

IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT IN AND FOR
ORANGE COUNTY, FLORIDA

CASE NO.:

LUMA ON PARK, LLC, a Florida
limited liability company,

Plaintiff,

v.

WILLIAM T. BATTAGLIA, an individual,
and FOUNDRY COMMERCIAL, LLC, a
Florida limited liability company,

Defendants.

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF
AND DEMAND FOR JURY TRIAL

Plaintiff LUMA ON PARK, LLC, a Florida limited liability company (“Luma”), by counsel, hereby files its Complaint for Damages and Injunctive Relief against WILLIAM T. BATTAGLIA, an individual (“Bill Battaglia”), and FOUNDRY COMMERCIAL, LLC, a Florida limited liability company (“Foundry”), and alleges as follows:

INTRODUCTION

1. This case arises out of Bill Battaglia’s improper attempt to use Luma, a fine dining institution on Winter Park’s acclaimed Park Avenue for 15 years, as a an unsuspecting pawn in his diabolical plan to inflict financial pain and suffering upon his family members, with whom he is tied through a multitude of family companies and trusts as detailed in in Orange County Circuit Court Case No.: 2020-CA-006176O, styled *Robert E. Battaglia, individually, and as Co-Trustee v. William P. Battaglia, individually, and as Co-Trustee, et. al.* As will be detailed herein, in addition to being a pawn, Luma was the target of Bill Battaglia’s efforts to deem himself

the “winner” in negotiations with Luma for the renewal option and in the aftermath of the catastrophic COVID-19 global pandemic.

2. In so doing, Bill Battaglia violated the Florida Deceptive and Unfair Trade Practices Act (Fla. Stat. §501, *et seq.*) (“FDUTPA”) and tortiously interfered with Luma’s advantageous contract with Landlord, causing substantial damage to Luma. In addition, Bill Battaglia conspired with Foundry and others to tortuously interfere with Luma’s mutually-beneficial and long-term relationship with Landlord, with Foundry committing overt acts in furtherance of the conspiracy, and with harm befalling Luma as a result of the conspiracy.

JURISDICTION AND VENUE

3. Luma is a Florida limited liability company who leases property located at 290 South Park Avenue, Winter Park, Orange County, Florida (“Premises”), from BFC Park Avenue, LLC, as successor in interest to 250 Park Avenue Trustee, Inc. (“Landlord”).

4. Bill Battaglia is an individual who resides in Orange County, Florida, and participates in the management of land holdings and related operations with his brother, Robert Battaglia, including Landlord. Both Bill Battaglia and his brother Robert Battaglia are officers of Landlord.

5. Foundry is a Florida limited liability company who manages commercial properties throughout Orange County, Florida, and, at all times material to the claim against it, held itself out as managing the Premises on behalf of Landlord.

6. This is an action for declaratory and injunctive relief and damages expected to exceed \$5,000,000.00.

7. Venue is appropriate in this Court, as the causes of action accrued in Orange County, Florida, pursuant to Section 47.011, FLA. STAT.

8. All conditions precedent to maintaining this action have been performed, waived, or otherwise excused by law.

ALLEGATIONS GIVING RISE TO ALL COUNTS

9. More than fifteen (15) years ago, Landlord and Luma entered into a Lease Agreement (“Lease”) for the Premises, a piece of commercial property located on one of the busiest corners of Winter Park’s revered Park Avenue. A true and correct copy of the Lease is attached hereto as Exhibit “A.”

10. Landlord and Luma thereafter entered into a Final and Binding Mediated Settlement Agreement, a true and correct copy of which is attached hereto as Exhibit “B.”

11. Luma experienced astonishing success over the years as a fine dining establishment, becoming an acclaimed institution on Winter Park’s famed Park Avenue.

12. Over the fifteen (15) years of its operation at the Premises, Luma received many awards and accolades including, but not limited to:

- 2009-2019 Florida Trend Award
- 2011-2016 AAA Four Diamond Award
- 2006 Orlando Magazine Dining Awards, Best New Restaurant
- 2006 Florida Magazine Foodie Awards, Best American Critic’s Choice
- 2007 Orlando Magazine Dining Awards, Best Place to Take Company
- 2007 Florida Magazine Foodie Awards, Best American Critic’s Choice
- 2008 Orlando Home & Leisure Magazine Silver Spoon Award, Emerging Chefs, Brandon McGlamery, Luma on Park
- 2008 Orlando Home & Leisure Magazine Silver Spoon Award, Chef’s Table
- 2009 Orlando Magazine Dining Awards, Best Wine List
- 2009 Orlando Home & Leisure Magazine Silver Spoon Award, Best Upscale Casual Restaurant
- 2010 Orlando Magazine Dining Awards, Best Restaurant
- 2010 Orlando Home & Leisure Magazine Silver Spoon Award, Best Upscale Casual Restaurant
- 2010 Orlando Home & Leisure Magazine Silver Spoon Award, Best Chef, Brandon McGlamery, Luma on Park
- 2011 Taste of Winter Park, Best Dessert
- 2012 Orlando Magazine Dining Awards, Best Celebrity Spotting

