloading of goods shall be done only at such times, in the areas, and through the entrances designated for such purposes by Landlord.
2. The delivery or shipping of merchandise, supplies and fixtures to and from the Leased Property shall be subject to such rules and regulations as,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

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

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

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

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



CLERK OF THE COURT

1 **NEO**
2 GORDON SILVER
3 ERIC R. OLSEN
4 Nevada Bar No. 3127
5 Email: eolsen@gordonsilver.com
6 3960 Howard Hughes Pkwy., 9th Floor
7 Las Vegas, Nevada 89169
8 Tel: (702) 796-5555
9 Fax: (702) 369-2666
10 Attorneys for Plaintiff

11
12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 HIGCO, INC., a Nevada corporation,
16
17 Plaintiff,

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

18 vs.

19 BOCA PARK PARCELS, LLC, a revoked
20 Nevada limited liability company; BOCA PARK
21 MARKETPLACE LV, LLC, a Nevada limited
22 liability company; BOCA PARK
23 MARKETPLACE LV SYNDICATIONS
24 GROUP MM, INC., a Nevada corporation;
25 BOCA PARK MARKETPLACE
26 SYNDICATIONS GROUP, LLC, a Nevada
27 limited liability company; and DOES I-X, and
28 ROE ENTITIES I-X, inclusive,

Defendants.

**NOTICE OF ENTRY OF ORDER
GRANTING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that an Order Granting Plaintiff's Motion for Summary Judgment, a copy of which is attached hereto, was entered on the 7th day of November, 2012.

Dated this 8th day of November, 2012.

GORDON SILVER




ERIC R. OLSEN
Nevada Bar No. 3127
3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169
(702) 796-5555
Attorneys for Plaintiff

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

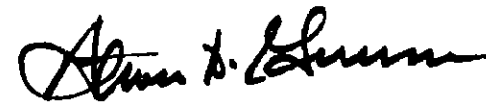
CERTIFICATE OF MAILING

The undersigned, an employee of Gordon Silver., hereby certifies that on the 8th day of November, 2012, she served a copy of the Notice of Entry of Order Granting Plaintiff's Motion for Summary Judgment, by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

Charles H. McCrea, Jr.
Lionel Sawyer & Collins
1700 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101



Vicki Thomas, an employee of
Gordon Silver



CLERK OF THE COURT

ORDR

GORDON SILVER

ERIC R. OLSEN

Nevada Bar No. 3127

Email: eolsen@gordonsilver.com

DYLAN T. CICILIANO

Nevada Bar No. 12348

Email: dciciliano@gordonsilver.com

3960 Howard Hughes Pkwy., 9th Floor

Las Vegas, Nevada 89169

Tel: (702) 796-5555

Fax: (702) 369-2666

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

HIGCO, INC., a Nevada corporation,

Plaintiff,

vs.

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

Defendants.

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

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

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

RECEIVED

NOV 02 2012

DISTRICT COURT DEPT#13

Gordon Silver
Attorneys At Law
Ninth Floor
3960 Howard Hughes Pkwy
Las Vegas, Nevada 89169
(702) 796-5555

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

7 I.

8 Procedural Facts

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

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

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

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

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

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

26 . . .

27 . . .

28 . . .

1 II.

2 Findings of Fact

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

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

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

12 (the "Exclusive Use Clause") The Exclusive Use Clause would grant Higco the right to
13 exclusively operate a tavern and a gaming operation in Boca Park I. The only exception to this
14 exclusive was to be for existing tenants in Boca Park I that were taverns or offered gaming. The
15 provision identified those tenants as Von's Grocery and Long's Drugs.

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

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

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

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

...

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

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

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

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

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

20 III.

21 Conclusions of Law

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

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

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

28 . . .

