

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. A-14-710780-B

**APPENDIX
TO
APPELLANT’S REPLY BRIEF**

VOLUME IV, Part 2
(RAPP 000252-331)

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

**APPENDIX TO APPELLANT'S
REPLY BRIEF**

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To: From: test Sun 29 May 1994 05:22:16 Page: 10

- U. 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.
- V. Wiring: Any other wiring and connections required by Tenant, except as provided by Landlord pursuant to Section I (C)(3) above.
- W. Restrooms: Tenant shall provide the restroom facilities required by applicable code, which shall be constructed in compliance with all applicable laws and regulations, including the Americans with Disabilities Act. Tenant shall be responsible for any saw cutting and pour back of the concrete required for such additional restrooms, all such work to be done according to code and subject to Landlord's reasonable approval of such completed work.
- X. Drywall: Other than as specifically provided in Section I(A)(6), all drywall installation (as required by code), including all texturing, painting and staining.
- Y. Insulation: Other than as specifically provided in Section I(A)(6), all insulation required by code to complete Tenant's Work. Tenant shall also replace any insulation of the building shell or any other tenant's work that was damaged, directly or indirectly, by Tenant's undertaking of Tenant's Work.
- Z. Other: Any other work required by Tenant not covered herein.

APR-11-2002 10:50 FROM:

04/09/2002 09:13

TRIPLE FIVE CONSTRUCTION → 3838576

TO: 8079

P.002/012
NO. 270 001

TRIPLE FIVE NEVADA DEVELOPMENT CORPORATION

8510 W. Sahara Avenue, Suite 200 Las Vegas, Nevada 89117
Telephone (702) 242-6837 • Fax (702) 242-6841

Fax

To: Richard Truesdell From: Shelly Hunsaker for Jean Marc Joveldi
Fax: 383-8576 Pages: 4 pages, (including Cover Sheet)
Phone: _____ Date: 4/9/02
Re: _____ CC: _____
☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle
• Comments:

The contents of this fax are confidential – If the reader is not the intended recipient or its agent, be advised that any dissemination or copying of the content or of this fax, is prohibited. If you have received this fax in error, please notify us immediately and destroy the original fax. Thank you.

APR-09-2002 10:15AM

TEL 7023609128

ID)

PAGE: 001 R=07%
HIG00104

RAPP 000252

APR-11-2002 10:50 FROM:

04/09/2002 09:13

TRIP LVE CONSTRUCTION → 3835576

TO: 1079

P.003/012



Cornerstone Company

Commercial Real Estate Services

April 1, 2002

Mr. Jean Marc Joveidi
Executive Vice President
Triple Five Nevada Development Corporation
2410 West Sahara Avenue, Suite 900
Las Vegas, Nevada 89117

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

Dear Mr. Joveidi:

I appreciated you taking the time this past Friday March 29, to meet with me and discuss the revised business terms for the above referenced location. I followed up with my assistant and am submitting the following for your review and approval. The following reflects the fundamental terms and conditions which we discussed and propose be incorporated into a lease document. Please note the base rental of \$34.20 annually (say \$2.85psf/mo) is not only higher than most of the rents in the area it is the top of the market for inline space. This proposed rental along with the other terms proposed herein is the best we can do.

Tenant: Higo, Inc. or related entity ("Tenant").

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

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

Dimensions: To be provided (see attached plan).

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

Minimum Rent:

\$32.20
\$40.00 *\$33* - *\$3.10* *per month - fixed for years*
\$34.20 annually (\$2.85 per square foot per month). The minimum rent shall commence ninety (90) days following the completion of Landlord's work and delivery of premises to Tenant.

Possession: Upon completion of Landlord's work.

201 Las Vegas Blvd. South, Suite 200
Las Vegas, Nevada 89101-6725
(702) 363-3033 • FAX (702) 363-8576

APR-09-2002 10:15AM

TEL 7023609128

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PAGE:002 R=97%

HIG00105

RAPP 000253

APR-11-2002 10:50 FROM:
04/09/2002 09:13

TRIP L VE CONSTRUCTION → 3838576

TO: 8079

P.004/012
NO. 276

APR-03-2002 17:36 FROM:

TO: 7022426941

P.003

Boca Park
April 1, 2002
Page 2 of 3

Improvements:

Landlord will (at Landlord's sole cost and expense) complete the ~~annually agreed upon work to subdivide the existing basement~~ space, which shall include, but not be limited to all electrical, plumbing and mechanical work, as required by Higco to operate the location as a restaurant/sports bar, as well as contribute \$10.00 PSF. The exact extent and nature of said work shall be determined prior to commencement of work.

Signage:

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

Use:

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

Liquor License:

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

Exclusive:

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

**Real Estate
Commission:**

To be paid by Landlord in the following manner:
Commission will be split equally and payable to Cornerstone Company, Ric Truesdell and CB Richard Ellis, Kevin Higgins, as agents for Higco, an amount equal to Five Dollars (\$5.00) per square foot. Said commission shall be paid upon full execution of the lease.

\$4.00

APR-11-2002 10:51 FROM:

04/09/2002 09:13

TRIP LUE CONSTRUCTION + 3838576

TO: 1079

P.005/012
NO. 276

APR-23-2002 17:37 FROM:

TO: 7022425941

P.001

Boca Park
April 1, 2002
Page 3 of 3

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

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

Sincerely,


Richard W. Truesdell
President/Broker

cc. Sean Higgins
Kevin Higgins

Acknowledged this _____ day of, 2002.

LANDLORD:

By: Sean Hane Truesdell

Title: Executive Vice President

Acknowledged this 3rd April day of, 2002.

TENANT:

By: Sean J. Higgins

Title: President

APR-09-2002 10:16AM

TEL 7023609128

ID)

PAGE: 004 R=97%

HIG00107

RAPP 000255

EXHIBIT 1-C

RAPP 000256

MAY-02-2002 15:25 FROM:

TO: 7022426941

P.001/005

W/C



Cornerstone Company

Commercial Real Estate Services

FAX

201 Las Vegas Blvd. South, Suite 25
Las Vegas, Nevada 89101-572
Phone (702) 383-303
Fax (702) 383-857

To:	Jean Marc Joveidi	From:	Richard Truesdell
Fax:	242-6941	Pages:	5/including this page
Phone:		Date:	5/2/02 3:15 PM
Re:	Proposed Restaurant/Tavern Site at Boca Park	CC:	

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Per Your Request
☐ Please Sign & Return ☐ For Your File ☐ Original to Follow, via _____

• Comments

Jean Marc,

Please find a copy of a letter of Intent for the proposed restaurant/tavern site at Boca Park.

Ric

SIGNATURE: Melissa Truesdell**IF DOCUMENTS ARE NOT PROPERLY RECEIVED, PLEASE CALL (702) 383-3033. THANK YOU.**

This information above has been obtained from sources believed reliable. While we do not desire to announce, we have not verified it and make no guarantee, warranty or representation about it. It is your responsibility to independently confirm its accuracy and completeness. Any projections, opinions, assumptions or estimates must be for example only and do not represent the current or future performance of the property. The value of this information to you depends on the facts and other factors which should be evaluated by your tax, financial and legal advisors. You and your advisors should conduct a careful, independent investigation of the property to determine to your satisfaction the availability of the property for your needs. This information has been prepared exclusively for the clients of CORNERSTONE COMPANY and is confidential. It is the property of CORNERSTONE COMPANY and reproduction of any portion without the written consent of CORNERSTONE COMPANY is strictly prohibited.

BPP000094

RAPP 000257

MAY-02-2002 15:32 FROM:

TO: 7022426941

P.002/005



Cornerstone Company

Commercial Real Estate Services

May 1, 2002

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

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

Dear Mr. Joveidi:

I would like to thank you for taking the time to meet with the Higgins brothers and myself yesterday to discuss Higco, Inc.'s ("Higco") interest in pursuing a lease for the above-referenced property. Pursuant to our meeting this letter is to set forth our understanding and the fundamental terms and conditions, which we have agreed to be incorporated into a lease document.

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

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

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

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

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

Minimum Rent: \$36.00 annually (\$3.00) per square foot per month, for the primary term. The minimum rent shall commence ninety (90) days following the completion of Landlord's work and delivery of premises to Tenant. *OK*

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

Improvements: Landlord will (at Landlord's sole cost and expense) complete the building and mutually agreed upon work to subdivide the

201 Las Vegas Blvd. South, Suite 250
Las Vegas, Nevada 89101-5725
(702) 383-3033 • FAX (702) 383-8576

BPP000095

RAPP 000258

FMT-02-2002 15:32 FROM:

TO: 7022426941

P.003/005

Boca Park
May 1, 2002
Page 2 of 3

Signage:

space, which shall include, but not be limited to Interior partitions, two (2) restrooms with three (3) stalls only, all electrical, plumbing and mechanical work, as required by Higco to operate the location as a restaurant/sports bar, as well as contribute \$10.00 PSF for tenant improvements, in addition to landlords work. The exact extent and nature of said work shall be determined prior to commencement of work.

three (3) and its signage criteria
Higco will have the right to install signage, customary to like business, on ~~all four (4)~~ sides of the building fascia. All signage will comply with city code. Higco will also have the right to install a 1-ft. by 12-ft. sign panel on shopping center pylons on Rampart and on Charleston, at no cost to Tenant except for the fabrication and installation. Landlord shall provide all necessary electrical requirements to all signage.

Use:

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

Liquor Licence:

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

Exclusive:

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

Real Estate Commission:

To be paid by Landlord in the following manner:

Commission will be split equally and payable to Cornerstone Company, Ric Truesdell and CB Richard Ellis, Kevin Higgins, as agents for Higco, an amount equal to Four Dollars (\$4.00) per square foot. Said commission shall be paid upon full execution of the Lease.

BPP000096

RAPP 000259

MAY-01-2002 14:22 FROM:

TO: From: test

Wed 9 Feb 1994 00:07:17 Page: 4

TO: 7988079

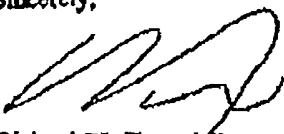
P.003/003

Boca Park
May 1, 2002
Page 3 of 3

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

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

Sincerely,



Richard W. Truesdell
President/Broker

cc, Sean Higgins
Kevin Higgins

Acknowledged this _____ day of, 2002.

LANDLORD:

By: Sean Marc Joveidi

Title: Executive Vice President



Acknowledged this 1st, day of May 2002.

TENANT:

By: Sean T. Higgins

Title: President

MAY-02-2002 11:27AM

TEL)

IO)

PAGE:004 R=97%

BPP000097

RAPP 000260

EXHIBIT 1-D

RAPP 000261

TRIPLE FIVE NEVADA DEVELOPMENT CORPORATION

9510 W. SAHARA AVENUE, SUITE 200
LAS VEGAS, NEVADA 89117

Telephone (702) 242-6937

Facsimile (702) 242-6941

June 27, 2002

VIA U.S. MAIL

Sean Higgins
Kevin Higgins
Higco, Inc.
2634 W. Horizon Ridge Parkway
Henderson, Nevada 89052

[- Complete set of plans
- Name - architect - firm
- GC
- Subs

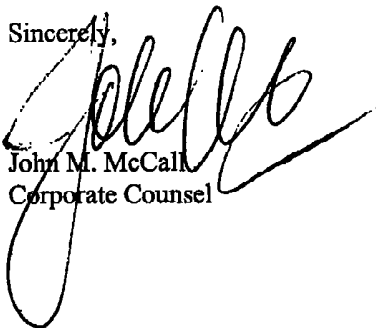
Re:  Three Angry Wives - Boca Park Pad J 

Dear Messrs. Higgins:

Enclosed please find for signature two (2) originals of the Lease and Guaranty and the Brokerage Agreement for the above referenced transaction. Once signed, please return all originals to me for countersignature along with the required deposit of Thirty One Thousand Seven Hundred Twenty Five and no/100ths Dollars (\$31,725.00). We ask that you do not date the Lease and Guaranty or the Brokerage Agreement as Landlord will enter the date they are fully executed.

If you have any questions, please do not hesitate to contact me.

Sincerely,


John M. McCall
Corporate Counsel

JMM/sa

Enclosures

cc: Jean Marc Joveidi (w/o enclosures)
Richard W. Truesdell (w/ enclosures)

HIG00129

RAPP 000262

EXHIBIT 1-E

RAPP 000263

1

To: From: test Sun 29 May 1994 05:22:16 Page: 1

Sean T. Higgins
5195 Las Vegas Blvd. S.
Las Vegas, Nevada 89119
702-798-6400
702-491-9105
f-702-798-8079

**HIGCO, INC. dba
THREE ANGRY
WIVES PUB
2634 W. Horizon
Ridge Pkwy.
Henderson, Nv.
89052
617-8691/f-617-8692**

Fax

To: John McCall From: Sean T. Higgins

Fax: 242-6941 Pages: 9

Phone: Date: August 1, 2002

Re: Boca Park Lease

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments: John,

Please call me so that we can discuss the requested changes.

Sean

BPP000131

RAPP 000264

To: From: test Sun 29 May 1994 05:22:16 Page: 2

One Hundred and no/100ths Dollars (\$14,100.00), which sum shall be applied to the first full month's minimum monthly rent.

(f) **Percentage Rent:** Section 3.06
~~{Six percent (6%) (the "Percentage Rent Rate")}~~ [None].

(g) **Payment of Percentage Rent:** Section 3.07
~~{The fifteenth (15th) day of the first month of each calendar quarter (the "Payment Date").}~~ [Not Applicable.]

(h) **Security Deposit:** Section 5
~~{Seventeen}~~ [Sixteen] Thousand ~~{Six}~~ [Four] Hundred ~~{Twenty Five}~~ [Fifty] and no/100ths Dollars ~~{(\$17,625.00)}~~ [(\$16,450.00)] (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 at discretion of Tenant*

(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.
~~{2634 W. Horizon Ridge Parkway}~~ [10273 Garden Glen Lane]
~~{Henderson, Nevada 89052}~~ [Las Vegas, Nevada 89135]
 Attn: Sean T. Higgins
 Facsimile: (702) ~~{647-8692}~~ [798-8079]
 Telephone: (702) ~~{647-8691}~~ [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
 One Dollar per square foot per annum.

To: From: test Sun 29 May 1994 05:22:16 Page: 3

I.F

(o) **Landlord's Contribution**

Landlord shall contribute Twenty and no/100ths (~~\$20.00~~) per square foot towards Tenant's Work ("Landlord's Contribution").

Exhibit C Section

7.17

(p) **Exclusive Use**

Section

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]]

To: From: test Sun 29 May 1994 05:22:16 Page: 4

any such insurance policy, or which may endanger any part of the Center or its occupants, business patrons or invitees. Tenant will not use any method of heating or air conditioning other than that supplied by Landlord.

7.03. Tenant shall not, without Landlord's prior written approval, operate or permit to be operated on the Leased Property any coin or token operated vending machines or similar device for the sale or leasing to the public of any goods, wares, merchandise, food, beverages, and/or service, including, without limitation, pay telephones, ATMs, pay lockers, pay toilets, scales and amusement devices ~~(No slot machine or other gambling game shall be permitted on the Leased Property without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion.)~~, however, foregoing notwithstanding Tenant may operate an ATM and pay telephone with the appropriate approvals. *- coin consent devices -*

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 ~~(including free flow up to the main sewer line)~~, fixtures, heating and air conditioning and electrical systems (whether or not located in the Leased Property), sprinkler system, walls, floors and ceilings, and any work performed by or on behalf of Tenant hereunder. Any such work shall be subject to such requirements as Landlord may, in its sole discretion, deem reasonable, including, but not limited to, the requirement that Landlord approve the contractors, materials, mechanics and/or materialmen utilized for such purposes. Landlord agrees to assign to Tenant any warranties Landlord may have pertaining to those parts of the Leased Property Tenant is responsible for maintaining hereunder.

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

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

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

To: From: test Sun 29 May 1994 05:22:16 Page: 7

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, ready for carpet only.

5. Roof: The roof shall be composition gravel, tile or as otherwise specified by Landlord's architect or agent.

6. 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 (taped only) and insulation, as required by code, for such demising walls. Alternatively, Landlord shall be entitled, in Landlord's sole discretion, to credit to Tenant the cost to Landlord of the work required under this Subsection I(A)(6), and Tenant shall, in exchange for such credit, undertake and fully complete the work required under this subsection. *LL shall install up to 60 ft. to top of finish ceiling*

7. Exits: Exits shall be in accordance with governing codes.

8. 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.