- 2012 Orlando Magazine Dining Awards, Best Place to Celebrate
- 2013 James Beard Award Nominee; Brandon McGlamery, Luma on Park
- 2013 Orlando Magazine Dining Awards, Best Wine List
- 2013 Orlando Magazine Dining Awards, Best Place for Cocktails
- 2013 Orlando Magazine Dining Awards, Best Celebrity Spotting
- 2014 Orlando Magazine Dining Awards, Best Wine List
- 2014 Orlando Magazine Dining Awards, Best Celebrity Spotting
- 2015 Orlando Magazine Dining Awards, Best Wine List
- 2015 Orlando Magazine Dining Awards, Best Celebrity Spotting
- 2016 James Beard Award Nominee; Brandon McGlamery, Luma on Park
- 2017 Taste of Winter Park, Best Beverage
- 2018 Taste of Winter Park, Best Appetizer/Side Dish

13. In addition to the fifteen (15) year term, the Lease had an option for Luma to renew for two (2) additional five (5) year terms under periods that were specified in the Lease.

14. Over time, Luma built substantial goodwill through its commitment to its customers and the community as a whole. The Luma brand became extraordinarily valuable.

15. Luma was also a model tenant of Landlord, never failing to timely make a rent payment that was due and owing.

16. Knowing that its opportunity and right to renew the Lease was upcoming, in early 2017, Luma contacted Landlord to commence discussions for the renewal. Luma planned to invest substantial sums of money to uplift Luma.

17. At the time, Landlord was being managed by Battaglia Group Management, LLC (“Battaglia Management”), specifically, Daniel Butts, the son-in-law of Bill Battaglia.

18. Both Bill Battaglia and Robert Battaglia were and are officers and principals of Battaglia Management.

19. At the time these discussions commenced, Landlord was fully supportive of Luma renewing the Lease, as it was a mutually beneficial relationship that allowed Landlord financial rewards, as well as the benefits of the goodwill Luma had created in the community.

20. Luma and Landlord’s negotiations stalled for nearly two (2) years, with no proposal

for renewal rates ever being provided to Luma by Landlord.

21. Robert Battaglia, an officer of Landlord and principal of Battaglia Management, was very interested in finalizing a renewal with Luma because of the obvious value of the relationship.

22. However, unbeknownst to Luma, Landlord was impacted by internal turmoil amongst the Battaglia family members.

23. The Battaglia family turmoil stemmed from the acts of Bill Battaglia, which created a completely dysfunctional environment relating to the Battaglia family assets, including the Lease with Luma.

24. Over the years, Bill Battaglia developed an excessive need to solely control every aspect of the Battaglia family holdings while forming openly antagonistic relationships with his family members.

25. Bill Battaglia's volatile and unpredictable behavior related to the Battaglia family holdings was observed by his family and others around him dating back to at least 2017 and his behavior worsened over time.

26. Examples of the physical and emotional maladies he suffered include: (a) failing to timely review critical business documents because he was mentally paralyzed, (b) failing to make commercially reasonable decisions regarding the Battaglia family holdings because of his mindset that every decision was "all about him," and (c) refusing to execute transaction documents as required without pressure, coaching and coddling from his family and others around him.

27. The family struggles worsened and led Daniel Butts, who was seemingly being groomed to run the Battaglia family holdings, to exit Battaglia Management in early 2019, without ever making a proposal to Luma.

28. At the time, Daniel Butts assured Luma that his departure would not impact negotiations and that Landlord's proposal for the renewal was imminent.

29. Daniel Butts thereafter worked for Foundry, but was no longer involved with negotiations between Landlord and Luma.

30. Once Daniel Butts left Battaglia Management, Luma's renewal talks were handled almost exclusively by Bill Battaglia.

31. Luma did not know that Bill Battaglia was not seeking the input of Robert Battaglia regarding the renewal, or even communicating with his brother. Luma also did not know that the unreasonable delay in getting a rent proposal was because the maladies that plagued Bill Battaglia essentially crippled the Battaglia family businesses.

32. In early March of 2019, Bill Battaglia again promised Luma that Landlord would provide market information and a go-forward rent rate proposal for the renewal.

33. A month later and over two (2) years from the date Luma originally contacted Landlord to initiate renewal negotiations, Bill Battaglia provided an outrageous and unreasonable rent proposal that was approximately a 92% gross rent increase. This proposal was not discussed with or approved by Robert Battaglia despite Bill Battaglia giving the appearance that that it was sent on behalf of Battaglia Management and representing the true intentions of Landlord.

34. This representation was clearly false as Bill Battaglia had not even consulted with Robert Battaglia and knew of Robert Battaglia's desire to renew the Lease with Luma with commercially-reasonable terms. On information and belief, Bill Battaglia's outrageous rent increase proposal was motivated by his personal interests, including his interests in his family dispute, rather than the interests of Landlord and/or Battaglia Management.