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

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

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

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

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

21 ORDER

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

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

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

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

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


9 Dated this 6th day of November, 2012.

10
11
12 DISTRICT COURT JUDGE

PB

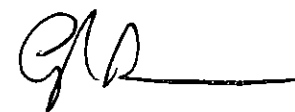
13 Approved / Disapproved as to form:

14 LIONEL SAWYER & COLLINS

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

19 Respectfully Submitted,

20 GORDON SILVER

21 
22 ERIC R. OLSEN
23 Nevada Bar No. 3127
Email: eolsen@gordonsilver.com
24 DYLAN T. CICILIANO
Nevada Bar No. 12348
25 Email: dciciliano@gordonsilver.com
26 3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169

BUSINESS COURT CIVIL COVER SHEET A - 1 4 - 7 1 0 7 8 0 - B

Clark County, Nevada

X I

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

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

Plaintiff(s) (name/address/phone): HIGCO, Inc., a Nevada corporation

Attorney (name/address/phone):

Eric R. Olsen/Dylan T. Ciciliano, Esq.

Gordon Silver

3960 Howard Hughes Parkway, 9th Floor

Las Vegas, NV 89169

Tel: (702) 796-5555

Defendant(s) (name/address/phone): Boca Park Parcels, LLC, a revoked Nevada limited liability company; Boca Park Marketplace LV, LLC, a revoked Nevada limited liability company; Boca Park Marketplace LV Syndications Group MM, Inc., a Nevada corporation; Boca Park Marketplace Syndications Group, LLC, a Nevada limited liability company; and DOES I-X, and ROE ENTITIES I-X, inclusive

Attorney (name/address/phone):

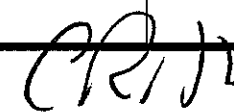
II. Nature of Controversy (please select the one most applicable filing type below)

☐ Arbitration Requested

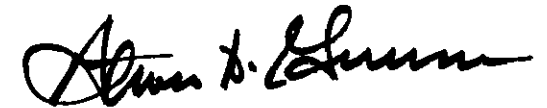
Civil Case Filing Types		Business Court Filing Types
<p style="text-align: center;">Real Property</p> <p>Landlord/Tenant</p> <p><input type="checkbox"/> Unlawful Detainer</p> <p><input type="checkbox"/> Other Landlord/Tenant</p> <p>Title to Property</p> <p><input type="checkbox"/> Judicial Foreclosure</p> <p><input type="checkbox"/> Other Title to Property</p> <p>Other Real Property</p> <p><input type="checkbox"/> Condemnation/Eminent Domain</p> <p><input type="checkbox"/> Other Real Property</p>	<p style="text-align: center;">Torts</p> <p>Negligence</p> <p><input type="checkbox"/> Auto</p> <p><input type="checkbox"/> Premises Liability</p> <p><input type="checkbox"/> Other Negligence</p> <p>Malpractice</p> <p><input type="checkbox"/> Medical/Dental</p> <p><input type="checkbox"/> Legal</p> <p><input type="checkbox"/> Accounting</p> <p><input type="checkbox"/> Other Malpractice</p> <p>Other Torts</p> <p><input type="checkbox"/> Product Liability</p> <p><input type="checkbox"/> Intentional Misconduct</p> <p><input type="checkbox"/> Employment Tort</p> <p><input type="checkbox"/> Insurance Tort</p> <p><input type="checkbox"/> Other Tort</p>	<p style="text-align: center;">CLARK COUNTY BUSINESS COURT</p> <p><input type="checkbox"/> NRS Chapters 78-79</p> <p><input type="checkbox"/> Commodities (NRS 91)</p> <p><input type="checkbox"/> Securities (NRS 90)</p> <p><input type="checkbox"/> Mergers (NRS 92A)</p> <p><input type="checkbox"/> Uniform Commercial Code (NRS 104)</p> <p><input type="checkbox"/> Purchase/Sale of Stock, Assets, or Real Estate</p> <p><input type="checkbox"/> Trademark or Trade Name (NRS 600)</p> <p><input type="checkbox"/> Enhanced Case Management</p> <p><input checked="" type="checkbox"/> Other Business Court Matters</p>
<p style="text-align: center;">Construction Defect & Contract</p> <p>Construction Defect</p> <p><input type="checkbox"/> Chapter 40</p> <p><input type="checkbox"/> Other Construction Defect</p> <p>Contract Case</p> <p><input type="checkbox"/> Uniform Commercial Code</p> <p><input type="checkbox"/> Building and Construction</p> <p><input type="checkbox"/> Insurance Carrier</p> <p><input type="checkbox"/> Commercial Instrument</p> <p><input type="checkbox"/> Collection of Accounts</p> <p><input type="checkbox"/> Employment Contract</p> <p><input checked="" type="checkbox"/> Other Contract</p>	<p style="text-align: center;">Civil Writ</p> <p><input type="checkbox"/> Writ of Habeas Corpus</p> <p><input type="checkbox"/> Writ of Mandamus</p> <p><input type="checkbox"/> Writ of Quo Warrant</p> <p><input type="checkbox"/> Writ of Prohibition</p> <p><input type="checkbox"/> Other Civil Writ</p>	<p style="text-align: center;">WASHOE COUNTY BUSINESS COURT</p> <p><input type="checkbox"/> NRS Chapters 78-79</p> <p><input type="checkbox"/> Commodities (NRS 91)</p> <p><input type="checkbox"/> Securities (NRS 90)</p> <p><input type="checkbox"/> Investments (NRS 104 Art.8)</p> <p><input type="checkbox"/> Deceptive Trade Practices (NRS 598)</p> <p><input type="checkbox"/> Trademark/Trade Name (NRS 600)</p> <p><input type="checkbox"/> Trade Secrets (NRS 600A)</p> <p><input type="checkbox"/> Enhanced Case Management</p> <p><input type="checkbox"/> Other Business Court Matters</p>
<p>Judicial Review/Appeal</p>		
<p>Judicial Review</p> <p><input type="checkbox"/> Foreclosure Mediation Case</p> <p>Appeal Other</p> <p><input type="checkbox"/> Appeal from Lower Court</p>	<p>Other Civil Filing</p> <p><input type="checkbox"/> Foreign Judgment</p> <p><input type="checkbox"/> Other Civil Matters</p>	