9. Door Frames: Exterior door frames will be hollow metal construction or as otherwise specified by Landlord's architect or agent.

10. Doors: Exterior service doors will be hollow metal, which shall generally be located at the rear of the Leased Property.

11. 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: Standard store front as provided by Landlord.

2. Typical: Tempered plate glass store front in painted aluminum moldings and extruded three foot (3') aluminum door, or other design, as selected shall be furnished every store.

C. UTILITIES

1. Water and Sewer: Landlord will furnish to a designated point in the Leased Property, as determined by Landlord, access to water and sewer service as required for one restroom for each store. ~~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. Gas: Landlord, at Landlord's option, may install and furnish such utility to a designated point at the shell building in which the Leased Property is located.

To: From: test Sun 29 May 1994 05:22:16 Page: 6

not exceed the lesser of the cost of Tenant's in-kind replacement or the actual cost to Landlord had Landlord provided that omitted portion of Landlord's Work. No credit shall be granted for the omission of materials where no replacement in kind is made. There shall be credits only for substitutions in kind; e.g., a storefront credit may be applied only against the cost of another type of storefront. Any credits provided in this Exhibit C shall be paid to Tenant, provided that Tenant is not in default under the Lease and that Tenant has complied with all of the following: (i) delivered to Landlord a certification from Tenant's contractor of the completion of Tenant's Work; (ii) delivered to Landlord copies of all final and unconditional lien waivers for labor and materials supplied in the performance of Tenant's Work; (iii) delivered to Landlord an executed commencement date memorandum; and (iv) Tenant's opening for business to the public in the Leased Property.

Tenant may not request an exterior store front design, finish or construction other than one that has been previously approved by Landlord in writing, and Landlord shall be entitled to erect and construct such exterior in keeping with the overall plan and design of Landlord's architect or agent.

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. \$750

Tenant agrees that upon completion of said Leased Property in accordance with the approved plans and specifications thereof and upon the delivery to and possession by Tenant, Tenant will accept the Leased Property in the condition which it may then be in and waives any right or claim against Landlord for any cause, directly or indirectly, arising out of the condition of the Leased Property, appurtenances thereto, the improvements thereon and the equipment thereof, and Tenant shall thereafter save and hold harmless the Landlord from any and all liability.

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 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 final plans and specifications are in conflict with this Exhibit C, the provisions of this Exhibit C shall prevail.

Landlord's approval of any plans or specifications shall not be deemed a covenant, representation or acknowledgment that the same comply with applicable law or are otherwise sufficient or proper.

1. WORK DONE BY LANDLORD AT LANDLORD'S EXPENSE

Landlord shall deliver to Tenant the Leased Property as a standard Landlord's "concrete shell" ("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

To: From: test Sun 29 May 1994 05:22:16 Page: 8

Cost of the gas meter, the distribution of the gas service to and throughout the Leased Property and the gas used will be paid by Tenant.

Electricity: Landlord will furnish an empty 2" conduit with pull string to the Leased Property to a maximum 200-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 agreed upon plans and specifications, shall be Tenant's responsibility at Tenant's expense.

Telephone: Landlord shall furnish an empty 1" conduit with pull string from telephone service in the building to a designated point in the Leased Property. All conduit systems and wiring from the telephone service location to and throughout the Leased Property shall be undertaken by Tenant at Tenant's expense.

HVAC: Landlord will furnish Tenant with air conditioning unit(s) at the rate of one (1) ton for every 300 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 mutually agreed upon plan and specifications, shall be undertaken by Tenant at Tenant's expense.

FIRE SPRINKLERS

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

RESTROOMS

Landlord shall credit Tenant for two (2) restrooms, located in an area designated and designed by Landlord, in the amount of Seven Thousand and no/100ths Dollars (\$7,000.00) per restroom. Such restrooms shall meet the requirements of the Americans with Disabilities Act. Landlord shall be responsible for the sewer connection fees associated with said restroom.

F. LANDLORD'S CONTRIBUTION

Landlord shall contribute the amount set forth in Section (o) of the Fundamental Lease Provisions above toward Tenant's Work ("Landlord's Contribution"). Landlord's Contribution shall be payable to Tenant, provided that Tenant is not in default under the Lease and that Tenant has complied with all of the following: (i) delivered to Landlord a certification from Tenant's contractor of the completion of Tenant's Work; (ii) delivered to Landlord copies of all final and unconditional lien waivers for labor and materials supplied in the performance of Tenant's Work; (iii) delivered to Landlord an executed commencement date memorandum; and (iv) Tenant's opening for business to the public in the Leased Property. Upon satisfaction of the above conditions, Landlord's Contribution shall be paid to Tenant in accordance with Landlord's customary accounts payable procedures.

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, panels, electric fixtures (lighting fixtures and outlets), equipment, including installation, electrical wiring and conduit for Tenant's fixtures, except as provided in Section I (C) above, "Work Done by Landlord."

To: From: test Sun 29 May 1994 05:22:16 Page: 9

No

B. Gas Connections: If such utility is furnished by Landlord, the cost of all gas meters and any distribution of the utility throughout the Leased Property.

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. Telephone, Data and Cable: All conduits for telephone, data and cable wires in the Leased Property, including, without limitation, the cost of any demolition and/or pourback of concrete if so required. Tenant shall make all arrangements for telephone service. *except as set forth in I(c) 4*

E. Walls: All interior partitions and curtain walls within the Leased Property.

F. Coves and Ceilings: All coves and ceilings.

G. Furniture and Fixtures: All store fixtures, cases, wood paneling, cornices, etc.

H. Show Window Background, Floors, etc.: All show window finish floors, show window backgrounds, show window lighting fixtures and show window doors.

I. 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.

J. HVAC: All distribution of the HVAC, complete with controls, duct detectors, etc., in accordance with the mutually agreed upon plans and specifications. *No*

K. Alarm Systems, etc.: All alarm systems or other protective devices including any special wiring required for such devices.

L. Special Plumbing: All extra plumbing, either roughing in or fixtures required for Tenant's special needs.

M. Special Ventilation: Any required ventilation and related equipment including show window ventilation.

N. Intentionally Omitted.

O. Special Equipment: All special equipment such as conveyors, elevators, escalators, dumb waiters, etc., including installation and connection.

P. Electric Floor Outlets and Point of Sale Stations: All such related expenses, including, without limitation, the cost of any demolition and/or pourback of concrete if so required. *No - all previe conduits*

Q. Sewer: All sewer usage and service charges shall be paid by Tenant.

R. Store Front: Any alterations to the standard storefront must be approved by Landlord or Landlord's architect, and Tenant shall bear all additional costs.

S. ~~Permits~~: All required building permits and fees for Certificate of Occupancy. *L.L.*

T. 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.

*Conduit -
- photo machines
- data lines
- phone/box lines
- cable
- satellite*

EXHIBIT 1-F

RAPP 000273

TRIPLE FIVE NEVADA DEVELOPMENT CORPORATION

9510 W. SAHARA AVENUE, SUITE 200
LAS VEGAS, NEVADA 89117

Telephone (702) 242-6937

Facsimile (702) 242-6941

September 6, 2002

TO BE PICKED UP

Sean Higgins
Higco, Inc.
2634 W. Horizon Ridge Parkway
Henderson, Nevada 89052

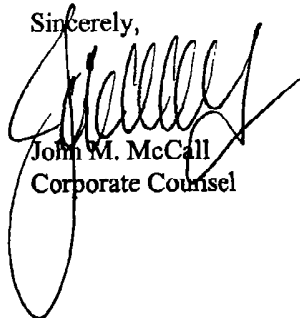
Re: Three Angry Wives -- Boca Park Pad J

Dear Mr. Higgins:

Enclosed please find for signature two (2) originals of the Lease and Guaranty for the above referenced transaction. Once signed, please return all originals to me for countersignature along with the required deposit of Twenty Eight Thousand Five Hundred Thirty Five and no/100ths Dollars (\$28,535.00). We ask that you do not date the Lease and Guaranty as Landlord will enter the date they are fully executed.

If you have any questions, please do not hesitate to contact me.

Sincerely,



John M. McCall
Corporate Counsel

JMM/sa

Enclosures

cc: Jean Marc Joveidi (w/o enclosures)

HIG00120

RAPP 000274

EXHIBIT 1-G

RAPP 000275

TRIPLE FIVE NEVADA DEVELOPMENT
CORPORATION

9510 W. SAHARA AVENUE, SUITE 200
LAS VEGAS, NEVADA 89117

TELEPHONE (702) 242-6937

FACSIMILE (702) 242-6941

January 30, 2003

VIA FACSIMILE (798-8079)

Sean Higgins
Higco, Inc.
2634 W. Horizon Ridge Parkway
Henderson, Nevada 89052

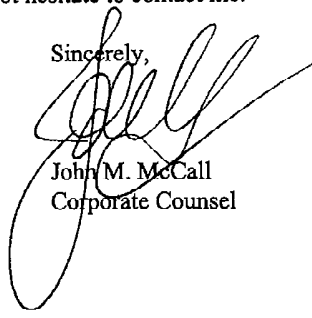
Re: *Three Angry Wives – Boca Park Pad J*

Dear Mr. Higgins:

Concurrently with the execution of the Lease Tenant is required to pay the first month's rent and Security Deposit equal to Twenty Eight Thousand Five Hundred Thirty Five and no/100ths Dollars (\$28,535.00). Please make the check payable to Boca Park Parcels, LLC.

If you have any questions, please do not hesitate to contact me.

Sincerely,


John M. McCall
Corporate Counsel

JMM/sa

cc: Jean Marc Joveidi (w/o enclosures)

N:\Boca Park Pad J\higco\corr\deposit request.ltr.doc

BPP000052

RAPP 000276

Sean Higgins
January 30, 2003
Page 2 of 2

bcc: Sandi Kay

BPP000053

RAPP 000277

EXHIBIT 2

RAPP 000278

DECLARATION OF DYLAN T. CICILIANO, ESQ IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

The undersigned, Dylan T. Ciciliano, ESQ., hereby states as follows:

1. I am over the age of 18 and am mentally competent. I have personal knowledge of the facts stated herein, except where stated upon information and belief, and as to facts stated upon information and belief, I am informed of those facts and believe them to be true. If called upon to testify as to the matters herein, I could and would do so. I make this declaration in support of the Plaintiff's Motion for Summary Judgment.

2. I am an associate of the law firm of Gordon Silver. I am also an attorney licensed to practice law in the State of Nevada.

3. Attached hereto as Exhibit "2-A" is a true and correct copy of the signed or initialed pages of the lease that Defendants attached to their Supplemental Opposition, at Ex. 3. In order to avoid unnecessarily voluminous exhibits, attached are only the pages that Higco or Defendants on which are purported to have hand-written.

4. Attached hereto as Exhibit "2-B" is a true and correct copy of the signed or initialed pages of the lease that Defendants attached to their Supplemental Opposition, at Ex. 5. In order to avoid unnecessarily voluminous exhibits, attached are only the pages that Higco or Defendants on which are purported to have hand-written.

5. Attached hereto as Exhibit "2-C" is a table I created that documents the evolution of the exclusive use term at issue. The table contains just the exclusive use term from each document cited. The documents were organized based upon dates appearing on the documents. For those documents produced by Defendants that did not contain dates, I organized the documents based upon known events, such as the removal or additional of terms. In order to avoid unnecessarily voluminous exhibits, I attached only the "Fundamental Lease Provisions."

6. Attached hereto as Exhibit "2-D" are true and correct copies of the leases Defendants produced in their First Supplemental Disclosure and that were cited to in Exhibit 2-C. The documents are organized by their appearance in "Ex. 2-C"

...

1 7. Attached hereto as Exhibit "2-E" is a true and correct copy of Defendants'
2 Response to Plaintiff's Request for Admissions.

3 I declare under penalty of perjury under the laws of the State of Nevada that the
4 foregoing is true and correct.

5 Dated this 20 day of September, 2012.


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8 DYLAN T. CICILIANO, ESQ.
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EXHIBIT 2-A

RAPP 000281

ORIGINAL

LEASE

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

FUNDAMENTAL LEASE PROVISIONS

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

- (a) **Center:** Section 1.01
The Boca Park Marketplace shopping center, which Center is legally described on Exhibit A-1 attached hereto and incorporated herein by reference (the "Center").
- (b) **Leased Property:** Section 1.01
Building J, Suite ___ in the Center, as shown by cross-hatching on Exhibit A-2 attached hereto and incorporated herein by reference, consisting of approximately 4,390 square feet (the "Leased Property").
- (c) **Term of Lease:** Sections 2.01 and 2.04
(i) The term of this Lease shall be for a period of ten (10) years, unless terminated earlier as elsewhere herein provided; provided that if the Commencement Date is not the first day of a calendar month the term hereof shall be for ten (10) years plus the period between the Commencement Date and the first day of the next succeeding calendar month.
(ii) Renewal term: four (4) options of five (5) years each.
- (d) **Commencement Date:** Section 2.02
The Commencement Date shall be ninety (90) days after Landlord notifies Tenant that the improvements to be installed by Landlord pursuant to Exhibit C hereof have been substantially completed or as soon as Tenant commences to do business in, upon or from the Leased Property, whichever first occurs.
- (e) **Minimum Monthly Rent:** Section 3.01
Beginning on the Commencement Date, Tenant shall pay to Landlord minimum monthly rent in an amount calculated based upon the actual rentable square feet included within the interior portions of the Premises (which shall be determined by measurement of Landlord's architect upon completion of construction of the Premises by Landlord) in accordance with the following rent schedule:

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

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

(c) **Exclusive Use**

Section 7.17

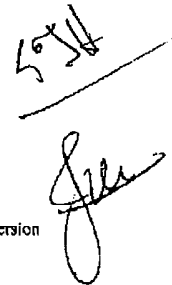
Landlord shall grant Tenant an exclusive for Boca Park Phase I for a tavern (the "Exclusive Use").

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N:\Boca Park Pad JV\igco\lease-5.doc

3

Execution Version

Handwritten signature and initials, possibly "505H" and "Jen", with a horizontal line above the signature.

BPP000163

RAPP 000283

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

"TENANT"

HIGCO, INC.
a Nevada corporation

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

"LANDLORD"

BOCA PARK PARCELS, LLC
a Nevada limited liability company

By: John M. McCall
Name: John M. McCall
Its: Manager; Corporate Counsel


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.