35. When Bill Battaglia was unwilling to consider anything other than his untenable

rent increase, on April 19, 2019, Luma exercised its option under section 1.02 the Lease, which provided for a process to determine the rent for the renewal period. A true and correct copy of Luma's exercise of the option is attached hereto as Exhibit "C."

36. In addition, Luma articulated its desire to negotiate a deal with Landlord that would provide for a longer term and with an investment by Luma; however, this stated desire was ancillary to and did not vitiate or void the option that was exercised. *See Exhibit "C."*

37. Thereafter, Landlord and Luma began the rent determination process by using the procedure that had been set forth in Section 1.02(c)(ii) of the Lease.

38. Landlord purported to determine the Fair Market Rental Rate under Section 1.02(c)(ii) of the Lease, which provides:

Landlord shall determine the Fair Market Rental Rate by using its good faith judgment. Landlord shall provide written notice of such amount within fifteen (15) business Days after Tenant provides the notice to Landlord exercising Tenant's option rights which require a calculation of the Fair Market Rental Rate. Tenant shall have fifteen (15) business days ("Tenant's Review Period") after receipt of Landlord's notice of the new rental within which to accept such rental in writing. In the event Tenant fails to accept the new rental proposed by Landlord, the matter shall be submitted to arbitration in accordance with subsections (a) through (e) below. Failure of Tenant to so elect in writing within Tenant's Review Period shall conclusively be deemed its disapproval of the Fair Market Rental Rate determined by Landlord.

39. However, the Fair Market Rental Rate proposed by the Landlord was not determined in good faith because Bill Battaglia was unfairly and improperly trying to drive up the rent in an attempt to force Luma to vacate the Premises, to further Bill Battaglia's personal interests in his family dispute.

40. Specifically, the improvements Luma had already made to the Premises were

not taken into account and the proposed Fair Market Rental Rate was not based on comparable commercial properties in the Winter Park area. Bill Battaglia also unfairly proposed a grossly unreasonable amount with respect to the basement space, in violation of Section 6(b) of the Settlement Agreement.

41. The deficiencies of Bill Battaglia's proposed Fair Market Rental Rate (purportedly on behalf of Landlord) caused Luma to seek its own appointment of an appraiser to determine the Fair Market Rental Rate under section 1.02(c) of the Lease.

42. The parties then selected a third appraiser, who purported to determine the Fair Market Rental Rate. Unfortunately, the third appraiser failed to determine the Fair Market Rental Rate in accordance with Section 1.02(c)(iii). Among other things, the third appraiser failed to determine the Fair Market Rental Rate based on comparable commercial properties in the Winter Park area.

43. However, because Luma had no recourse under the Lease with regard to the third party appraiser's determined Fair Market Rental Rate, Luma charted its course of operations to try to meet the new rental obligations at the commencement of the renewal terms while simultaneously and independently attempting to negotiate with Bill Battaglia, who continued to misrepresent that he was negotiating in good faith and on behalf of Landlord. In truth, Bill Battaglia's was seeking to further his personal interests in his dispute with Robert Battaglia and other family members.

44. Bill Battaglia's representation that he was negotiating in good faith and on behalf of Landlord was false given that Robert Battaglia, upon information and belief, was not consulted and his intention to renew the Lease through commercially-reasonable concessions was not pursued.

45. Luma's additional attempts at negotiation did not void or otherwise vitiate the option that was exercised.

46. During this same period, Bill Battaglia was becoming further estranged from his family members, primarily due his unwavering determination to control every aspect of the family's holdings, to the exclusion of Robert Battaglia and their respective children for whom the holdings were to benefit.

47. Bill Battaglia continued to unilaterally manage the Battaglia family holdings with volatility and unpredictability, including compensation of \$400,000.00 for the "services" he purportedly performed for Battaglia Management showing he believed business decisions were "all about him."

48. Bill Battaglia also disinherited his daughters (including Daniel Butts' wife) in an act of retaliation and vindictiveness.

49. Thereafter, in early 2020 as the initial term of the Lease came to an end, the world was faced with a horrific pandemic caused by a highly contagious and often lethal virus that came to be known as COVID-19. The last time the world had experienced a pandemic of these proportions was over 100 years ago with the Spanish Flu.

50. The global pandemic caused federal, state and local governments to declare states of emergencies and issue orders designed to slow the spread of the highly-contagious and potentially deadly virus. These measures included, *inter alia*, travel bans, curfews, business and school closures, and mask mandates. The world as it had previously existed, grinded to a screeching halt.

51. For his part, Governor DeSantis issued numerous Executive Orders in the wake of the COVID-19 pandemic to slow the spread of the highly contagious which could turn deadly if

proper medical attention was not available for the most vulnerable.

52. These Executive Orders, including Executive Order 20-91 (as may be amended and/or extended from time to time, collectively, the “Executive Orders”) deprived Luma of its right to use the Premises as set forth in section 3.01 of the Lease.