December 5, 2014

Date



Signature of initiating party or representative



CLERK OF THE COURT

COMP
GORDON SILVER
ERIC R. OLSEN
Nevada Bar No. 3127
E-mail: eolsen@gordonsilver.com
DYLAN T. CICILIANO
Nevada Bar No. 12348
E-mail: dciciliano@gordonsilver.com
3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169
Tel: (702) 796-5555/Fax: (702) 369-2666
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

HIGCO, INC, a Nevada corporation,

Plaintiff,

vs.

CASE NO. A - 1 4 - 7 1 0 7 8 0 - B
DEPT. X I

COMPLAINT

ARBITRATION EXEMPT:
Amount in Controversy in Excess of
\$50,000.00

Business Court Requested

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

Defendants.

Plaintiff, HIGCO, Inc. ("Plaintiff"), a Nevada corporation, by and through its counsel, the law firm of Gordon Silver, hereby alleges against Defendants, BOCA PARK PARCELS, LLC ("Boca Park Parcels"), a revoked Nevada limited liability company; BOCA PARK MARKETPLACE, LLC ("Boca Park Successor-in-Interest"), a revoked Nevada limited liability company; BOCA PARK MARKETPLACE LV SYNDICATIONS GROUP MM, INC. ("Boca Park Parent Corp."), a Nevada corporation; and BOCA PARK MARKETPLACE SYNDICATIONS GROUP, LLC ("Boca Park Manager," collectively with Boca Park Parcels, Boca Park Successor-in-Interest, and Boca Park Parent Corp., the "Defendants"), 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, Boca Park Parcels was Nevada limited liability company organized and existing under the laws of the State of Nevada, but that Boca Park Parcels has been revoked.

3. Plaintiff is informed and believes and thereupon alleges that at all times herein mentioned, Boca Park Successor-in-Interest was and is now a Nevada limited liability company organized and existing under the laws of the State of Nevada, but that Boca Park Successor-in-Interest has been revoked.

4. Plaintiff is informed and believes and thereupon alleges that at all times herein mentioned, Boca Park Parent Corp. was and is now a Nevada corporation organized and existing under the laws of the State of Nevada.