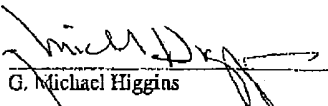
Should Guarantor consist of more than one person or entity, then, in such event, all such persons and entities shall be jointly and severally liable as Guarantor hereunder. In any action brought by Landlord to enforce any of its rights under or arising from this Guaranty, Landlord shall be entitled to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

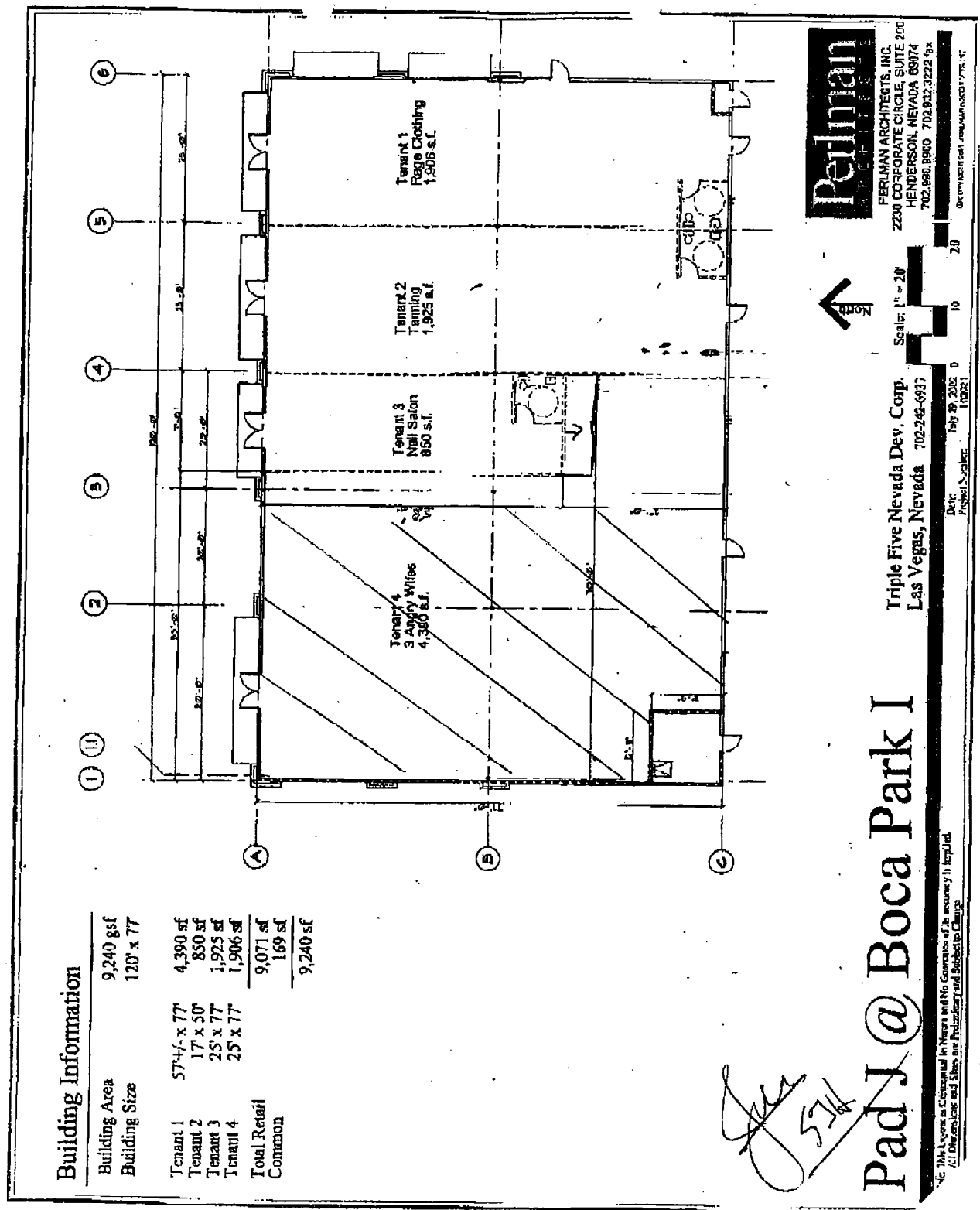


EXHIBIT 2-B

RAPP 000287

LEASE

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

FUNDAMENTAL LEASE PROVISIONS

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

(a) **Center:** Section 1.01
The Boca Park Marketplace shopping center, which Center is legally described on Exhibit A-1 attached hereto and incorporated herein by reference (the "Center").

(b) **Leased Property:** Section 1.01
Building J, Suite ____ in the Center, as shown by cross-hatching on Exhibit A-2 attached hereto and incorporated herein by reference, consisting of approximately 4,390 square feet (the "Leased Property").

(c) **Term of Lease:** Sections 2.01 and 2.04
(i) The term of this Lease shall be for a period of ten (10) years, unless terminated earlier as elsewhere herein provided; provided that if the Commencement Date is not the first day of a calendar month the term hereof shall be for ten (10) years plus the period between the Commencement Date and the first day of the next succeeding calendar month.

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

(d) **Commencement Date:** Section 2.02
The Commencement Date shall be ninety (90) days after Landlord notifies Tenant that the improvements to be installed by Landlord pursuant to Exhibit C hereof have been substantially completed or as soon as Tenant commences to do business in, upon or from the Leased Property, whichever first occurs.

(e) **Minimum Monthly Rent:** Section 3.01
Beginning on the Commencement Date, Tenant shall pay to Landlord minimum monthly rent in an amount calculated based upon the actual rentable square feet included within the interior portions of the Premises (which shall be determined by measurement of Landlord's architect upon completion of construction of the Premises by Landlord) in accordance with the following rent schedule:

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

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

(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)

5/26
Jus

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

"TENANT"

HIGCO, INC.
a Nevada corporation

By: _____

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

"LANDLORD"

BOCA PARK PARCELS, LLC
a Nevada limited liability company

By: _____

John M. McCall
Name: *John M. McCall*
Manager; Corporate Counsel

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"

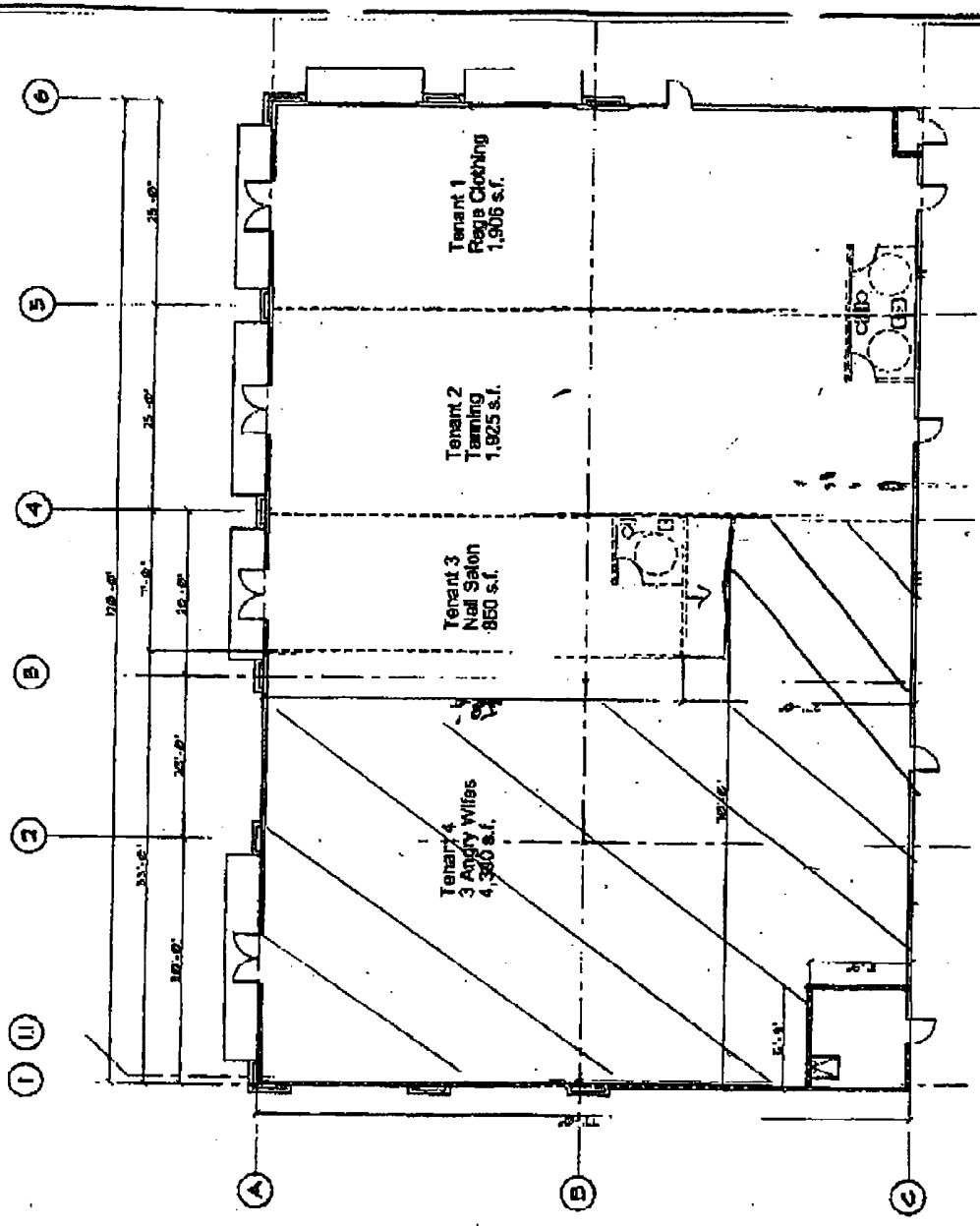

Kevin Higgins


Sean Higgins


G. Michael Higgins

Building Information

Building Area	9,240 gsf
Building Size	120' x 77'
Tenant 1	57'-4" x 77'
Tenant 2	17' x 50'
Tenant 3	25' x 77'
Tenant 4	25' x 77'
Total Retail	9,071 sf
Common	169 sf
	9,240 sf



PERILMAN ARCHITECTS, INC.
2230 CORPORATE CIRCLE, SUITE 200
HENDERSON, NEVADA 89074
702.990.3950 702.932.3222 fax

Scale: 1" = 20'

Triple Five Nevada Dev. Corp.
Las Vegas, Nevada 702.242.4437

Pad J @ Boca Park I

*This drawing is conceptual in nature and no guarantee of its accuracy is implied.
All dimensions and sizes are preliminary and subject to change.

Date: Feb 29, 2008
Project Number: 103211

0 10 20

PERILMAN ARCHITECTS, INC.

EXHIBIT 2-C

RAPP 000293

EXHIBIT 2-C: Progression of the Exclusive Use Term

Date of Document	Title of Document	Exclusive Use Provision	Citation
March 14, 2002	First Letter of Intent	Exclusive: Landlord will grant Higco an exclusive for Boca Park I & II for a Tavern and gaming, except for any tenants currently located in the center which allow gaming (i.e. Vons, Longs). Landlord will grant Tenant a right of first refusal to for a similar restaurant location in Boca Park III.	Exhibit "1-A"
April 1, 2002	Second Letter of Intent	Exclusive: Landlord will grant Higco an exclusive for Boca Park I & II for a Tavern and gaming, except for any tenants currently located in the center which allow gaming (i.e. Vons, Longs). Landlord will grant Tenant a right of first refusal to for a similar restaurant location in Boca Park III.	Exhibit "1-B"
May 2, 2002	Third Letter of Intent	Exclusive: Landlord will grant Higco an exclusive for Boca Park I & II for a Tavern and gaming, except for any tenants currently located in the center which allow gaming (i.e. Vons, Longs). Landlord will grant Tenant a right of first refusal to for a similar restaurant location in Boca Park III.	Exhibit "1-C"
May 2, 2002, to August 1, 2002	Execution Version- Incorporates May 2, 2002 changes but not August 1, 2002 changes.	Landlord will grant Higco an exclusive for Boca Park I & II for a Tavern and gaming, except for any tenants currently located in the center which allow gaming (i.e. Vons, Longs).	Exhibit 2-D BPP000401-BPP000402 ¹

¹ The "bates" prefix "BPP" designates productions made by Defendants.

Date of Document	Title of Document	Exclusive Use Provision	Citation
August 1, 2002	Execution Version August 1, 2002	Landlord shall grant Tenant 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").	Exhibit 1-E
September 6, 2002	Execution Version (red-line) N:BOCA PARK PAD JHIGCOLEASE-2.Doc	Landlord shall grant Tenant 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").	Exhibit 2-D BPP000441-BPP000444
Identical to September 6, 2002	Execution Version (no red-line)	Landlord shall grant Tenant 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").	Exhibit 2-D BPP000484-BPP000485 BPP000524-BPP000525
After September 6, 2002	Execution Version (red-line) N:BOCA PARK PAD JHIGCOLEASE-4.Doc	Landlord shall grant Tenant 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").	Exhibit 2-D BPP000270-BPP000273
After September 6, 2002	Comparison between Basic lease and Lease-5	Landlord shall grant Tenant 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").	Exhibit 2-D BPP000222-BPP000225

Date of Document	Title of Document	Exclusive Use Provision	Citation
January 20, 2003	Clarification of the Exclusive Use	Landlord shall grant Tenant 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").	Exhibit 1-G
Undated	Unmarked, non-redlined version of lease	Landlord shall grant Tenant an exclusive for Boca Park I for a tavern (the "Exclusive Use").	Exhibit 2-D BPP000344-BPP000345 BPP000564-BPP000565

EXHIBIT 2-D

RAPP 000297

LEASE

THIS LEASE is made and entered into as of this ____ day of _____ 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 4,700 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	\$3.00	\$14,100.00
2-3	\$3.25	\$15,275.00
4-8	\$3.50	\$16,450.00
9-10	\$3.75	\$17,625.00

Tenant, concurrently with the execution hereof, shall deposit with Landlord the sum of Fourteen Thousand One Hundred and no/100ths Dollars (\$14,100.00), which sum shall be applied to the first full month's minimum monthly rent.

- (f) **Percentage Rent:** **Section 3.06**
Six percent (6%) (the "Percentage Rent Rate").
- (g) **Payment of Percentage Rent:** **Section 3.07**
The fifteenth (15th) day of the first month of each calendar quarter (the "Payment Date").
- (h) **Security Deposit:** **Section 5**

Seventeen Thousand Six Hundred Twenty Five and no/100ths Dollars (\$17,625.00) (the "Security Deposit").

(i) **Use:** **Section 7**

If available, for use as a Three Angry Wives restaurant and tavern with on-premises sale of liquor, beer and wine and a complete menu (the "Permitted Use").

(j) **Trade Name:** **Section 7**

Three Angry Wives

(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.
2634 W. Horizon Ridge Parkway
Henderson, Nevada 89052
Attn: Sean T. Higgins
Facsimile: (702) 617-8692
Telephone: (702) 617-8691

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) **Landlord's Contribution** **Exhibit C Section I.F**
Landlord shall contribute Twenty and no/100ths (\$20.00) per square foot towards Tenant's Work ("Landlord's Contribution").

(p) **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").

This redlined draft, generated by CompareRite (TM) - The Instant Redliner, shows the differences between -

original document : N:\BOCA PARK PAD J\HIGCO\LEASE-1.DOC
and revised document: N:\BOCA PARK PAD J\HIGCO\LEASE-2.DOC

CompareRite found 32 change(s) in the text

Deletions appear as Overstrike text surrounded by {}

Additions appear as Bold text surrounded by []

LEASE

THIS LEASE is made and entered into as of this ____ day of _____ 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 ~~{4,700}~~ [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	{ \$14,100.00 } [\$13,170.00]
3-5	\$3.25	{ \$15,275.00 } [\$14,267.50]
5-7	\$3.40	{ \$15,980.00 } [\$14,926.00]
8-10	\$3.50	{ \$16,450.00 } [\$15,365.00]

Thereafter, rent shall be adjusted for any renewal terms in accordance with Section 3.02. Tenant, concurrently with the execution hereof, shall deposit with Landlord the sum of ~~{Fourteen}~~ [Thirteen] Thousand One Hundred [Seventy] and no/100ths Dollars ~~{(\$14,100.00)}~~ [(\$13,170.00)], which sum shall be applied to the first full month's minimum monthly rent.

- (f) **Percentage Rent:** **Section 3.06**
None.
- (g) **Payment of Percentage Rent:** **Section 3.07**
Not Applicable.
- (h) **Security Deposit:** **Section 5**
{~~Sixteen~~} [Fifteen] Thousand {~~Four~~} [Three] Hundred {~~Fifty~~} [Sixty Five] and no/100ths Dollars {~~(\$16,450.00)~~} [(\$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**
One Dollar per square foot per annum.

(o) ~~{Landlords Contribution Exhibit C Section I.F~~
~~Landlord shall contribute Twenty and no/100ths (\$20.00) per square foot towards Tenants Work ("Landlords Contribution").~~

~~(p)}~~ **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)

LEASE

THIS LEASE is made and entered into as of this ____ day of _____ 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
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5-7	\$3.40	\$14,926.00
8-10	\$3.50	\$15,365.00

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- (f) **Percentage Rent:** **Section 3.06**
None.
- (g) **Payment of Percentage Rent:** **Section 3.07**
Not Applicable.

- (h) **Security Deposit:** **Section 5**
Fifteen Thousand Three Hundred Sixty Five and no/100ths Dollars (\$15,365.00) (the "Security Deposit").
- (i) **Use:** **Section 7**
If available, for use as a Three Angry Wives restaurant and tavern with gaming and on-premises sale of liquor, beer and wine and a complete menu (the "Permitted Use").
- (j) **Trade Name:** **Section 7**
Three Angry Wives or other name
- (k) **Common Area Maintenance Cost:** **Section 10.02.1**
Six Dollars (\$6.00) per square foot of the Leased Property per year, adjusted annually.
- (l) **Notices Addresses:** **Section 33.01**
Tenant: Higco, Inc.
10273 Garden Glen Lane
Las Vegas, Nevada 89135
Attn: Sean T. Higgins
Facsimile: (702) 798-8079
Telephone: (702) 798-6400

or at the Leased Property once open for business.