53. Prior to the worldwide pandemic and the onslaught of governmental restrictions and mandates, Luma timely paid every amount due to Landlord, as well as all amounts due to employees and vendors, and turned a profit every year of the Lease.

54. When Luma approached Bill Battaglia on or about March 30, 2020, about the dire conditions created by the pandemic and the inability to use the Premises as a “restaurant/bar, lounge and special event facility,” Bill Battaglia assured Luma by saying it should “do what it could” and that the parties “would get through it together.”

55. Foundry thereafter followed up with correspondence to Luma advising that a formal monetary concession was under consideration and Landlord was looking to Luma to “adapt their historical business strategy to the current environment.” A true and correct copy of that correspondence is attached hereto as Exhibit “D.”

56. Luma relied upon these representations by Bill Battaglia and Foundry and complied with all COVID-19 mandates, including the Executive Orders, while doing as it believed Landlord requested in adapting its operations to the current environment of the global pandemic and trying to continue to pay its approximately 100 employees.

57. However, the inability for Landlord to provide Luma with use of the Premises as defined in section 3.01 of the Lease was a breach of warranty by Landlord under the Lease which legally relieved Luma’s rental obligation.

58. In addition, given that an Act of God or Force Majeure event under section 1.03 of

the Lease occurred when Governor DeSantis issued the Executive Orders to protect the citizens of the State of Florida from further spread of the virus, Luma was not required to pay rent to Landlord under section 12.02 of the Lease.

59. Section 8.01 of the Lease was also triggered when Governor DeSantis' Executive Orders materially interfered with Luma's ability to use the Premises as set forth in section 3.01 of the Lease, resulting in an abatement of Luma's rental obligation.

60. Luma did its best to adjust its operations as instructed by Foundry (claiming to represent Landlord), while trying to create opportunities for the continued employment of its approximately 100 employees.

61. During this time, Luma acted in good faith by making numerous proposals to Landlord (through Bill Battaglia and Foundry) while Landlord was purportedly considering how much Luma should pay. Upon information and belief, neither Foundry nor Bill Battaglia communicated these proposals to the other officer of Landlord. Instead, its other officer, Robert Battaglia, was locked out of the corporate offices.

62. On June 12, 2020, Bill Battaglia was sued in connection with his management of the Battaglia family holdings, with the appointment of a replacement for him as the primary relief sought (the "Trust Removal Lawsuit"). See Orange County Circuit Court Case No.: 2020-CA-006176O, styled *Robert E. Battaglia, individually, and as Co-Trustee v. William P. Battaglia, individually, and as Co-Trustee, et. al.*

63. This lawsuit suggested that Bill Battaglia had become erratic in making and following through with decisions involving the Battaglia family holdings and exposed the dysfunction that plagued the Battaglia family in recent years.

64. Whether to vindictively destroy a viable asset of the family holdings or to punish

Luma for not agreeing to his outlandish proposal of a 92% gross rent increase, Bill Battaglia then became laser-focused on improperly removing Luma from the Premises and used Foundry and others in furtherance of his destructive and deceptive scheme. To the extent that Bill Battaglia was acting to further his personal interests in his family feud, rather than the interests of Landlord, he may be held personally liable.

65. On June 19, 2020, a week after the filing the Trust Removal Lawsuit, Bill Battaglia authorized and instructed the service of a Default Notice under the Lease to Luma, presumably on behalf of Landlord, a true and correct copy of which is attached hereto as Exhibit "E."

66. The Default Notice was sent to Luma despite: (a) the lack of knowledge or consent of Robert Battaglia (who, by that point, had been locked out of the corporate offices), who wanted to continue the advantageous relationship between Luma and Landlord, (b) Luma not being able to use the Premises as a "restaurant/bar, lounge, and special event facility," which caused the claimed amounts to be false, (c) the previous assurances Bill Battaglia gave to Luma, and (d) the lack of a response to Luma's pandemic concession request.

67. With a Default Notice hanging over Luma's head, Foundry, at the behest of Bill Battaglia, advised on July 24, 2020, that modest monetary concessions would be given, provided Luma agreed to: (1) increased rent from the Fair Market Rental Rate from the third appraiser to Bill Battaglia's Fair Market Rental Rate, and (2) an investment of \$500,000.00 of leasehold improvements within twelve (12) months of the new rent structure taking effect. A true and correct copy of this correspondence is attached hereto as Exhibit "F."

68. Despite the unfair and commercially-unreasonable proposal from Bill Battaglia (without the consent or knowledge of Robert Battaglia), Luma continued to try to negotiate a rent structure in good faith that would take into consideration the impact of the global pandemic.

69. In response, Bill Battaglia arranged for Luma to be advised on August 24, 2020, that Luma could take the deal as proposed or vacate the Premises by August 31, 2020.