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

6. The true names and capacities, whether individual, corporate, associate or otherwise of Defendants DOES I-X, inclusive, and ROE ENTITIES I-X, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the Defendants designated herein as a fictitiously named Defendant may have rights or duties arising from or related to the contract at issue in this case, or is in some manner responsible for the events and happenings herein referred to, or is an affiliate, subsidiary, parent entity, or successor in interest to one of the herein named defendants. Plaintiff will amend this Complaint to assert the true names and capacities of such Doe and Roe Entities when more information has been ascertained.

///

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

II.

GENERAL ALLEGATIONS

A. Defendants Granted Plaintiff an Exclusive Use for Gaming in Boca Park Phase I

7. At the end of 2001, Plaintiff and Defendants began discussing Plaintiff's lease from Defendants of premises in Boca Park Phase I. Over the next year, Plaintiff and Defendants negotiated the lease provisions. The parties understood that Plaintiff intended to operate a tavern and to having gaming on the premises. Among those provisions was an "Exclusive Use" clause for Plaintiff in Boca Park I. (See Order Granting Plaintiff's Motion for Summary Judgment, at p. 3, ¶1, attached hereto as **Exhibit 1**).

8. On or about May 2, 2002, the parties first agreed upon a proposed Exclusive Use Clause, under which Defendants would:

... grant [Plaintiff] an exclusive for Boca Park I for a tavern and gaming, except for any tenants currently located in the center which allow gaming (i.e. Vons, Longs).

(the "Exclusive Use Clause"). (Id. at ¶2). The Exclusive Use Clause granted Plaintiff the right to exclusively operate a tavern and a gaming operation in Boca Park I. (Id.). The only exception to this exclusive was to be for existing tenants in Boca Park I that offered gaming. (Id.). The provision identified those specific tenants, Von's Grocery and Long's Drugs. (Id.).

9. The parties' negotiations of the lease continued over the next five months. All proposed lease terms exchanged after May 2, 2002 included the Exclusive Use Clause as written in paragraph 8 above. (Id.).

10. On November 5, 2002, the parties executed a lease that contained a different exclusive use clause referring only to "tavern." (Id. at ¶ 4).

11. On January 20, 2003, Defendants provided Plaintiff a corrected lease page 3 for Plaintiff's initials. (Id. at ¶ 5). The accompanying corrected lease page contained the Exclusive Use Clause above, which was consistent with all written negotiations, and stated:

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

1 This Exclusive Use clause was initialed and dated by Defendants, and faxed to Plaintiff. (Id. at
2 ¶ 5).

3 12. On or about January 20, 2003, Defendants delivered to Plaintiff a complete copy
4 of the corrected lease (the "Lease"). (See Lease, attached hereto as **Exhibit 2**).

5 **B. The District Court Has Already Entered Judgment Ruling That the Lease Grants**
6 **Plaintiff the Exclusive Right to Offer Gaming in Boca Park I.**

7 13. On April 23, 2012, Plaintiff brought a single cause of action for declaratory relief
8 against Defendants, in the Eighth Judicial District Court, Higco, Inc. vs. Boca Park Parcels, LLC,
9 Case No. A-12-660548-B (the "Declaratory Relief Action"). (See Declaratory Relief Action).
10 Plaintiff's Declaratory Relief Action requested that the Court declare the parties rights under the
11 Lease and specifically to interpret the Exclusive Use Clause. (See Declaratory Relief Action
12 Complaint, attached hereto as **Exhibit 3**, at p. 5).

13 14. On November 7, 2012, the Court entered its Order Granting Plaintiff's Motion for
14 Summary Judgment. (Exh. 1).

15 15. The Court found that "in the lease, "gaming" was included as a category for
16 which there would be exclusivity, and that category was central to contract formation. The
17 Exclusive Use Clause is not ambiguous. The inclusion of an exception for "tenants currently
18 located in the center which allow gaming" establishes that the Exclusive Use Clause was
19 intended to extend beyond just taverns offering gaming. Von's Grocery and Long's Drugs were
20 not taverns, but are included in the exception for current tenants offering gaming. Therefore, the
21 Exclusive Use Clause was intended to give Plaintiff an exclusive for all gaming in Boca Park I,
22 regardless of the primary purpose of the business offering gaming, i.e. regardless of whether the
23 primary purpose was a tavern." (Id. at p.4, ¶7).