Landlord: Boca Park Parcels, LLC
9510 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attn: Leasing Department
Facsimile: (702) 242-6941
Telephone: (702) 242-6937

with a copy to: Triple Five Nevada Development Corporation
9510 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attn: Legal Department
Facsimile: (702) 242-6941
Telephone: (702) 242-6937
- (m) **Broker:** **Section 34**
Richard W. Truesdell of Cornerstone Company and Kevin Higgins of CB Richard Ellis, pursuant to a separate agreement.
- (n) **Advertising and Promotional Services** **Section 4**
One Dollar per square foot per annum.
- (o) **Exclusive Use** **Section 7.17**
Landlord shall grant Tenant an exclusive for Boca Park Phase I for a tavern and gaming, except for any tenants currently located in the center, which allow gaming (i.e., Vons, Longs) (the "Exclusive Use").

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

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8-10	\$3.50	\$15,365.00

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- (f) **Percentage Rent:** **Section 3.06**
None.

- (g) **Payment of Percentage Rent:** **Section 3.07**
Not Applicable.

- (h) **Security Deposit:** **Section 5**
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- (j) **Trade Name:** **Section 7**
Three Angry Wives or other name
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Six Dollars (\$6.00) per square foot of the Leased Property per year, adjusted annually.
- (l) **Notices Addresses:** **Section 33.01**
Tenant: Higo, 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.

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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
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Richard W. Truesdell of Cornerstone Company and Kevin Higgins of CB Richard Ellis, pursuant to a separate agreement.
- (n) **Advertising and Promotional Services** **Section 4**
One Dollar per square foot per annum.
- (o) **Exclusive Use** **Section 7.17**
Landlord shall grant Tenant an exclusive for Boca Park Phase I for a tavern and gaming, except for any tenants currently located in the center, which allow gaming (i.e., Vons, Longs) (the "Exclusive Use").

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original document : N:\BOCA PARK PAD J\HIGCO\LEASE-3.DOC
and revised document: N:\BOCA PARK PAD J\HIGCO\LEASE-4.DOC

CompareRite found 1 change(s) in the text

Deletions appear as Overstrike text surrounded by {}

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LEASE

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

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

(f) **Percentage Rent:** **Section 3.06**
None.

(g) **Payment of Percentage Rent:** **Section 3.07**
Not Applicable.

(h) **Security Deposit:** **Section 5**
Fifteen Thousand Three Hundred Sixty Five and no/100ths Dollars (\$15,365.00) (the "Security Deposit").

(i) **Use:** **Section 7**
If available, for use as a Three Angry Wives restaurant and tavern with gaming and on-premises sale of liquor, beer and wine and a complete menu (the "Permitted Use").

(j) **Trade Name:** **Section 7**
Three Angry Wives or other name

(k) **Common Area Maintenance Cost:** **Section 10.02.1**
Six Dollars (\$6.00) per square foot of the Leased Property per year, adjusted annually.

(l) **Notices Addresses:** **Section 33.01**
Tenant:

Higco, Inc.
10273 Garden Glen Lane
Las Vegas, Nevada 89135
Attn: Sean T. Higgins
Facsimile: (702) 798-8079
Telephone: (702) 798-6400

or at the Leased Property once open for business.

Landlord: Boca Park Parcels, LLC
9510 W. Sahara Avenue, Suite 200
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Attn: Leasing Department
Facsimile: (702) 242-6941
Telephone: (702) 242-6937

with a copy to: Triple Five Nevada Development Corporation
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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**

One Dollar per square foot per annum.

4

- | | | Section |
|-------------|---|----------------|
| 7.17 | (o) Exclusive Use | |
| | Landlord shall grant Tenant an exclusive for Boca Park Phase I for a tavern and gaming, except for any tenants currently located in the center, which allow gaming (i.e., Vons, Longs) (the "Exclusive Use"). | |

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original document : N:\FORMS\LEASE-SHOP MERGE.DOC

and revised document: N:\BOCA PARK PAD J\HIGCO\LEASE-6.DOC

CompareRite found 181 change(s) in the text

Deletions appear as Overstrike text surrounded by {}

Additions appear as Bold text surrounded by []

LEASE

THIS LEASE is made and entered into as of this ____ day of _____ 2002, by and between ~~{«Landlord», «LLCorporation»}~~ **[Boca Park Parcels, LLC, a Nevada limited liability company]** (**“Landlord”**), and ~~{«Tenant», «LLCorporationindividual»}~~ **[Higco, Inc., a Nevada corporation]** (**“Tenant”**).

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- (a) **Center:** **Section 1.01**
The ~~{«Center»}~~ **[Boca Park Marketplace]** shopping center, which Center is legally described on Exhibit A-1 attached hereto and ~~{depicted in Exhibit A-2}~~ incorporated herein by reference (the **“Center”**).
- (b) **Leased Property:** **Section 1.01**
~~{«Space»}~~ **[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 ~~{«no_of_sf»}~~ **[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 ~~{«Lease_Term»}~~ **[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 ~~{«Lease_Term»}~~ **[ten (10)]** years plus the period between the Commencement Date and the first day of the next succeeding calendar month.
(ii) Renewal term: ~~{«options»}~~ **[four (4)]** options of five (5) years each.
- (d) **Commencement Date:** **Section 2.02**
The Commencement Date shall be ~~{«Free_Rent_Period»}~~ **[ninety (90)]** days after Landlord notifies Tenant ~~{verbally or in writing}~~ that the improvements to be installed by Landlord pursuant to Exhibit C hereof have been substantially completed or ~~{when}~~ **[as soon as]** Tenant ~~{opens for}~~ **[commences to do]** business in[, upon or from] the Leased Property, whichever **[first]** occurs ~~{first}~~.
- (e) **Minimum Monthly Rent:** **Section 3.01**
[Beginning on the Commencement Date,] Tenant shall pay to Landlord ~~{the minimum monthly rental of «Rent_psf» per square foot of the Leased Property, or approximately «Minimum monthly rent», which rent shall be increased}~~ **[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 ~~{terms of Section 3.02 below}~~ **[following rent schedule:**

<i>Years</i>	<i>Rent Per Square Foot</i>	<i>Monthly Rent</i>
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5-7	\$3.40	\$14,926.00
8-10	\$3.50	\$15,365.00

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

(f) **Percentage Rent:** Section 3.06
~~{Six percent (6%) (the "Percentage Rent Rate")}~~ [None].

(g) **Payment of Percentage Rent:** Section 3.07
~~{The fifteenth (15th) day of the first month of each calendar quarter (the "Payment Date").}~~ [Not Applicable.]

(h) **Security Deposit:** Section 5
~~{«Security Deposit»}~~ [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
~~{«company_or_dba»}~~ [Three Angry Wives or other name]

(k) **Common Area Maintenance Cost:** Section 10.02.1
~~{«CAM»}~~ [Six Dollars (\$6.00)] per square foot of the Leased Property per year, adjusted annually.

(l) **Notices Addresses:** Section 33.01
Tenant: ~~{«company_or_dba»}~~
«Address1»
«City_State_Zip»
Attn: «FirstName» «LastName»
Facsimile: «Fax_»
Telephone: «Phone_» [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: ~~{«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.]

4 (n) Advertising and Promotional Services Section
One Dollar per square foot per annum.

(o) ~~{Landlords Contribution Exhibit C Section I.F~~
~~Landlord shall contribute «LL_contribution» per square foot towards Tenants Work (“Landlords Contribution”).~~

(p)} Exclusive Use Section 7.17
~~{Tenant is granted the exclusive right to sell, at retail,~~
~~_____ (the) [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)

LEASE

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FUNDAMENTAL LEASE PROVISIONS

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

- (b) **Leased Property:** **Section 1.01**
Building J, Suite ____ in the Center, as shown by cross-hatching on Exhibit A-2 attached hereto and incorporated herein by reference, consisting of approximately 4,390 square feet (the "Leased Property").

- (c) **Term of Lease:** **Sections 2.01 and 2.04**
(i) The term of this Lease shall be for a period of ten (10) years, unless terminated earlier as elsewhere herein provided; provided that if the Commencement Date is not the first day of a calendar month the term hereof shall be for ten (10) years plus the period between the Commencement Date and the first day of the next succeeding calendar month.
(ii) Renewal term: four (4) options of five (5) years each.

- (d) **Commencement Date:** **Section 2.02**
The Commencement Date shall be ninety (90) days after Landlord notifies Tenant that the improvements to be installed by Landlord pursuant to Exhibit C hereof have been substantially completed or as soon as Tenant commences to do business in, upon or from the Leased Property, whichever first occurs.

- (e) **Minimum Monthly Rent:** **Section 3.01**
Beginning on the Commencement Date, Tenant shall pay to Landlord minimum monthly rent in an amount calculated based upon the actual rentable square feet included within the interior portions of the Premises (which shall be determined by measurement of Landlord's architect upon completion of construction of the Premises by Landlord) in accordance with the following rent schedule:

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

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

- (f) **Percentage Rent:** **Section 3.06**
None.

- (g) **Payment of Percentage Rent:** **Section 3.07**
Not Applicable.

- (h) **Security Deposit:** **Section 5**
Fifteen Thousand Three Hundred Sixty Five and no/100ths Dollars (\$15,365.00) (the "Security Deposit").
- (i) **Use:** **Section 7**
If available, for use as a Three Angry Wives restaurant and tavern with gaming and on-premises sale of liquor, beer and wine and a complete menu (the "Permitted Use").
- (j) **Trade Name:** **Section 7**
Three Angry Wives or other name
- (k) **Common Area Maintenance Cost:** **Section 10.02.1**
Six Dollars (\$6.00) per square foot of the Leased Property per year, adjusted annually.
- (l) **Notices Addresses:** **Section 33.01**
Tenant: Higco, Inc.
10273 Garden Glen Lane
Las Vegas, Nevada 89135
Attn: Sean T. Higgins
Facsimile: (702) 798-8079
Telephone: (702) 798-6400

or at the Leased Property once open for business.

Landlord: Boca Park Parcels, LLC
9510 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attn: Leasing Department
Facsimile: (702) 242-6941
Telephone: (702) 242-6937

with a copy to: Triple Five Nevada Development Corporation
9510 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attn: Legal Department
Facsimile: (702) 242-6941
Telephone: (702) 242-6937
- (m) **Broker:** **Section 34**
Richard W. Truesdell of Cornerstone Company and Kevin Higgins of CB Richard Ellis, pursuant to a separate agreement.
- (n) **Advertising and Promotional Services** **Section 4**
One Dollar per square foot per annum.
- (o) **Exclusive Use** **Section 7.17**
Landlord shall grant Tenant an exclusive for Boca Park Phase I for a tavern (the "Exclusive Use").

(remainder of page intentionally blank)

LEASE

THIS LEASE is made and entered into as of this ____ day of _____ 2002, by and between Boca Park Parcels, LLC, a Nevada limited liability company ("Landlord"), and Higco, Inc., a Nevada corporation ("Tenant").

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

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

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with a copy to:
Triple Five Nevada Development Corporation
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Attn: Legal Department
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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 (the "Exclusive Use").

(remainder of page intentionally blank)

EXHIBIT 2-E

RAPP 000320

1 **RESP**

2 Charles H. McCrea, Jr. (SBN #104)

3 Steven C. Anderson (SBN #11901)

4 LIONEL SAWYER & COLLINS

5 1700 Bank of America Plaza

6 300 South Fourth Street

7 Las Vegas, Nevada 89101

8 (702) 383-8888 (Telephone)

9 (702) 383-8845 (Fax)

10 cmccrea@lionelsawyer.com

11 sanderson@lionelsawyer.com

12 *Attorneys for Defendants Boca Park Parcels,*
13 *LLC; Boca Park Marketplace, LLC; Boca*
14 *Park Marketplace LV Syndications Group*
15 *MM, LLC; and Boca Park Marketplace*
16 *Syndications Group, LLC.*

DISTRICT COURT

CLARK COUNTY, NEVADA

HIGCO, INC., a Nevada corporation,

Plaintiff,

v.

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

Defendants.

Case No. A660548

Dept. No. XIII

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S REQUESTS FOR
ADMISSIONS**

TO: HIGCO, INC.; and

TO: Eric Olsen, its attorney of record.

DEFENDANTS respond to Plaintiff Higco, Inc.'s ("Higco") requests for admission as follows:

...

...

1 Defendants object to the preamble instructions provided by plaintiff to the extent they
2 enlarge or expand upon the parties' duty to respond pursuant to NRCp 36.

3 **RESPONSES**

4 **REQUEST FOR ADMISSION NO. 1:**

5 Admit that Exhibit 2 to Higco's Motion for Summary Judgment is a true and correct copy
6 of the controlling lease between you and Higco.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

8 Deny that Exhibit 2 is a true and correct copy of the controlling lease because Page 3
9 contains a different section (o) than the fully executed lease in Defendants' possession.

10 **REQUEST FOR ADMISSION NO. 2:**

11 Admit that the signature of John M. McCall found at "page 29" of Exhibit 2 to Higco's
12 Motion for Summary Judgment is a true and authentic signature of, or authorized by, John M.
13 McCall, Manager and Corporate Counsel of Boca Park Parcels, [sic] LLC.

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

15 Admitted.

16 **REQUEST FOR ADMISSION NO. 3:**

17 Admit that the initials found on page 3 of Exhibit 2 to Higco's Motion for Summary
18 Judgment are true and authentic initials made by, or at the direction of, John M. McCall.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

20 Admitted.

21 **REQUEST FOR ADMISSION NO. 4:**

22 Admit that Exhibit 2 to your "Opposition to Plaintiff's Motion for Summary Judgment" is
23 a true and correct copy of a March 14, 2002, letter to Triple-Five Nevada Development
24 Corporation.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

26 Admitted.

27 ...

1 **REQUEST FOR ADMISSION NO. 5:**

2 Admit that the signature of Jean Marc Joveidi, at page 3 of Exhibit 2 to your "Opposition
3 to Plaintiff's Motion for Summary Judgment," is a true and authentic signature of, or authorized
4 by, John M. McCall, Executive Vice President of Triple-Five Nevada Development Corporation.

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

6 Denied. To the best of Defendants knowledge, the printed name appears to be in John
7 McCall's handwriting.

8 **REQUEST FOR ADMISSION NO. 6:**

9 Admit that you possess a copy of the "Lease" in the form attached to Higco's Motion for
10 Summary Judgment, at Exhibit 2," regardless of whether the document is completely executed
11 by the parties thereto.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

13 Admitted.

14 **REQUEST FOR ADMISSION NO. 7:**

15 Admit that the network path "N:\Boca Park Pad j\higco\lease-f.doc," found as a footer in
16 Exhibit 3 of your Opposition to Plaintiff's Motion for Summary Judgment, refers to a network
17 location in your exclusive possession and control.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

19 Admitted.

20 **REQUEST FOR ADMISSION NO. 8:**

21 Admit that the "Von's" referred to in the Lease attached to Higco's Motion for Summary
22 Judgment is the Von's grocery located in Boca Park Phase I.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

24 Admitted.

25 **REQUEST FOR ADMISSION NO. 9:**

26 Admit that the "Long's" referred to in the Lease attached to Higco's Motion for Summary
27 Judgment is the Long's Drug that did business in Boca Park Phase I.

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RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Admitted.

REQUEST FOR ADMISSION NO. 10:

Admit that Von's never operated a tavern in Boca Park Phase I.

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Admitted.

REQUEST FOR ADMISSION NO. 11:

Admit that Long's never operated a tavern in Boca Park Phase I.

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Admitted.

DATED this 23rd day of August, 2012.

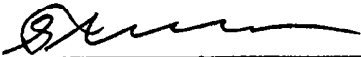

Charles H. McCrea, Jr. (SBN #104)
Steven C. Anderson (SBN #11901)
LIONEL SAWYER & COLLINS
1700 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

EXHIBIT 3

RAPP 000325

01/20/03

14:10

TRIPLE 5 NEV DEV CORP → 7988079

NO. 802

002

TRIPLE FIVE NEVADA DEVELOPMENT CORPORATION

9510 W. SAHARA AVENUE, SUITE 200
LAS VEGAS, NEVADA 89117

TELEPHONE (702) 242-6937

FACSIMILE (702) 242-6941

January 20, 2003

VIA U.S. MAIL & FACSIMILE (702-798-8079)

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

Re: *Higco/Three Angry Wives - Boca Park Pad J*

Dear Mr. Higgins:

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

If you have any questions, please do not hesitate to contact me.

Sincerely,



John M. McCall
Manager, Corporate Counsel

JMM/js

cc: Jean Marc Joveldi

BPP000017

RAPP 000326

01/20/03 15:02 TRIPLE 5 NEV DEV CORP → 7988079

NO. 804 003

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").