70. This communication came from one of the attorneys acutely familiar with the Trust Removal Action who had personally witnessed the Battaglia family turmoil and detailed Bill Battaglia's maladies that caused "paralysis" as to business decisions, as well as "unraveling" and thinking everything is "all about him," as compared to his family for whom the holdings were and are to benefit.

71. In the face of spiking COVID-19 cases in Florida and without the consent (or knowledge of his brother Robert Battaglia), Bill Battaglia stuck with his unconscionable demand (made through Foundry) for increased rent above the determined Fair Market Rental Rate and leasehold improvements of \$500,000.00 in exchange for modest monetary relief.

72. This demand was made by Bill Battaglia with the knowledge that Luma had been deprived of the use of the Premises as a "bar/restaurant, lounge and special events facility" since the onset of the catastrophic global pandemic.

73. This demand was made by Bill Battaglia despite his assurances to Luma to "do what it could" and that they would "get through it together."

74. Luma, unable to agree to Bill Battaglia's unfair and bad faith ultimatum, had no choice but to advise that it would allow its improper ouster from the Premises on September 30, 2020.

75. Despite knowing that Luma intended to vacate the Premises, Bill Battaglia caused Landlord to sue Luma in this Court in the action styled *BFC Park Avenue LLC v. Luma on Park LLC*, Case No. 2020-CA-009035-O (without Robert Battaglia's knowledge or consent), seeking possession of the Premises and distress writ and foreclosure of Landlord's lien.

76. Bill Battaglia also did this with the full knowledge from the Trust Removal Action that his brother and family were opposed to him unilaterally and arbitrarily making these types of decisions regarding the Battaglia family holdings.

77. To further deprive Luma of its legal leasehold interest in the Premises, Foundry changed the locks. This was an illegal and overt act of retaliation against Luma, not dissimilar to Bill Battaglia locking Robert Battaglia out of the corporate offices months earlier.

78. Foundry also prompted a false and improper tax lien be levied against Luma's assets for taxes that were not even due. This was an illegal, intentional and malicious act of retaliation against Luma.

79. Today, the Premises remains vacant, leaving Luma improperly stripped of its leasehold interest in the Premises and unable to qualify for the second round of the Paycheck Protection Program which it could have used to remain a going concern at the Premises when legally allowed to do so.

80. As a result of the improper actions by Bill Battaglia and Foundry described above, Luma has been damaged in the form of lost profits and severely diminished goodwill in the community.

81. Luma has retained the undersigned attorneys and their law firms to pursue these claims and is liable to them for the attorneys' fees and costs incurred.

COUNT I
VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR
TRADE PRACTICES ACT BY BILL BATTAGLIA

82. Luma re-alleges and incorporates by reference all of the allegations set forth in Paragraphs 1 as though 81 of this Complaint as if set forth herein at length.

83. This is an action for declaratory and injunctive relief and damages against Bill

Battaglia under the Florida Deceptive and Unfair Trade Practices Act, Sections 501.201, *et seq.* (the “Act”).

84. Luma has standing to seek declaratory and injunctive relief, pursuant to Section 501.211(1) of the Act, and actual damages under Section 501.211(2) of the Act.

85. At all times material, Luma was a “consumer” under Section 501.203(7) of the Act, as well as an “interested party or person” as defined in Section 501.203(6) of the Act, as a person affected by a violation of the Act.

86. At all times material, Luma was a “legitimate business enterprise” to which the Act seeks to protect from unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce under Section 501.202(2) of the Act.

87. At all times material, Bill Battaglia engaged in “trade or commerce,” as defined in Section 501.203(8) of the Act, by providing or offering his services as the asset manager for Landlord during the: (a) negotiations with Luma relating to the renewal option, (b) negotiations in the wake of the global pandemic, COVID-19, and (c) cessation of Luma as a going concern at the Premises. All of these were real estate transaction services encompassed in the definition of “trade or commerce.”

88. At all times material, Bill Battaglia engaged in the aforesaid trade or commerce with a “thing of value” as defined in Section 501.203(9) of the Act, to include, without limitation, the leasehold interest in the Premises before and after the initial term of the Lease.

89. At all times material, Bill Battaglia violated Section 501.204(1) of the Act, by engaging in unconscionable acts or practices, and/or unfair or deceptive acts or practices in the conduct of any trade or commerce.

90. At all times material, the aforesaid conduct and material misrepresentations by Bill

Battaglia were likely to mislead Luma into believing that the negotiations with Bill Battaglia were in good faith and on behalf of Landlord.

91. At all times material, the aforementioned conduct and material misrepresentations by Bill Battaglia were unconscionable, unfair, deceptive, and caused injury to Luma, including the lost profits that have been suffered by Luma because it was improperly forced to cease operations at the Premises.

92. Pursuant to Section 501.211(1) of the Act, Luma was aggrieved by Bill Battaglia's violation of the Act and seeks a declaratory judgment that Bill Battaglia's acts and practices violate the Act.