24 16. The Court further ORDERED that the Lease "is unambiguous, and that [Plaintiff]
25 has a right to an exclusive use both for tavern and for gaming in Boca Park I, except for any
26 tenants offering gaming in Boca Park I as of November 5, 2002, including Vons and Longs; and
27 that the exclusive use applies to all businesses operating in Boca Park I, such that Defendants
28 **shall** not allow any business in Boca Park I, other than [Plaintiff], to offer gaming, unless the

1 business allowed gaming in Boca Park I, as of November 5, 2002.” (Id. at p. 6) (emphasis
2 added).

3 **C. Defendants Allowed Wahoo’s Fish Taco to Offer Gaming in Boca Park I in**
4 **Violation of the Lease.**

5 17. In 2012, Wahoo’s Fish Taco (“Wahoo”) entered into a lease with the Defendants
6 and began operating at 1000 S. Rampart, Building 21 (the “Wahoo Premises”), which is located
7 in Boca Park I.

8 18. Shortly thereafter, Plaintiff became aware that Wahoo and/or Golden Route
9 Operations (“Golden”) had applied for a restricted gaming license at the Wahoo Premises.

10 19. Plaintiff immediately demanded that Defendants not allow gaming at the Wahoo
11 Premises. Defendants refused the demand and consented to allow gaming to occur at the Wahoo
12 Premises.

13 20. On April 19, 2012, the Nevada Gaming Control Board approved the restricted
14 gaming license application for the Wahoo Premises.

15 21. Plaintiff filed an action in District Court, which Defendants litigated on the
16 merits, to determine the issue of whether the Exclusive Use provision of the Lease applied to and
17 prohibited gaming at the Wahoo Premises. Defendants lost that fight when the District Court
18 entered judgment declaring that the Exclusive Use applied to all gaming in Boca Park I
19 (excluding Von’s), including Wahoo.

20 22. Nonetheless, from April 2012 until present, Defendants have allowed gaming to
21 continually occur at the Wahoo Premises, to the detriment of the Plaintiff.

22 **III.**

23 **CLAIMS FOR RELIEF**

24 **FIRST CLAIM FOR RELIEF**
25 **(Breach of Contract)**

26 23. Plaintiff repeats and realleges the allegations in the preceding paragraphs of this
27 Complaint as though fully set forth herein.
28

1 24. The Lease constitutes a valid and existing contract between Plaintiff and
2 Defendants.

3 25. The District Court has entered judgment against the Defendants, declaring that the
4 Lease grants Plaintiff the exclusive right for gaming in Boca Park I such that Defendants shall
5 not allow any business in Boca Park I, other than Plaintiff, to offer gaming, unless the business
6 allowed gaming in Boca Park I, as of November 5, 2002.

7 26. The Wahoo Premises is located in Boca Park I.

8 27. On or after April 19, 2012, the Wahoo Premises began offering gaming in breach
9 of the Lease and has continued to offer gaming since that time. By consenting to and/or allowing
10 gaming on the Wahoo Premises, the Defendants breached the Lease.

11 28. As a direct and proximate result of Defendants' breach, Plaintiff has suffered
12 substantial damages by the loss of gaming revenues, which amounts exceeded \$150,000 for the
13 first 12 months alone and have continued to accrue since that time. The total amount of damages
14 will be determined at trial.

15 29. Defendants' refusal to perform under the Lease has required Plaintiff to employ
16 an attorney for redress, entitling it to recover its reasonable attorney's fees and costs of this as
17 well as the prior action, as an element of its damages.

18 **SECOND CLAIM FOR RELIEF**
19 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

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

22 31. The Lease constitutes a valid and existing contract between Plaintiff and
23 Defendant.

24 32. Every contract in Nevada imposes upon the contracting parties an implied duty of
25 good faith and fair dealing.

26 33. Defendants owed an implied duty of good faith and fair dealing to Plaintiff under
27 the Lease at issue here.

28

1 34. Defendants entered into a lease for the Wahoo Premises, in or about 2012. On or
2 after April 19, 2012, the Wahoo Premises began offering gaming and has continued to offer
3 gaming since that time.