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

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01/20/03

15:02

TRIPLE 5 NEV DEV CORP → 7988079

NO. 804

004

- (f) **Percentage Rent:** **Section 3.06**
None.
- (g) **Payment of Percentage Rent:** **Section 3.07**
Not Applicable.
- (h) **Security Deposit:** **Section 5**
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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").
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- (n) **Advertising and Promotional Services** **Section 4**
One Dollar per square foot per annum.

01/20/03

15:02

TRIPLE 5 NEV DEV CORP → 7988879

NO. 804 005

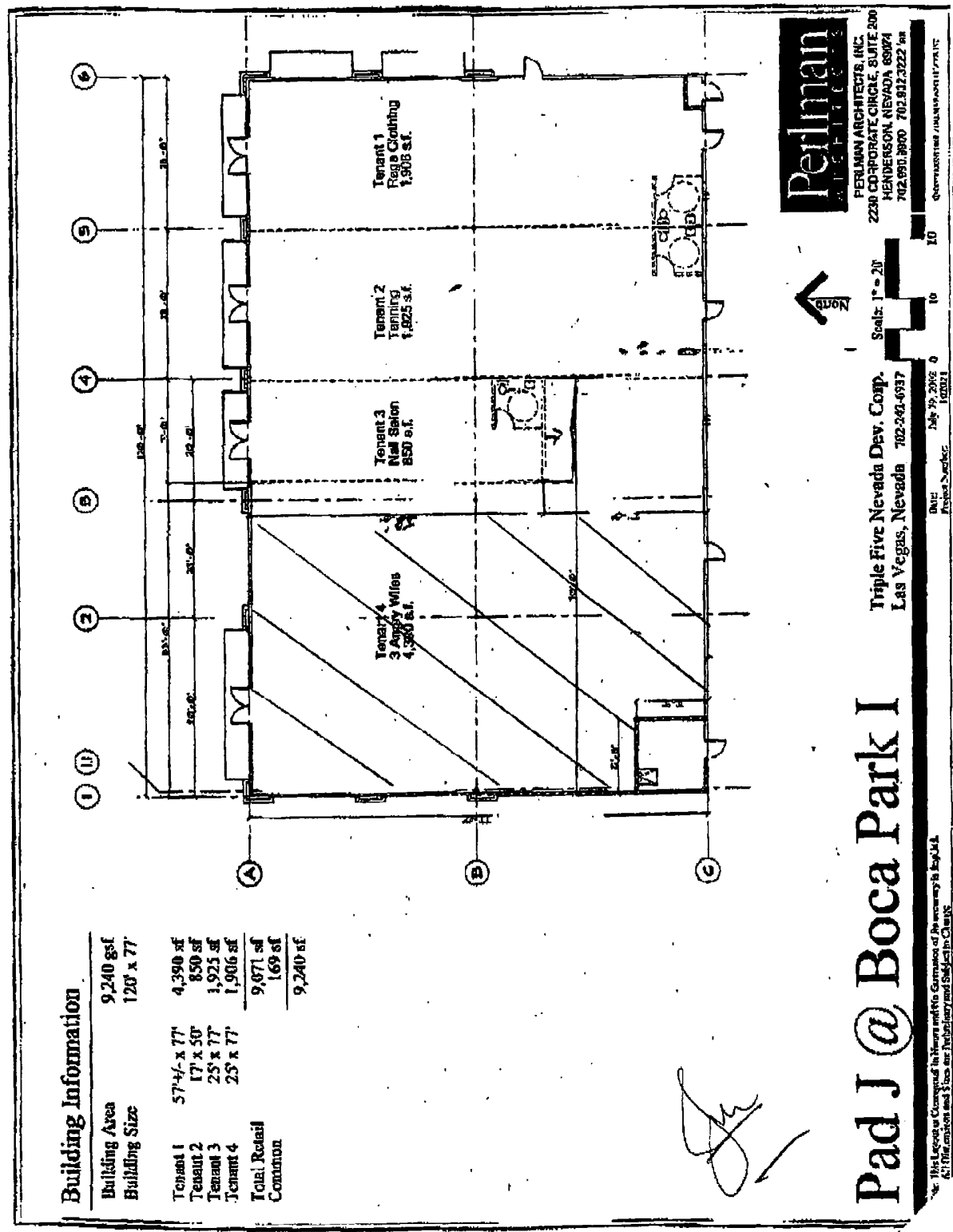
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Section 7.17

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)

01/20/03 15:02 TRIPLE 5 NEV DEV CORP → 7988879 NO.804 006



BPP000021

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[Search](#) [Refine Search](#) [Close](#)

Location : District Court Civil/Criminal [Help](#)

REGISTER OF ACTIONS

CASE NO. A-12-660548-B

Higco, Inc., Plaintiff(s) vs. Boca Park Parcels, LLC, Defendant(s)

§
§
§
§
§
§

Case Type: **Business Court**
 Subtype: **Other Business Court**
 Matters
 Date Filed: **04/23/2012**
 Location: **Department 13**
 Cross-Reference Case Number: **A660548**

PARTY INFORMATION

Defendant	Boca Park Marketplace LV LLC	Lead Attorneys Charles H. McCrea, Jr. <i>Retained</i> 702-834-8777(W)
Defendant	Boca Park Marketplace LV Syndications Group MM, Inc.	Charles H. McCrea, Jr. <i>Retained</i> 702-834-8777(W)
Defendant	Boca Park Marketplace Syndications Group, LLC	Charles H. McCrea, Jr. <i>Retained</i> 702-834-8777(W)
Defendant	Boca Park Parcels, LLC	Charles H. McCrea, Jr. <i>Retained</i> 702-834-8777(W)
Plaintiff	Higco, Inc.	Eric R. Olsen <i>Retained</i> 725-777-3000(W)

EVENTS & ORDERS OF THE COURT

06/25/2012 **Motion for Summary Judgment** (9:00 AM) (Judicial Officer Denton, Mark R.)
06/25/2012, 09/24/2012
Decision: Plaintiff's Motion for Summary Judgment

Minutes

06/18/2012 9:00 AM

06/25/2012 9:00 AM

- Eric Olsen, Esq., for Plaintiff Higco, Inc. Steven Anderson, Esq., for Defendants PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT Also present: Sean Higgins, Higco Inc. Counsel argued as to whether the Plaintiff's lease included exclusive rights for a tavern and gaming, exceptions noted, in Boca Park and if Defendants violated that lease. COURT ORDERED matter CONTINUED; supplemental opposition to be filed by September 7 and supplemental reply by September 20th. CONTINUED TO 9/24/2012 AT 9:00AM

09/24/2012 9:00 AM

[Return to Register of Actions](#)

RAPP 000331

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
May 11 2017 03:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**APPENDIX
TO
APPELLANT'S REPLY BRIEF**

VOLUME IV, Part 1
(RAPP 000186-251)

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

**APPENDIX TO APPELLANT'S
REPLY BRIEF**

TABLE OF CONTENTS

<u>Description</u>	<u>Date</u>	<u>Vol.</u>	<u>Pages</u>
Motion for Summary Judgment – Case No. A-12-660548-B	5/15/12	III, Parts 1 & 2	RAPP 000001-60
Opposition to Plaintiff's Motion For Summary Judgment Case No. A-12-660548-B	6/11/12	III, Part 2	RAPP 000061-80
Reply in Support of Plaintiff's Motion for Summary Judgment Case No. 12-660548-B	6/18/12	III, Part 2	RAPP 000081-88
Supplemental Opposition to Plaintiff's Motion for Summary Judgment and Countermotion for Summary Judgment – Case No. A-12-660548-B	9/12/12	III, Parts 2 & 3 IV, Part 1	RAPP 000089-227
Supplemental Reply in Support Of Plaintiff's Motion for Summary Judgment – Case No. A-12-660548-B	9/20/12	IV, Parts 1 & 2	RAPP 000228-330
Register of Action – Court Minutes 6/25/2012 – Case No. A-12-660548	6/25/12	IV, Part 2	RAPP 000331

SECTION 22 RECORDS AND BOOKS OF ACCOUNT

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

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

SECTION 23 RIGHT OF ACCESS

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

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

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

SECTION 24 EXPENDITURES BY LANDLORD

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

SECTION 25 OFFSET STATEMENT

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

SECTION 26 DEFAULT

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

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

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

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

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

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

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

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

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

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

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

(b) The right, without declaring the term of this Lease ended, to reenter the Leased Property and to occupy and/or relet the same, or any portion thereof, for and on account of Tenant as hereinafter provided, and Tenant shall be liable for and pay to Landlord on demand all such expenses as Landlord may have paid, assumed or incurred in recovering possession of the Leased Property, including costs, expenses, attorneys' fees, and expenditures placing the same in good order and condition, or preparing or altering the same for reletting, and all other expenses, commissions and charges paid, assumed or incurred by Landlord in or in connection with reletting the Leased Property.

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

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

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

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

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

26.04. Intentionally omitted.

26.05. Intentionally omitted.

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

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

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

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

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

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

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

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

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

SECTION 27 HAZARDOUS WASTE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 28 QUIET POSSESSION

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

SECTION 29 SALE BY LANDLORD

In the event of any sale, transfer or exchange of the Leased Property by Landlord, Landlord shall be and is hereby relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease, arising out of any act, occurrence or omission relating to the Leased Property occurring after consummation of such sale or exchange. Tenant agrees to attorn to such purchaser or grantee.

SECTION 30 DEFAULT BY LANDLORD

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

SECTION 31 FORCE MAJEURE

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

SECTION 32 NO PARTNERSHIP

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

SECTION 33
SERVICE OF NOTICES

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

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

SECTION 34
BROKERS

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

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

SECTION 35
MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 36 QUEING AND CROWD CONTROL

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

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

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

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

(SIGNATURE PAGE FOLLOWS)

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

"TENANT"

HIGCO, INC.
a Nevada corporation

By: _____

Name: _____

Its: _____

Sean J. Higgins

Sean J. Higgins

President

"LANDLORD"

BOCA PARK PARCELS, LLC
a Nevada limited liability company

By: _____

John M. McCall

Manager; Corporate Counsel

[Signature]

[Signature]

GUARANTY

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

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

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

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

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

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

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

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

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

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

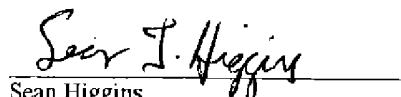
The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Guaranty. The venue for any disagreement, dispute or litigation shall be the State of Nevada, County of Clark and City of Las Vegas.

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

Dated this 5th day of November, 2002.

"GUARANTORS"


Kevin Higgins


Sean Higgins

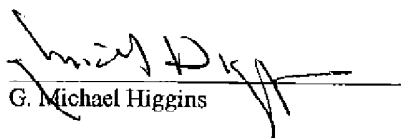
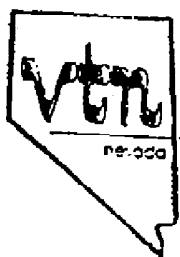
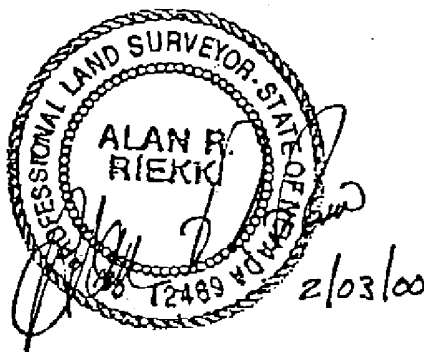

G. Michael Higgins

EXHIBIT A-1
LEGAL DESCRIPTION OF CENTER

See Attached



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



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

EXPLANATION:

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

**LEGAL DESCRIPTION
PHASE 1**

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

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

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

LEGAL DESCRIPTION CONTINUED

W.O.5334-1

10/15/98

PAGE 2 OF 2

REVISED: 5/27/99

REVISED: 2/03/00

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

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

BASIS OF BEARINGS:

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

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

END OF DESCRIPTION.

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

RAMPART BOULEVARD
BASIS OF BEARINGS

T20S R60E
W 1/16 S 32
T21S R60E

P.O.C.

P.O.B.

CHARLESTON BOULEVARD

T20S R60E
1/4 S 32
T21S R60E

MERIALDO LANE

T20S R60E
E1/16 S5
T21S R60E



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

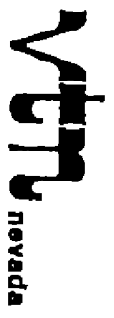


EXHIBIT TO ACCOMPANY
LEGAL DESCRIPTION
PHASE 1

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

G:\C\5\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

Chord: 76.37

Tangent: 54.00

Course In: N 00-33-39 W

Course: N 45-33-39 W

RP North: 16123.80

Course Out: S 89-26-21 W

End North: 16123.28

East: 17744.35

East: 17690.35

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

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

Error Closure: 0.00

Course: S 50-22-28 E

Error North: -0.001

East: 0.001

Precision 1: 3,557,022.19

EXHIBIT A-2

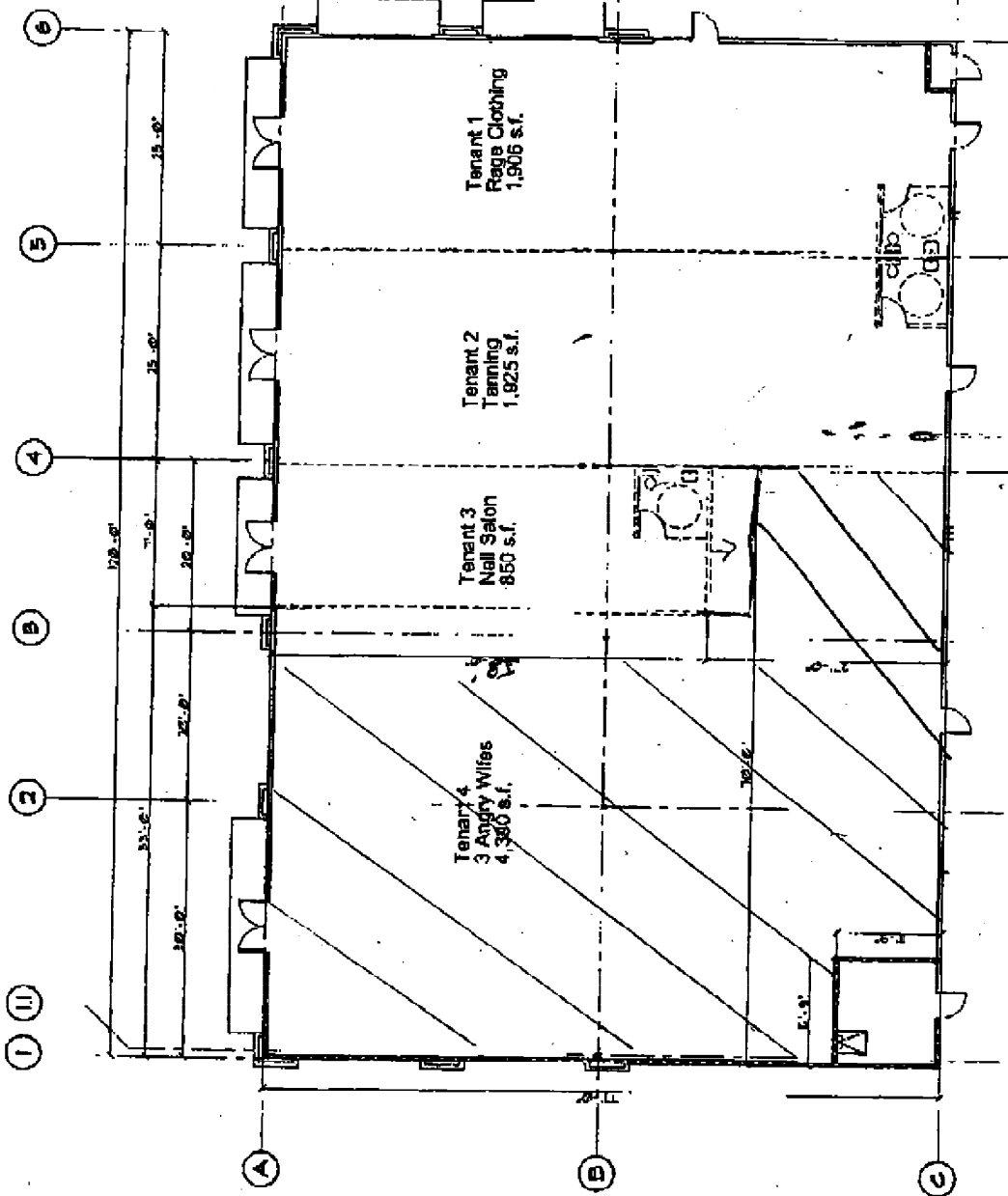
SITE PLAN

See Attached

Building Information

Building Area	9,240 gsf
Building Size	120' x 77'

Tenant 1	57'-4" x 77'	4,390 sf
Tenant 2	17' x 50'	850 sf
Tenant 3	25' x 77'	1,925 sf
Tenant 4	25' x 77'	1,906 sf
Total Retail		9,071 sf
Common		169 sf
		9,240 sf



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

Scale: 1" = 20'

Triple Five Nevada Dev. Corp.
Las Vegas, Nevada 702.243.4937

Pad J @ Boca Park I

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 25, 2002
Project Number: 10321

[Handwritten signature]

EXHIBIT B

COMMENCEMENT DATE

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

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

Dear Mr. Higgins:

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

"LANDLORD"

BOCA PARK PARCELS, LLC
a Nevada limited liability company

By: _____
John M. McCall
Manager, Corporate Counsel

EXHIBIT C

DESCRIPTION OF WORK

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

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

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

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

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

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

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

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

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

I. WORK DONE BY LANDLORD AT LANDLORD'S EXPENSE

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

A. STRUCTURE

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

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

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

B. STORE FRONTS

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

C. UTILITIES

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

be undertaken by Landlord at Landlord's expense.