93. Because Luma has been aggrieved by Bill Battaglia's violation of the Act, Luma seeks to enjoin Bill Battaglia from further violations of the Act, pursuant to Section 501.211(1) of the Act. Specifically, Luma seeks an injunction preventing Bill Battaglia from reletting the Premises because Luma is entitled to its leasehold interest in the Premises under the renewal option it exercised and Luma would not have left the Premises but for Bill Battaglia's unconscionable, unfair and deceptive conduct.

94. Because of Bill Battaglia's violations of the Act, Luma is entitled to the actual damages it has suffered including, but not limited to, its lost profits.

WHEREFORE, Plaintiff, Luma requests this Court to:

- (a) Declare that Bill Battaglia is in violation of the Act;
- (b) Grant a temporary and permanent injunction against Bill Battaglia, and his agents, attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, prohibiting such persons from engaging in the acts and practices in violation of provisions of Chapter 502, Part II, FLA. STAT.,

related to the deceptive and unconscionable acts and misrepresentations, and allowing Luma to possess the Premises under its legal leasehold interest, as more specifically alleged above;

- (c) Award Luma its actual damages suffered as a result of the violations of the Act;
- (d) Award Luma its reasonable attorneys' fees and costs pursuant to Section 501.2105 of the Act; and
- (e) Award Luma such other and further relief as this Court deems just and equitable.

COUNT II
TORTIOUS INTERFERENCE WITH CONTRACTUAL
RELATIONSHIP AGAINST BILL BATTAGLIA

95. This is an action against Bill Battaglia seeking monetary damages resulting from Bill Battaglia's tortious interference with Luma's advantageous business relationship with Landlord.

96. Luma realleges and incorporates by reference the allegations set forth in paragraphs 1 through 81 of this Complaint, as if fully set forth herein.

97. For fifteen (15) years, Luma had an advantageous contractual relationship with Landlord to lease the Premises through the end of the first renewal term.

98. Bill Battaglia was aware of Luma's advantageous contractual relationship with Landlord. Despite this knowledge, Bill Battaglia intentionally and wrongfully meddled with and interfered in the option negotiations and the negotiations after the COVID-19 global pandemic and Executive Orders prevented Luma from being able to use the Premises as a "restaurant/bar, lounge and special event facility."

99. Bill Battaglia, and the agents he hired to advance his personal and malicious agenda, falsely represented to Luma that Landlord wanted to oust Luma from the Premises unless

Luma agreed to the unconscionable demands set forth in the July 24, 2020 letter from Foundry.

100. These false and malicious representations unjustifiably interfered with Luma's advantageous contractual relationship with Landlord.

101. Through his deliberate and calculated efforts, Bill Battaglia intentionally, maliciously, and unjustifiably interfered with Luma's advantageous and contractual relationship with Landlord.

102. Bill Battaglia's interference with Luma's relationship with Landlord was not privileged because he acted to further his personal interests (rather than Landlord's interests). Bill Battaglia further acted with malice and utilized improper methods as detailed above.

103. Luma has been and continues to be damaged from Bill Battaglia's malicious and intentional interference with Luma's contractual relationship with Landlord in an amount that could easily exceed \$5,000,000.00.

WHEREFORE, Plaintiff, Luma requests this Court to:

- (a) Enter a money judgment against Bill Battaglia in an amount equal to the actual damages suffered by Luma by reason of Bill Battaglia's intentional and unjustifiable interference with Luma's contractual relationship with Landlord alleged herein;
- (b) Award Luma punitive damages after a reasonable showing by the evidence or an appropriate proffer by Luma under FLA. STAT. §768.72(1); and
- (c) Award Luma such other and further relief as this Court deems just and equitable.

COUNT III
CIVIL CONSPIRACY TO TORTIOUSLY INTERFERE WITH LUMA'S
CONTRACTUAL RELATIONSHIP WITH LANDLORD AGAINST FOUNDRY

95. This is an action against Foundry seeking monetary damages resulting from

Foundry's civil conspiracy with Bill Battaglia to tortiously interfere with Luma's advantageous business relationship with Landlord.

96. Luma realleges and incorporates by reference the allegations set forth in paragraphs 1 through 81 and 83-95 and 97-103 of this Complaint, as if fully set forth herein.

97. As alleged herein above, Bill Battaglia and Foundry conspired to wrongfully and tortiously interfere with Luma's advantageous contractual relationship with Landlord.

98. This conspiracy included unlawful acts under FDUTPA described above and potentially lawful acts by unlawful means including, without limitation, the demand that Luma would be evicted (based upon the false Default Notice) from the Premises unless it agreed to the false and unconscionable Lease modifications during a global pandemic as set forth in Foundry's July 24, 2020 correspondence.

99. Foundry committed at least one overt act in pursuance of the conspiracy when it: (1) falsely represented in the wake of the Executive Orders that Landlord was considering how to proceed with the Lease despite Robert Battaglia (who wanted to continue the advantageous relationship between Luma and Landlord) having no role in the process, (2) sent the July 24, 2020 correspondence knowing it was the will of Bill Battaglia and not that of Landlord, (3) arranged for the locks at the Premises to be changed without the knowledge or consent of Luma, and (4) arranged for the entry of a false tax lien against Luma.