4 35. Defendants breached their duty of good faith and fair dealing by entering into
5 another lease in Boca Park I after November 5, 2002, the lease of the Wahoo Premises, and
6 consenting to and/or allowing gaming, by refusing demands that it not allow gaming on the
7 Wahoo Premises, by forcing Plaintiff to seek relief declaring that gaming on the Wahoo
8 Premises was in violation of an Exclusive Use, and by allowing gaming on the Wahoo Premises
9 to continue even after the District Court entered judgment in Plaintiff's favor.

10 36. As a direct and proximate result of Defendants' breach, Plaintiff has suffered
11 substantial damages by the loss of gaming revenues, which amounts exceeded \$150,000 for the
12 first 12 months alone and have continued to accrue since that time. The total amount of damages
13 will be determined at trial.

14 37. In addition, Defendants' refusal to perform under the Lease has required Plaintiff
15 to employ an attorney for redress, entitling it to recover its reasonable attorney's fees and costs
16 of this as well as the prior action, as an element of its damages.

17 Wherefore, Plaintiff prays for judgment against Defendants as follows:

18 1. For an award of compensatory damages against Defendants and in favor of
19 Plaintiff, in an amount in excess of \$10,000.00;

20 2. For an award to Plaintiff of its reasonable attorneys' fees as damages;

21 3. For an award to Plaintiff of its costs;

22 4. For pre-judgment and post-judgment interest at the appropriate rate of interest;

23 and

24 ///

25 ///

26 ///

27 ///

28 ///

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

5. For such other and further relief that the Court deems just and proper.

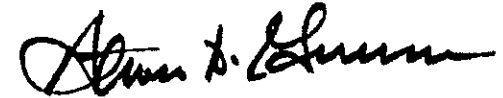
Dated this 6th day of December 2014.

GORDON SILVER



Eric R. Olsen
Nevada Bar No. 3127
Dylan T. Ciciliano
Nevada Bar No. 12348
3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169
(702) 796-5555
Attorneys for Plaintiff

EXHIBIT 1



CLERK OF THE COURT

ORDR
GORDON SILVER
ERIC R. OLSEN
Nevada Bar No. 3127
Email: eoisen@gordonsilver.com
DYLAN T. CICILIANO
Nevada Bar No. 12348
Email: dciciliano@gordonsilver.com
3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169
Tel: (702) 796-5555
Fax: (702) 369-2666
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

HIGCO, INC., a Nevada corporation,

Plaintiff,

vs.

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

Defendants.

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

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

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

RECEIVED

NOV 02 2012

DISTRICT COURT DEPT#13

Gordon Silver
Attorneys At Law
Ninth Floor
3960 Howard Hughes Pkwy
Las Vegas, Nevada 89169
(702) 796-5555

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

7 I.

8 Procedural Facts

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

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

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

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

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

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

26 ...

27 ...

28 ...

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

II.

Findings of Fact

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

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

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

(the "Exclusive Use Clause") The Exclusive Use Clause would grant Higco the right to exclusively operate a tavern and a gaming operation in Boca Park I. The only exception to this exclusive was to be for existing tenants in Boca Park I that were taverns or offered gaming. The provision identified those tenants as Von's Grocery and Long's Drugs.

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

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

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

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

...

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

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

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

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

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

20 III.

21 Conclusions of Law

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

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

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

28 ...

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

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

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

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

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

21 ORDER

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

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

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

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


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

9 Dated this 6th day of November, 2012.

10
11
12 
DISTRICT COURT JUDGE

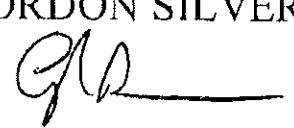
13 Approved / Disapproved as to form:

14 LIONEL SAWYER & COLLINS

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

19 Respectfully Submitted,

20 GORDON SILVER

21 
22 ERIC R. OLSEN
23 Nevada Bar No. 3127
Email: eolsen@gordonsilver.com
24 DYLAN T. CICILIANO
Nevada Bar No. 12348
25 Email: dciciliano@gordonsilver.com
26 3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169