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

D. FIRE SPRINKLERS

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

E. RESTROOMS

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

F. ROUGH PLUMBING

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

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

H. TENANT IMPROVEMENT ALLOWANCE:

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

II. WORK DONE AT TENANT'S EXPENSE

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

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

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

- W. Insulation: Intentionally omitted.
- X. Other: Any other work required by Tenant not covered herein.

EXHIBIT D

RULES AND REGULATIONS

Tenant agrees as follows:

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

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

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

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

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

- EXHIBIT 6 -

- EXHIBIT 6 -

RAPP 000216

01/20/03

14:10

TRIPLE 5 NEV DEV CORP - 7988079

NO. 002

002

TRIPLE FIVE NEVADA DEVELOPMENT CORPORATION

9510 W. SAHARA AVENUE, SUITE 200
LAS VEGAS, NEVADA 89117

TELEPHONE (702) 242-6937

FACSIMILE (702) 242-6941

January 20, 2003

VIA U.S. MAIL & FACSIMILE (702-798-8079)

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

Re: *Higco/Three Angry Wives - Boca Park Pad J*

Dear Mr. Higgins:

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

If you have any questions, please do not hesitate to contact me.

Sincerely,


John M. McCall
Manager, Corporate Counsel

JMM/js

cc: Jean Marc Joveidi

BPP000017

RAPP 000217

01/20/03

15:02

TRIPLE S NEW DEV CORP + 7988079

NO. 004 003

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

(c) Term of Lease:

Sections 2.01 and 2.04

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

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

(d) Commencement Date:

Section 2.02

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

(e) Minimum Monthly Rent:

Section 3.01

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

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

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

01/20/03

15:02

TRIPLE 5 NEV DEV CORP → 7988879

NO. 804

004

- (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.

01/20/03

15:02

TRIPLE 5 NEW DEV CORP → 7988079

NO. 804 005

(c) **Exclusive Use**

Section 7.17

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

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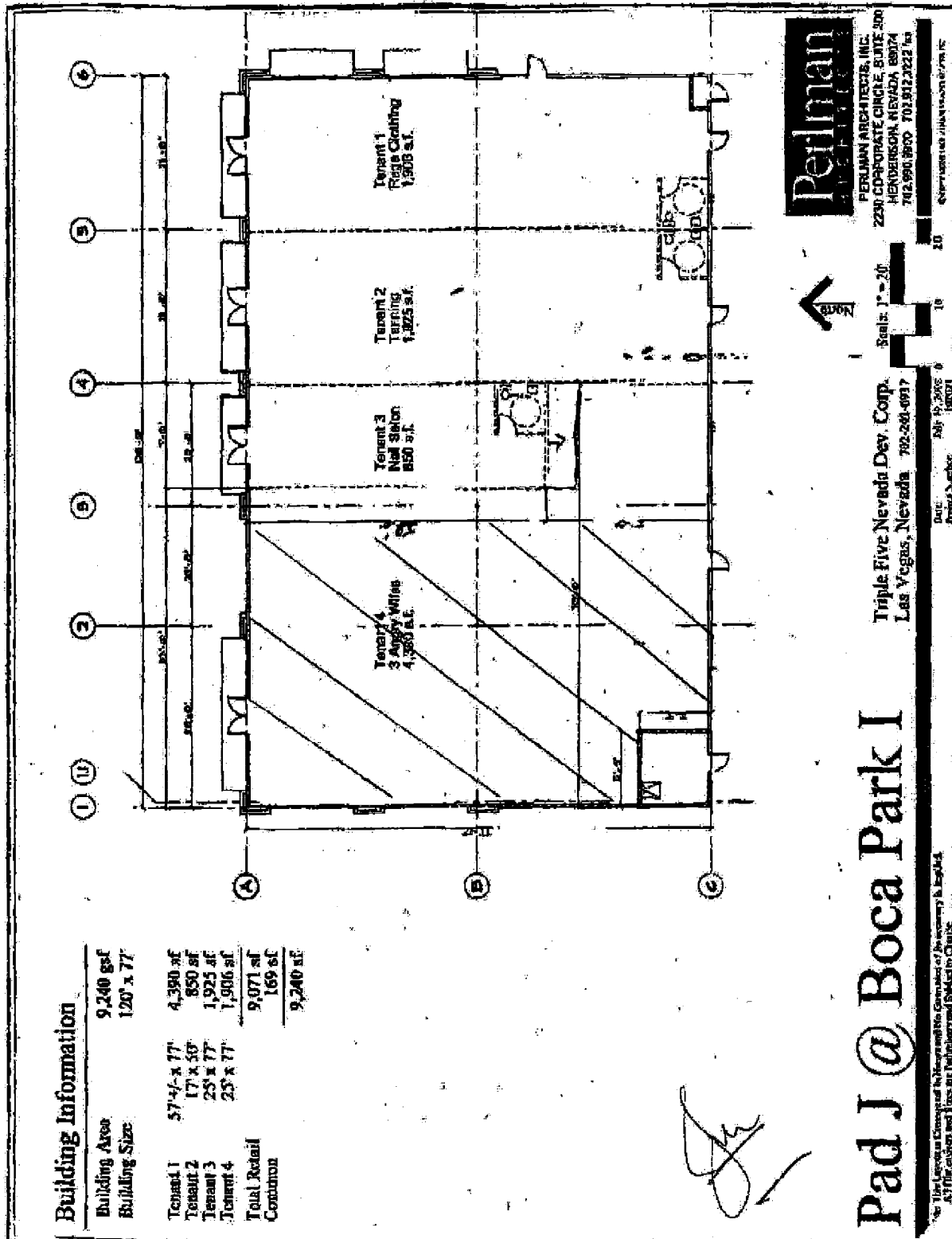
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Execution Version

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01/20/03 15:02 TRIPLE 5 NEV DEV CORP + 7988079

NO.004 006



BPP000021

01/20/03 15:02 TRIPLE 5 NEV DEV CORP * 7988079

NO.804 001

TRIPLE FIVE NEVADA DEVELOPMENT CORPORATION

FACSIMILE TRANSMITTAL SHEET

TO: SEAN HIGGINS

FROM: JOHN M. MCCALL

FAX NUMBER:

DATE: JANUARY 20, 2003

702-798-8079

COMPANY:

TOTAL NO. OF PAGES INCLUDING COVER: 6

HIGCO

PHONE NUMBER:

SENDER'S REFERENCE NUMBER:

RE: THREE ANGRY WIVES - BOCA PARK PAD J

YOUR REFERENCE NUMBER:

☐ URGENT☐ FOR REVIEW☐ PLEASE COMMENT☐ PLEASE REPLY

NOTES/COMMENTS:

Originals to follow via U.S. mail. Please initial ^{from} and return to Triple Five, or we will pick them up via messenger.

THIS TRANSMISSION IS CONFIDENTIAL AND INTENDED ONLY FOR THE USE OF THE INDIVIDUAL TO WHOM IT IS ADDRESSED.

IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE CALL US IMMEDIATELY AND MAIL IT TO THE ADDRESS BELOW. THANK YOU.

IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED.

TRIPLE FIVE NEVADA DEVELOPMENT CORPORATION * 9510 WEST
SAHARA AVENUE, SUITE 200 * LAS VEGAS, NEVADA 89117
PHONE: (702) 242-6937 * FAX: (702) 242-6941

BPP000022
RAPP 000222

01/20/03

14:10

TRIPLE 5 NEV DEV CORP → 7988079

NO. 802 001

TRIPLE FIVE NEVADA DEVELOPMENT CORPORATION

FACSIMILE TRANSMITTAL SHEET

TO: SEAN HIGGINS

FROM: JOHN M. MCCALL

FAX NUMBER:

702-798-8079

DATE: JANUARY 20, 2003

COMPANY:

HIGCO

TOTAL NO. OF PAGES INCLUDING COVER: 2

PHONE NUMBER:

SENDER'S REFERENCE NUMBER:

RE: THREE ANGRY WIVES - BOCA PARK PAD J

YOUR REFERENCE NUMBER:

☐ URGENT☐ FOR REVIEW☐ PLEASE COMMENT☐ PLEASE REPLY

NOTES/COMMENTS:

THIS TRANSMISSION IS CONFIDENTIAL AND INTENDED ONLY FOR THE USE OF THE
INDIVIDUAL TO WHOM IT IS ADDRESSED.

IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE CALL US IMMEDIATELY AND
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NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS
STRICTLY PROHIBITED.

TRIPLE FIVE NEVADA DEVELOPMENT CORPORATION • 9510 WEST
SAHARA AVENUE, SUITE 200 • LAS VEGAS, NEVADA 89117
PHONE: (702) 242-6937 • FAX: (702) 242-6941

BPP000023
RAPP 000223

- EXHIBIT 7 -

- EXHIBIT 7 -

RAPP 000224



March 21, 2012

VIA U.S. MAIL (Certified) & FACSIMILE

Boca Park Parcels, LLCs
Attn: Leasing Department
9510 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Facsimile: (702) 242-6941

Re: Notice of Landlord's Violation of Exclusivity Provision in Lease

Dear Leasing Department:

This firm represents Higco, Inc. ("Tenant") with respect to enforcement of its rights under the lease entered into with Boca Park Parcels, LLC ("Landlord"), dated November 5, 2002 ("Lease"). It has come to our attention that Landlord may be in violation of a Fundamental Lease Provision, as defined pursuant to the terms of the Lease.

The Lease contains an Exclusivity Provision as follows:

(o) Exclusive Use

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").

(See Lease, Fundamental Lease Provisions, (o)).

This provision grants Tenant the right to lease space in a shopping center (Boca Park Phase I) whereby it is the sole tenant (other than Vons, currently) that offers gaming. In Nevada, restrictive covenants such as this are strictly construed, and will be enforced as written. *Nevada Food King, Inc. v. Reno Press Brick Co.*, 81 Nev. 135, 138, 400 P.2d 140, 142 (1965). Despite the Exclusive Use restriction, we are informed and believe that Hotel California, located at 1050 South Rampart Boulevard and within Boca Park Phase I, was recently approved for gaming by the Nevada Gaming Commission and either has installed gaming on the premises or intends to do so shortly.¹

¹ We are informed and believe that Landlord may have sold the parcel upon which Hotel California sits without the appropriate deed restriction excluding the use of gaming. If true, such act is a breach of the Covenant of Good Faith and Fair Dealing, and devalues the Lease entered into by Tenant, rendering the bargained-for Exclusivity Provision with Landlord meaningless.

3960 HOWARD HUGHES PARKWAY, NINTH FLOOR | LAS VEGAS, NEVADA 89169
T: 702.796.5555 | F: 702.369.2666
gordonsilver.com

102630-001/1479951

LAS VEGAS | PHOENIX | WASHINGTON, D.C.

RAPP 000225

Gordon Silver

Attorneys and Counselors at Law

March 21, 2012

Page 2

Moreover, we are informed and believe that Landlord has entered into a lease with a new tenant that would expressly violate Tenant's rights to provide exclusive gaming in the Boca Park Phase I shopping center. Indeed, we understand that Wahoo's Fish Taco, the referenced tenant, has already applied for a gaming permit, with the intent to open in Boca Park Phase I with gaming.

These two events are unambiguous violations of the Exclusivity Provision contained within the Lease. If Hotel California and Wahoo's Fish Taco operate gaming facilities in Boca Park Phase I, Tenant's revenue is likely to be immediately and substantially impacted. Tenant originally entered into the Lease in large part because of the Exclusivity Provision it had been granted.

It is worth noting that Landlord's representatives have recently claimed that Landlord has in its possession a different version of the Lease that, conveniently, differs only with respect to the language contained in Section (o). Landlord's version contains a grant of exclusivity only with respect to the tavern business, and not with respect to gaming. Tenant, however, is in possession of the original, fully executed Lease, which contains the Section (o) referenced above. Section (o) was so important to Tenant that page 3 of the Lease, which solely contains Section (o), was initialed by both parties.

We trust that Landlord will immediately abandon its position that no gaming exclusivity provision exists, given Tenant's possession of the original, fully executed version that grants exclusivity with respect to gaming. Otherwise, Landlord will be liable for fraud; in addition to contractual damages arising from its failure to adhere to the Exclusivity Provision contained within the Lease.

Accordingly, Landlord is hereby noticed that the offering by Hotel California and Wahoo's Fish Taco of gaming within their respective businesses constitutes a Default by Landlord under the terms of the Lease. (See Lease, Section 30.)

If such Default is not cured under the terms of the Lease, Tenant is prepared to seek a temporary, preliminary and permanent injunction against the opening of Wahoo's Fish Taco with gaming. It is well recognized that acts committed without just cause which unreasonably interfere with a business or destroy its credit or profits, do an irreparable injury and thus authorize issuance of an injunction. *Sobol v. Capital Mgmt.*, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986); *Ecolab v. Paolo*, 753 F.Supp. 1100, 1110 (E.D.N.Y. 1991); *Guion v. Terra Mktg. of Nev. Inc.*, 90 Nev. 237, 240, 523 P. 2d 847 (1974) ("Equity will, however, restrain tortuous acts where it is essential to preserve a business... interest.") Put another way, the right to carry on a lawful business without obstruction is a property right. Interference with that business without

Gordon Silver

Attorneys and Counselors at Law

March 21, 2012

Page 3

good cause or excuse may do irreparable injury to the business and cause the court to issue an injunction. *Guion v. Terra Mktg. of Nev., Inc.*, 90 Nev. 237, 240, 523 P.2d 847, 848 (1974).

With respect to Hotel California's gaming facilities, Tenant is prepared to seek damages from Landlord for the loss of revenues related to same.

Alternatively, Tenant is willing to discuss an amicable business solution to this dispute that would include an appropriate, and permanent, rental reduction, and possible temporary rental abatement. Nothing in this demand, or in any subsequent discussions or negotiations that may occur, shall be construed as a waiver by Tenant of its rights and remedies under the Lease and applicable law. Tenant expressly reserves all rights to pursue all remedies.

We request a response within five (5) business days of your receipt of this letter. If we do not hear from you within that time frame, we will have no choice but to seek court action.

Sincerely,

GORDON SILVER



ERIC R. OLSEN, ESQ.

FVB/bjd

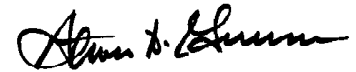
Cc: Legal Department, Triple Five Nevada Development Corporation (Via U.S. Mail, Certified: 9510 W. Sahara Ave., Suite 200, Las Vegas, NV 89117; and Facsimile: (702)242-6941)

Stacy Debevec - stacy.debevec@triplefive.com

John Manning via facsimile (702) 430-5810

Scan T. Higgins - shiggins@gordonsilver.com

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CLERK OF THE COURT

RIS
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. A660548
DEPT. XIII

**SUPPLEMENTAL REPLY IN SUPPORT
OF PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Plaintiff, HIGCO, INC., hereby files its Supplemental Reply in support of Higco's motion for summary judgment against Defendants, on grounds that no material facts are in dispute and Plaintiff is entitled to judgment as to unambiguous language of the Lease, which provides Plaintiff an exclusive use right for tavern and for gaming in Boca Park Phase I.