100. Luma has been damaged as a result of the acts performed pursuant to the conspiracy to tortiously interfere with its advantageous contractual relationship with Landlord, including being deprived of revenues and profits had it been able to continue to enjoy its leasehold interest in the Premises and damage to its goodwill in the community.

WHEREFORE, Plaintiff, Luma requests this Court to:

- (a) Enter a money judgment against Foundry in an amount equal to the actual damages suffered by Luma by reason of the conspiracy to intentionally and unjustifiably interfere with Luma's advantageous and contractual relationship with Landlord alleged herein;
- (b) Award Luma punitive damages after a reasonable showing by the evidence or an appropriate proffer by Luma under FLA. STAT. §768.72(1); and
- (c) Award Luma such other and further relief as this Court deems just and equitable.

DEMAND FOR JURY TRIAL

Luma demands a trial by jury on all issues so triable.

STOVASH, CASE & TINGLEY, P.A.

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Sanford, Florida 32771
Telephone: (407) 960-2671

Counsel for Luma on Park, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the process server with Summonses for service upon Defendants, WILLIAM T. BATTAGLIA and FOUNDRY COMMERCIAL, LLC, upon issuance by the Clerk of Court in and for Orange County, Florida.

/s/ Amy S. Tingley
Amy S. Tingley, Esquire

EXHIBIT "A"

LEASE AGREEMENT

BY AND BETWEEN

**250 Park Avenue Trustee, Inc.,
a Florida corporation**

AS LANDLORD

AND

**Luma on Park LLC,
a Florida limited liability company**

AS TENANT

October 7, 2004

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EXHIBITS

DESCRIPTIONS

EXHIBIT A-1	Sketch of Ground Floor Premises
EXHIBIT A-2	Sketch of Basement Premises
EXHIBIT A-3	Legal Description of Building
EXHIBIT B	Letter Agreement as to Term and Premises
EXHIBIT C	AIG Form of Subordination, Nondisturbance and Attornment Agreement
EXHIBIT D	CNLBank Form of Subordination, Nondisturbance and Attornment Agreement
EXHIBIT E	Guaranty of Brian France
EXHIBIT F	Rules and Regulations
EXHIBIT G	Form of Memorandum of Lease

SUMMARY OF LEASE PROVISIONS

1. **Landlord:** 250 Park Avenue Trustee, Inc., a Florida corporation, as successor trustee to the 250 Park Avenue Trust dated March 30, 2000.
2. **Tenant:** Luma on Park LLC, a Florida limited liability company
3. **Premises:** A total of approximately 8,000 square feet of the Building, approximately 6,000 square feet of which is located within a portion of the ground floor and depicted on Exhibit A-1 attached hereto and made a part hereof (the "Ground Floor Premises"), and approximately 2,000 square feet of which is located within the basement of the Building and depicted on Exhibit A-2 attached hereto and made a party hereof (the "Basement Premises").
4. **Term:** Tenant's and Landlord's obligations under this Lease shall commence as of the "Effective Date" (as hereinafter defined). The Term shall begin on the Commencement Date (as defined in Section 1.02(a) hereof) and, unless sooner terminated, end One-hundred Eighty (180) full calendar months thereafter, subject to two (2) renewal periods of five (5) years each, as set forth in Section 1.02(b). The parties estimate that the Commencement Date shall be March 1, 2005, and the Expiration Date shall be 11:59 P.M. EST on the last day of the One-hundred and eightieth (180th) consecutive month thereafter but such dates shall be established pursuant to Section 1.02.
5. **Base Rent:** From and after the Commencement Date (as defined in Section 1.02(a) hereof) through the last day of the Term, a monthly amount, payable in accordance with Section 2.01 hereof, plus applicable sales, use and excise taxes. The Base Rent shall be calculated and set forth in the letter agreement in the form attached hereto as Exhibit B.
6. **Security Deposit** Intentionally Omitted.
7. **Operating Expenses:** Subject to the "gross-up" provisions of Section 2.02(b), Tenant will be responsible for paying its pro-rata share of Operating Expenses and Taxes (in accordance with Section 2.02).
8. **Pro Rata Share:** Pro Rata Share shall be calculated by dividing the total square footage of the Premises by the total rentable square footage of the Building, and set forth on the letter agreement in the form attached hereto as Exhibit B. Tenant's Pro Rata Share is subject to change in the event of any change in the rentable square footage of the Building.