I.

INTRODUCTION

Having received leave from the Court to conduct discovery, Defendants have filed a supplemental opposition to Higco's Motion for Summary Judgment (the "Motion"), but nothing

1 material has changed. After conducting discovery, two facts are still evident: 1) Higco and
2 Defendants intended to create a lease that granted Higco an exclusive for Boca Park I for tavern
3 and gaming, not just for a tavern; and 2) Defendants executed a lease provision that granted
4 Higco an exclusive for Boca Park I for tavern and for gaming.

5 Defendants do have a new argument, and they attempt to muddy the water by stating that
6 another executed version of the lease exists, but the result here is the same. The Exclusive in
7 effect covers gaming in Boca Park I. Under Defendants theory, and assuming their allegations to
8 be true for this motion only, the parties negotiated an exclusive including gaming, the parties
9 executed a lease with an exclusive term that "left-out" gaming, immediately after "executing"
10 that lease and prior to any performance, Defendants clarified that mistake, by delivering to Higco
11 an initialed document that contained the exclusive term including gaming, which Defendants
12 actually initialed. Higco made its first month's rent and security deposit payment only after that.
13 Despite admitting to negotiating, preparing, signing, and sending the Exclusive term including
14 gaming, Defendants new argument is that the language of the gaming Exclusive was actually an
15 offer to Higco, which Higco never accepted. This argument has no support, even under the facts
16 offered by Defendants.

17 Defendants have no declaration to support this argument, and the documents they provide
18 (while confirming the scope of the Exclusive includes gaming as Higco has claimed) contradict
19 it. If one assumes a version of the Exclusive including tavern only was ever signed, no meeting
20 of the minds occurred, based on the documents. Absent meeting-of-the-minds, Defendants "other
21 lease" was never effective. On Defendants' facts, the parties' immediate abandonment of this
22 other "lease", signing and sending of the "clarified" Exclusive, and subsequent post-dated
23 execution of lease establishes that Defendants other lease was never operative. The only lease
24 that existed between Defendants and Higco created an Exclusive for Boca Park I for tavern and
25 gaming, and there exists no question of material fact that the lease did not contain an Exclusive
26 for both purposes.

27 Mind you, Defendants still argue that the lease is ambiguous and must be construed to
28 eliminate an exclusive for gaming, but this argument, which cannot stand scrutiny, is now

relegated to the back pages of Defendants' Supplement. By its terms, the Exclusive use clarifies any other term in the lease, including ¶ 7.17. Section (o)'s reference to Von's and Long's eliminates any doubt the Exclusive applies to gaming not in a tavern. Further, the parties unambiguous intent was to include an Exclusive use for both gaming and tavern. Therefore, Higco is entitled to summary judgment affirming the clear language of the Lease which grants Plaintiff an exclusive for taverns and gaming in Boca Park Phase I

MEMORANDUM OF POINTS AND AUTHORITIES

II.

RELEVANT PROCEDURE

In July and August 2012, the parties exchanged written discovery. On September 12, 2012, Defendants filed their supplemental opposition, five days after the deadline established by the Court. Defendants' tardiness significantly prejudiced Higco's opportunity to reply to Defendants opposition, especially in light of the fact that one judicial day separates Higco's deadline from the continued hearing.

STATEMENT OF RELEVANT UNDISPUTED MATERIAL FACTS

A. NEGOTIATION OF THE LEASE

Toward the end of 2001, Defendants and Higco met to discuss Higco's interest in obtaining a lease for a 4,700 square foot building, which had not yet been constructed, located in Boca Park Phase I.

On March 14, 2002, Richard Truesdell ("Truesdell") of Cornerstone Company, acting on behalf of Higco, sent a letter to Jean Marc Joveidi ("Joveidi") of Triple Five Nevada Development Corporation ("Triple Five"), Defendants representative (the "First Letter of Intent"). (See Exhibit "1-A").¹ The First Letter of Intent states that it "is proposed to reflect the intention of the parties to enter into and document a business relationship. However, the parties agree[d] that the terms and conditions set forth herein shall not constitute a final or binding agreement until a formal legal document has been prepared and executed by both parties" (the

¹ The First Letter of Intent is a copy of the First Letter of Intent as produced by Defendants.

1 “Parties Intent Clause”). (Id. at pp. 3-4.)(emphasis added)

2 The First Letter of Intent included “fundamental terms and conditions which [Higco]
3 propose[s] be incorporated into a lease document.” Among those terms is:

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

8 Emphasis added. (Id. at p. 2.)

9 Mr. Joveidi acknowledged the First Letter of Intent. Although Joveidi altered and made
10 notes corresponding to several terms, Joveidi did not alter the “First Exclusive Use Clause”
11 above, which included gaming, and the reference to Von’s and Long’s. On or about March 27,
12 2002, Joveidi faxed the First Letter of Intent to Truesdell with his proposed changes.

13 On or about April 1, 2002, Truesdell sent a letter to Mr. Joveidi (the “Second Letter of
14 Intent”). (See Exhibit “1-B”).² The letter contained a Parties Intent Clause indicating that it was
15 revised to reflect the intentions of the parties, but was otherwise identical to the Parties Intent
16 Clause. (Id. at p. 3.) The Second Letter of Intent contained an Exclusive clause that was identical
17 to the First Exclusive Use Clause, i.e. it included gaming. (Id. at p. 2.) Again, Mr. Joveidi made
18 notations on several terms, but did not alter or annotate the Exclusive Use language. On or about
19 April 9, 2002, Mr. Jovcidi faxed Truesdell his acknowledgement of the Second Letter of Intent.
(Id. at p. 1.)

20 Truesdell faxed a letter to Mr. Joveidi (the “Third Letter of Intent”) on or about May 2,
21 2002. (See Exhibit “1-C”).³ The letter contained a Parties Intent Clause that was identical to the
22 First Letter of Intent. (Id. at p. 3.) It included an exclusive use clause term identical to the
23 Exclusive Use Clause, but this time Mr. Joveidi altered the Exclusive use term as follows:

24 Exclusive: Landlord will grant Higco an exclusive for Boca Park I & ~~H~~ for a Tavern
25 and gaming, except for any tenants currently located in the center which
26 allow gaming (i.e. Vons, Longs).

27 ² The Second Letter of Intent is a copy of the Second Letter of Intent as produced by Defendants.

28 ³ The Third Letter of Intent is a copy of the Third Letter of Intent as produced by Defendants.

1 (Id. at p. 2.) In other words, Mr. Joveidi deleted reference to Boca Park II and III, but not to
 2 gaming. Sometime thereafter, Mr. Joveidi returned the letter to Truesdell. This is the Exclusive
 3 language Defendants admit they initialed.

4 On June 27, 2002, John M. McCall ("McCall"), Corporate Counsel for Triple Five, on
 5 behalf of Defendants, sent Higco a letter "enclosing two (2) originals of the Lease and Guaranty .
 6 . . ." (See Exhibit "1-D").⁴ Once signed, Mr. McCall directed Higco to return all originals to
 7 McCall "for countersignature along with the required deposit of" \$31,725.00. (Id.) McCall also
 8 directed Higco not to "date the Lease and Guaranty . . . as Landlord will enter the date they are
 9 fully executed." (Id.)

10 On or about August 1, 2002, Higco faxed Mr. McCall, requesting certain changes to the
 11 lease. Higco included nine pages of an August 1, 2002, lease with certain noted changes. (See
 12 Exhibit "1-E".) That lease also contains the Tavern and Gaming Exclusive Use clause that read
 13 as follows:

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

16 (Id. at p. 3.)⁵ In other words, it contained the same language, referring to gaming, and Von's and
 17 Long's, but no reference to Phase II or Phase III. Higco did not propose changes to the Tavern
 18 and Gaming Exclusive Use clause.

19 On or about September 6, 2002, Higco was sent a letter by Mr. McCall, "enclosing two
 20 (2) originals of the Lease and Guaranty" (See Exhibit "1-F".) Once signed, McCall directed
 21 Higco to return all originals to McCall "for countersignature along with the required deposit of"
 22 \$28,535.00. (Id.) McCall also directed Higco not to "date the Lease and Guaranty . . . as
 23 Landlord will enter the date they are fully executed." (Id.)

24 Defendants seem to claim that this lease was signed, and that this lease includes a
 25

26 ⁴ The electronic location of the lease remained in Defendants possession throughout the negotiation process and still
 27 remains in their exclusive possession. (See RFA)....

28 ⁵ The only difference between the May 2, 2002, Exclusive Use Clause and the June 27, 2002, Exclusive Use Clause
 is the use of Tenant in lieu of "Higco" and "shall" in place of "will"

different Exclusive, simply referring to taverns, not gaming, and not Von's and Long's. Defendants have nothing to support this, but an inference from documents. (The only date on any lease in this case is November 5, 2002.)

On January 20, 2003, McCall faxed Higco a letter that stated in full:

Dear Mr. Higgins:

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.

If you have any questions, please do not hesitate to contact me.

Sincerely,
/s/ John M. McCall

(See Exhibit "3").(emphasis added) Enclosed with the letter were three pages of the lease and a diagram of the leased premises.⁶ Importantly, the letter said "clarify" not "amend"; nor did it say "offer" or anything akin to it. (Id.) The enclosed lease pages included the Tavern and Gaming Exclusive Use clause, the only language for Boca Park I ever reflected in any correspondence before the Court:

Landlord shall grant Tenant 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").

(Id. at p. 4.) Defendants agreed to this language and McCall initialed the lease directly below the Tavern and Gaming Exclusive Use clause, as well as the diagram of the leased premises. (Id. at pp. 4, 5.)⁷ Even assuming Defendants' sequence of events, which requires conjecture, the

⁶ The enclosed document illustrating the leased premise is identical to the document Defendants attach to the "lease" Defendants contend controls this case.

⁷ Higco did not initial the January 20, 2003 fax. Rather, sometime later, the parties executed the entire lease, including the guarantee, which included the Tavern and Gaming Exclusive Use. Both Higco and Defendants' signature on the lease containing the Tavern and Gaming Exclusive Use differ from any other lease. (Compare Supplemental Opposition, at Ex. 5, p. 29 (HIG00030), with Supplemental Opposition, at Ex. 3, p. 29 (BPP000189); Compare Supplemental Opposition, at Ex. 5, p. 31 (HIG00032), with Supplemental Opposition, at Ex. 3, p. 30 (BPP000191).) (For easy comparison, the signature pages of the respective leases and guarantees are attached hereto as Exhibit "2". The "5th" and "November" are also both handwritten and when compared to any other version of the lease, it is apparent that they were also re-written. (Compare Supplemental Opposition, at Ex. 5, p. 2, with Supplemental Opposition, at Ex. 3, p. 2.) It is also undisputed that in both cases Defendants "filled in" the date and month, and that neither lease was fully executed on November 5, 2002. In the case of the Higco Lease, Defendants faxed the lease with date and month already filled-in. (See Ex. 1-F, p. 2.) In the version Defendants contend controls, Mr. McCall directed Higco not to "date the Lease and Guaranty . . . as Landlord will enter the date they are fully executed." (See Ex. 3 (containing a faxed copy of the lease from Defendants with the date filled in).) Therefore, Defendants and Higco executed the lease with the controlling Tavern and Gaming Exclusive Use clause.

evidence does not support any conclusion other than that the Exclusive for tavern only was a mistake which Defendants corrected. Nothing supports the argument this was a new offer, requiring consideration.

On January 30, 2003, Mr. McCall notified Higco that "Concurrently with the execution of the Lease Tenant is required to pay the first month's rent and Security Deposit equal to [\$28,535.00]." (See Exhibit "1-G").⁸ This suggests that the Lease including an Exclusive for gaming was signed in or after January 2003.

B. COMPARISON OF THE RESPECTIVE LEASES

Defendants admit that they have maintained exclusive control of the network pathway in which the lease is maintained. (See Ex. 2-E. at Admission No. 7.) In other words, they controlled the drafts. The controlling lease contains the Tavern and Gaming Exclusive Use clause (the "Higco Lease"). (See Supplemental Opposition, at Ex. 5.) The "Exclusive Use" clause states:

Landlord shall grant Tenant 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").

(See Supplemental Opposition, at Ex. 5, p.2.) Defendants admit that they prepared, initialed, and delivered the Higco clarified Exclusive, and including the language Higco seeks to enforce, to Higco. The Defendants, however, contend that the controlling lease ("Defendants Lease") contains an exclusive use clause addressing only taverns, stating:

Landlord shall grant Tenant an exclusive for Boca Park I for a tavern (the "Exclusive Use").

(hereinafter, the "Defendants Exclusive Use clause"). (See Supplemental Opposition, at Ex. 3, p. 2.) The Defendants Exclusive Use clause is identical to the Tavern and Gaming Exclusive Use clause, except that it excludes the phrase "and gaming, except for any tenants currently located in the center, which allow gaming (i.e. Vons, Longs)". Again, however, Defendants admit preparing, signing, and sending the Tavern and Gaming Exclusive Use Clause. Given the negotiations of this term, how it could have been in the Lease is unexplained, but Defendants

⁸ The evolution of the Exclusive Use clause is illustrated in Table A, attached hereto as Exhibit "2-C."

1 admit it was corrected by them.

2 Both leases also contain certain "Fundamental Lease Provisions," amongst them are
3 sections (e) and (h), which stated that "Tenant, concurrently with the execution hereof, shall
4 deposit with Landlord the sum of [\$13,170.00], which sum shall be applied to the first full
5 month's minimum monthly rent . . ." and a security deposit of \$15,365.00." (Supplemental
6 Opposition, at Ex. 3, §§ (e), (h), (5); Ex. 3, §§ (e), (h), (5).) Higco did not pay the security
7 deposit and first month's rent until on or after January 30, 2003, which was after Defendants
8 initialed the clarified Exclusive and the parties executed the Higco Lease. (See Ex. 1-G; Ex. 1, at
9 ¶10.)

10 III.

11 LEGAL ARGUMENT

12 A. SUMMARY JUDGMENT STANDARD

13 If such a showing is made of the absence of a genuine issue of material fact, then the
14 party opposing summary judgment assumes a burden of production to show the existence of a
15 genuine issue of material fact. See Celotex, 477 U.S. at 331; Wood, 121 Nev. at 732, 121 P.3d at
16 1031; Main v. Stewart, 109 Nev. 721, 726-27, 857 P.2d 755, 758-59 (1993). If the factual
17 context makes the respondent's claim implausible, that party must come forward with more
18 persuasive evidence than would otherwise be necessary to show that there is a genuine issue for
19 trial. Celotex, 477 U.S. at 323-24; Matsushita Elect. Indus. Co. v. Zenith Radio Corp., 475 U.S.
20 574, 586-87 (1986).

21 Summary judgment is necessary and appropriate to "avoid a needless trial when an
22 appropriate showing is made in advance that there is no genuine issue of fact to be tried, and the
23 movant is entitled to judgment as a matter of law." Coray v. Hom, 80 Nev. 39, 41, 389 P.2d 76,
24 77 (1964).

25 Here, Defendants fail to meet their burden of showing a genuine issue of fact. At the
26 very least, Defendants' argument requires that the Court in the "factual context" of this case,
27 define the word "clarifying" as meaning "offering to amend." This assertion is not supported in
28 any document, and no declaration has been offered by one with personal knowledge to suggest it.

B. BASED ON UNDISPUTED FACTS, THE OPERATIVE LEASE GRANTS HIGCO AN EXCLUSIVE USE IN BOTH TAVERN AND GAMING.

The undisputed admissible material facts before the Court demonstrate that the parties contemplated and agreed that Higco would have an “exclusive for Boca Park I for a tavern and gaming” The facts further illustrate that prior to any performance under the agreement Defendants executed an agreement granting Higco an “exclusive for Boca Park I for a tavern and gaming”

“Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting of the minds, and consideration.” May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). “A meeting of the minds exists when the parties have agreed upon the contract's essential terms.” Certified Fire Prot. Inc. v. Precision Constr., --Nev.--, --, 283 P.3d 250, 255 (2012) (quoting Roth v. Scott, 112 Nev. 1078, 1083, 921 P.2d 1262, 1265 (1996)). Which terms are essential “depends on the agreement and its context and also on the subsequent conduct of the parties, including the dispute which arises and the remedy sought.” Id. (quoting Restatement (Second) of Contracts § 131 cmt. g (1981)). “When essential terms such as these have yet to be agreed upon by the parties, a contract cannot be formed.” Id. (quoting Nevada Power Co. v. Public Util. Comm'n, 122 Nev. 821, 839–40, 138 P.3d 486, 498–99 (2006)).

1. The only agreement ever contemplated by the parties included an exclusive for tavern and gaming.

Defendants present documents showing that Higco and Defendants negotiated the terms of a lease agreement for several months, but no evidence suggesting they settled on an Exclusive use for a tavern only. (See Supplemental Opposition, at p. 4.) The course of negotiations and subsequent clarification clearly demonstrates that the parties contemplated and intended to execute a lease that contained an exclusive use for both tavern and gaming. Therefore, there could be no meeting of the minds unless the lease included an exclusive for tavern and gaming.

Between March 2002 and November 2002, Higco and Defendants contemplated “9” separate documents that contained lease terms or were drafts of the lease. (See Ex. 3.) Each of those 9 agreements contained one of two Exclusive Use Provisions:

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

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

8 (See id.) The parties expressly agreed that their intent was to enter into a contract that included
9 these exclusive use terms. (See Exs. 1-A, at p.3; 1-B, at p.3; 1-C, at p.3.) The parties agreed on
10 the Tavern and Gaming Exclusive Use clause, that also included the defining reference to Von's
11 an Long's. This provision simply bolstered ¶ 7.17 of the Lease, which said that no competing
12 business would be allowed in Phase I. Gaming competes with gaming.

13 Defendants argue that somewhere along the way the Exclusive for gaming fell out of the
14 agreement, without explanation, when they executed the lease. Defendants, however, kept
15 detailed records documenting each individual change to the lease, including redline versions, and
16 have produced no evidence that the parties ever contemplated or agreed to a lease that did not
17 include the Exclusive for tavern and gaming. (See Ex. 3.)

18 Even assuming that Defendants' timeline is correct (for this Motion only), the evidence
19 overwhelmingly demonstrates that the parties' intent was to have an Exclusive Use that included
20 gaming. As recently reaffirmed by the Nevada Supreme Court, an analysis for a "meeting of the
21 minds" considers the subsequent conduct of the parties. See Certified Fire Prot. Inc., --Nev. at --,
22 283 P.3d at 255. Assuming Defendants' facts, two months after the parties allegedly executed the
23 lease, Defendants attorney clarified the lease, including the Tavern and Gaming Exclusive Use,
24 the very term the parties had negotiated for nine-months prior; the language to which Defendants
25 continually acquiesced. Notably, he did not amend the lease or use the words, amend or offer.

26 Defendants indicate that the clarified lease sent in January 2003, was dated on November
27 5, 2002, again evidencing that Defendants intended the clarification of "Defendants Lease," not
28 amendment. (See Supp. Opp., at Ex. 5, at p. 1.) Moreover, Higco's rent obligations under the
lease were due concurrent with the execution of the lease. Higco's rent obligations came due
only on or after January 30, 2003, when the parties executed the clarification. (See Exhibit 1-G.)

1 The evidence shows that the parties always intended that the Lease include the Tavern
 2 and Gaming Exclusive Use. According to Defendants' timeline, upon discovering the absence of
 3 the provision, the parties immediately, and without additional negotiations or discussion,
 4 clarified the provision to the lease that Defendants claim was somehow signed. There exists no
 5 question of material fact, such that as a matter of law, Higco and Defendants could not have
 6 formed a meeting of the minds until the lease contained an exclusive use provision for both
 7 tavern and gaming. This was understood by Mr. McCall who "clarified" the language.

8 **2. Defendants signing of the clarified clause binds them.**

9 "It is immaterial that one party fails to sign a written contract, if the agreement is signed
 10 by the other party." U.S. Juice Corp. V. JMF Group, LLC, 2006 WL 2022992, at *3 (D. Nev.,
 11 July 18, 2006) (citing J.A. Jones Constr. Co. v. Plumbers and Pipefitters Local 598, 568 F.2d
 12 1292, 1295 (9th Cir.1978)). The contract binds the non-signing party if (a) he accepts it and (b)
 13 both parties act in reliance on it as a valid contract. Id. The term "accepts" is defined as:
 14 "Conduct which imports acceptance is acceptance or assent, in the view of the law, whatever
 15 may have been the actual state of mind of the party." N.L.R.B. v. Local 825, Intern. Union of
 16 Operating Engineers, AFL-CIO, 315 F.2d 695, 699 (3rd Cir.1963).

17 By Defendants own argument, the only Lease that the parties could operate under is a
 18 Lease that includes an Exclusive use for gaming. Yet, Defendants argue that the clarification is
 19 not binding, because 1) it was amendment, 2) Defendants do not possess a copy of an executed
 20 agreement, and 3) Higco did not provide additional consideration for the amendment. However,
 21 the idea that the clarification was an amendment is wholly made up by counsel. The only
 22 evidence before the Court is that the gaming Exclusive was always to be included, and Mr.
 23 McCall's letter and Mr. Joveidi's initials confirmed it. This was not an offer. Upon signing the
 24 clarification, Defendants became bound by its terms.

25 Defendants contend that Higco did not accept the offered amendment because Defendant
 26 did not return a "counter-initialed page," but failure to initial this page is irrelevant, because the
 27 language was a "clarification", not an amendment. That from Mr. McCall's own letter, is the
 28 only evidence. As for Mr. Massing, he was not involved in the negotiation of the lease and

1 claims no personal knowledge of the events. (See Ex. 1, at ¶11.)⁹

2 Furthermore, both parties acted in reliance on the clarification. Higco was obligated to
3 make certain payments to Defendants when the parties executed the lease. As evidenced from the
4 record, Defendants did not demand payment and Higco did not make payments until after
5 January 30, 2002. Because Higco's obligations were concurrent with the lease, no lease could be
6 effective until Higco issued a security deposit and paid the first month's rent. From the document
7 it appears that lease was executed in January 2003. Therefore, there is no doubt that Higco and
8 Defendants manifested intent to enter into the Higco Lease including the clarified Exclusive, and
9 Higco is entitled to summary judgment on this issue, even under Defendants' facts.

10 **3. Defendants' negligence cannot establish Defendants grounds for estoppel.**

11 Defendants argue that the Tavern and Gaming Exclusive Use provision cannot be
12 controlling because Higco is estopped from asserting it. Defendants' only evidence is that they
13 claim not to have a copy of an executed lease containing the gaming Exclusive. Higco cannot
14 prove a negative, and the assertion does not prove anything. Even if true, this theory is premised
15 on Defendants professed negligence in recognizing that Defendants' agents executed an
16 agreement with Higco that granted Higco an Exclusive use; the Exclusive that had been
17 negotiated and agreed all along.

18 Defendants have produced nine separate agreements which include a form of the Tavern
19 and Gaming Exclusive Use. (See Ex. 3.) Moreover, Defendants do not contend that they have no
20 executed copy of the Higco Lease. Rather, Defendants argue that they did not have a copy of the
21 Higco Lease, with gaming Exclusive, that Higco executed. In any case, the evidence that
22 Defendants were aware of the execution is overwhelming. For one thing, the Defendants issued
23 Higco a letter that indicates rent was due on the date of the Higco Leases execution, January 30,
24 2003. (See Ex. 1-G.) Even if true, Higco had no reason to believe that Defendants were relying

25
26 ⁹ A simple comparison of the "Higco Lease" and the "Defendants Lease" reveals that the signatures on both leases
27 were made at different times. (See Ex. 3.) That Higco did not initial the "fax" is immaterial. Moreover, Higco's
28 subsequent execution of the hard copy of the Higco Lease, in whole, which Defendants counter-signed, is proof
positive that Higco accepted the Higco Lease. In fact, Defendant and Higco fully executed the lease.

1 on an allegedly unsigned page. Estoppel fails.

2 While it is unfortunate that Defendants breached the Higco Lease, any fault is that of
3 Defendants.

4 **4. The Exclusive is not ambiguous.**

5 The Court allowed Defendants a supplemental opposition in order to oppose summary
6 judgment based on any evidence coming to light through NRCP 56(f) discovery. Defendants
7 have demoted but nonetheless reargued their position that the contract is ambiguous. Plainly,
8 Defendants' opposition is not based on new discovery, but instead rehashes an old argument. No
9 discovery was done by Defendants concerning the meaning of the language, and no declaration
10 has been offered to suggest that the Exclusive does not include all gaming in Phase I, aside from
11 Von's.

12 As a matter of contract construction, the Court must construe a contract so as to give all
13 of its terms meaning. See Restatement of Contracts, § 236(a). The Nevada Supreme Court holds
14 that "a specific provision will qualify the meaning of a general provision." Shelton v. Shelton,
15 119 Nev. 492, 497, 78 P.3d 507, 510 (2003). Only when they directly conflict and such
16 reconciliation is not possible must the court make a decision as to whether or not there is an
17 ambiguity, or one provision controls over another.

18 Section 7.17 of the Higco Lease states, in pertinent part, that:

19 . . . Landlord shall not lease or operate within the Center any other directly
20 competing business whose primary use is exclusively the Exclusive Use set forth
21 in Lease Section (o).
(Supplemental Opposition, at Ex. 5, at §7.17.)

22 Subsection (o), as discussed above states:

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

26 (Supplemental Opposition, at Ex. 5, at p.3.)

27 In this case, the two provisions brought into issue are not only consistent with one
28 another, because Lease Section (o) provides specificity for Section 7.17, but the broader
provision actually references that the primary use is set forth in the more specific paragraph,

1 Lease Section (o). Standing on its own, ¶7.17 prohibits a competing business. One cannot truly
2 question that gaming competes with gaming. Beyond that, Subsection (o) spells out that the
3 gaming is a competing use. The competing use cannot be limited to taverns because of the
4 clause that follows. Defendants admit Von's is not a tavern; Defendants admit Long's was not a
5 tavern.

6 Furthermore, the course of lease negotiations acknowledged by Defendants illustrate that
7 the parties contemplated the scope of the Exclusive use clause. There were no less than nine-
8 expressions of intent to incorporate Section (o) into the lease. All of them include gaming.
9 Assuming Defendants' facts, when Section (o) was somehow mistakenly altered, the parties
10 immediately sought to clarify and reintroduce Section (o) as negotiated. Because, Section 7.17 is
11 directly qualified by Section (o), and because Section (o) played an integral part in the formation
12 of the lease, the Court must consider Section (o) to be a material and controlling term, such that
13 the Exclusive Use stated in Section 7.17 cannot be considered absent the Exclusive Use
14 specifically enumerated in the Section (o). Thus, Higco is entitled to summary judgment in its
15 favor.

16 C. COUNTERMOTION FOR SUMMARY JUDGMENT

17 In an apparent move to have the last word, Defendants themselves move for summary
18 judgment. As Defendants are aware, the Court requested Defendants supplemental opposition by
19 September 7, 2012, and Higco's Supplemental Reply by September 20, 2012, with a hearing on
20 the matter scheduled for September 24, 2012. Defendants filed their supplemental opposition on
21 September 12, 2012, five days after the Court's deadline, severely prejudicing Higco's ability to
22 adequately respond.

23 To boot, Defendants seemingly request that the Court decide Defendants Motion for
24 Summary Judgment, filed September 12, 2012, at the September 25, 2012 hearing. Defendants
25 request must be denied as procedurally improper. Further, Defendants' Motion for Summary
26 Judgment motion should be heard in the normal course. The "motion" must be denied, but Higco
27 will respond in kind with a separate opposition, if the Court instructs.

28 . . .

IV.

CONCLUSION

Defendants raise no genuine issue of fact. Even if one accepts their version, the Defendants are bound by the Exclusive Use including gaming, which they negotiated, prepared, signed, and delivered to Higco by their own admission. Even accepting Defendants' timeline for this motion, although unsupported by evidence, the Defendants are bound by the Exclusive including gaming. Based on the foregoing, Higco respectfully requests that Plaintiffs Motion for Summary Judgment be granted, and the Court declare that under the controlling lease, Higco has an exclusive for Boca Park I for tavern and gaming.

Dated this 25th day of September, 2012.

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

RAPP 000243

DECLARATION OF SEAN T. HIGGINS, ESQ. IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

The undersigned, Sean T. Higgins, Esq. hereby states as follows:

1. I am over the age of 18 and am mentally competent. I have personal knowledge of the facts stated herein, except where stated upon information and belief, and as to facts stated upon information and belief, I am informed of those facts and believe them to be true. If called upon to testify as to the matters herein, I could and would do so. I make this declaration in support of the Plaintiff's Motion for Summary Judgment.

2. I am a shareholder and President of Higco Inc., the Plaintiff. I am also an attorney licensed to practice law in the State of Nevada.

3. On March 14, 2002, Richard Truesdell ("Truesdell") of Cornerstone Company, acting on behalf of Higco, sent a letter to Jean Marc Joveidi ("Joveidi") of Triple Five Nevada Development Corporation ("Triple Five"), Defendants representative (the "First Letter of Intent"). Attached hereto as Exhibit "1-A" is a true and correct copy of the First Letter of Intent.

4. On or about April 1, 2002, Truesdell sent a letter to Joveidi (the "Second Letter of Intent"). Attached hereto as Exhibit "1-B" is a true and correct copy of the Second Letter of Intent.

5. On or about May 2, 2002, Truesdell faxed a letter to Joveidi (the "Third Letter of Intent"). Attached hereto as Exhibit "1-C" is a true and correct copy of the Third Letter of Intent.

6. On June 27, 2002, John M. McCall ("McCall"), Corporate Counsel for Triple Five, on behalf of Defendants, sent me a letter "enclosing two (2) originals of the Lease and Guaranty" Attached hereto as Exhibit "1-D" is a true and correct copy of the letter I received on June 27, 2002.

7. On or about August 1, 2002, I faxed McCall, requesting certain changes to the lease. I included nine pages of an August 1, 2002, lease with certain noted changes. Attached hereto as Exhibit "1-E" is a true and correct copy of the August 1, 2002, letter I sent.

8. On or about September 6, 2002, Higco received a letter from McCall, "enclosing two (2) originals of the Lease and Guaranty" Attached hereto as Exhibit "1-F" is a true and

1 correct copy of the cover letter I received on September 6, 2002.

2 9. On January 30, 2003, McCall notified me by letter that “[c]oncurrently with the
3 execution of the Lease Tenant is required to pay the first month’s rent and Security Deposit equal
4 to [\$28,535.00].” Attached hereto as Exhibit “1-G” is a true and correct copy of the letter I
5 received on January 30, 2003.

6 10. Higco did not tender to Defendants’ the first month’s rent or security deposit until
7 after McCall’s January 30, 2003, letter.

8 11. John Massing did not participate in the negotiation of or subsequent signing of the
9 lease.

10 I declare under penalty of perjury under the laws of the State of Nevada that the
11 foregoing is true and correct.

12 Dated this 20th day of September, 2012.

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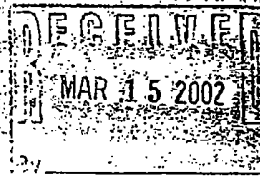
EXHIBIT 1-A

RAPP 000246



Cornerstone Company

Commercial Real Estate Services



March 14, 2002

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

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

Dear Mr. Joveidi:

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

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

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

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

Dimensions: To be provided (see attached plan).

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

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

Possession: Upon completion of Landlord's work.

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

201 Las Vegas Blvd. South, Suite 250
Las Vegas, Nevada 89101-5725
(702) 383-3033 • FAX (702) 383-8576

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Page 2 of 3

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

Signage:

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

Use:

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

Liquor License:

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

Exclusive:

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

**Real Estate
Commission:**

\$3 P.S.F.

To be paid by Landlord in the following manner:

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

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

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Boca Park
March 14, 2002
Page 3 of 3

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

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

Sincerely,



Richard W. Truesdell
President/Broker

cc. Sean Higgins
Kevin Higgins

Acknowledged this _____ day of, 2002.

LANDLORD:

By: Jean Hane Joleidi
Title: Executive Vice President

Acknowledged this _____ day of, 2002.

TENANT:

By: _____
Title: _____

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RAPP 000249

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Boca Park
March 14, 2002
Page 3 of 3

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

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

Sincerely,

Richard W. Truesdell
President/Broker

cc. Sean Higgins
Kevin Higgins

Acknowledged this _____ day of, 2002.

LANDLORD:

By: _____

Title: _____

Acknowledged this 14th ^{March} day of, 2002.

TENANT:

By: Sean J. Higgins

Title: President

MAR-14-2002 05:09PM TEL)

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RAPP 000250

EXHIBIT 1-B

RAPP 000251