9. **Permitted Use:** The Premises shall be used by Tenant as a restaurant, bar, lounge and special events facility and for storage purposes incidental thereto and for no other purpose whatsoever, as more specifically set forth in Section 3.01.
10. **Landlord's Notice Address:** Lincoln Property Company of Florida, Inc.
300 South Orange Avenue
Suite 975 -- Lincoln Plaza
Orlando, Florida 32801
Attention: Scott Stahley
- With a copy to:
Broad and Cassel
390 N. Orange Avenue, Suite 1100
Orlando, Florida 32801
Attention: Michael J. Kirwin, Esquire
11. **Address For Rent Payments:** Post Office Box 3010
Winter Park, FL 32790-3010
12. **Tenant's Notice Address** 2049 Century Park East, Suite 3000
Los Angeles, California 90067
Attention: Rex Caton
- With a copy to:
Concentrics
566 Dutch Valley Road, Suite C
Atlanta, Georgia 30324
Attention: Robert Amick
- With a copy to:
Sutherland Asbill & Brennan LLP
999 Peachtree Street, NE
Atlanta, Georgia 30309-3996
Attention: Alfred G. Adams, Jr.
13. **Address For Rent Billing:** Concentrics
566 Dutch Valley Road, Suite C
Atlanta, GA 30324
Attention: Robert Amick
14. **Brokers:** Landlord's Broker: Lincoln Property Company of Florida, Inc.
Tenant's Broker: The Florida Shopping Center Group

LEASE

Article I. BASIC LEASE TERMS

1.01 PREMISES; CONSTRUCTION BY TENANT.

(a) In consideration of the rents, terms, provisions and covenants of this Lease, Landlord hereby leases, lets and demises to Tenant and Tenant hereby leases from Landlord the Premises described in Paragraph 3 of the Summary of Lease Provisions (the "Summary") above and as collectively shown on the sketch attached hereto as Exhibit A-1 and Exhibit A-2, together with all easements, rights and appurtenances thereto and use of the freight elevator and certain other common areas in and around the Building (the "Premises", which for all purposes of this Lease, Landlord and Tenant acknowledge and agree shall be contain the Ground Floor Premises and the Basement Premises); provided, however, the Premises shall not contain, nor shall Tenant have independent rights to use or access, the ground floor lobby, any portion of the bank premises within the Building, the balconies and/or common areas on any floor above the floors on which the Premises are located, nor shall Tenant have independent access or rights of ingress/egress to and from the Premises into any such areas within the Building. The Premises is located in the six (6) story, 102,000-square foot, class "A" office building known as The 250 Park Avenue Building located at 250 South Park Avenue, Winter Park, Florida 32789 (the "Building"). A legal description of the real property on which the Building is located is attached hereto as Exhibit A-3. Landlord and Tenant agree that the square footage stated in Paragraph 3 of the Summary, with respect to the Building and the Premises preliminarily shall be used in the computation of Base Rent and Additional Rent and all other charges due hereunder. The square footage of the Ground Floor Premises shall be determined by measuring to the drip line of the exterior wall(s) of the Building, and will include all indentations of the exterior walls into the Ground Floor Premises. Landlord (subject to Tenant's verification) agrees to measure the Ground Floor Premises in accordance with the foregoing standard, which measurement shall be set forth and utilized in connection with all applicable calculations contained in Exhibit B attached to this Lease. Prior to beginning construction of the Work within the Basement Premises, Tenant (subject to Landlord's verification) shall measure the rentable square feet contained in the Basement Premises in accordance with "Standard Method for Measuring Floor Area in Office Buildings", published by the Secretariat, Building Owners and Managers Association International (ANSI/BOMA Z65.1 - 1996), approved June 7, 1996 ("BOMA"), or in accordance with such other standard of measurement upon which Landlord and Tenant may reasonably agree. The square footage of the Basement Premises shall likewise be set forth and utilized in connection with all applicable calculations contained in Exhibit B attached to this Lease. It is agreed that Tenant has examined the Premises prior to the execution of this Lease and is satisfied with the physical condition thereof. Tenant shall accept the Premises in its "AS IS" condition and with all faults; provided, however, Landlord shall deliver the Premises free of any and all Hazardous Materials (as hereinafter defined) and in a structurally sound condition. Landlord, at Landlord's sole cost and expense, shall construct to code all demising walls separating the tenant spaces. Except as expressly set forth herein, no representation has been made by Landlord or Landlord's agent as to the condition or repair of the Premises and there has been no agreement, other than as above set forth to redecorate, alter, repair or improve the Premises either before or after the execution of this Lease. Notwithstanding the foregoing or anything herein to the contrary, the layout of the Premises,

including any exterior patio area, shall be at a location mutually agreeable to Landlord and Tenant; provided, however, any remaining contiguous space: (i) will be rectangular, except that the Ground Floor Premises may narrow northward in the portion of the Ground Floor Premises bounded on the west by the column line of the easternmost two small interior columns running north and south and bounded on the east by the curtain wall on Center Street; (ii) will front on Park Avenue and extend to the curtain wall on Center Street; (iii) will contain between 2,800 and 3,200 usable square feet; and (iv) will have a width fronting on Park Avenue of not less than approximately 26.75 feet (measured to the center of the mullion). Further, Tenant and the City of Winter Park must mutually agree upon the location and use of sidewalks adjacent to the Premises in the Building, to which Landlord will reasonably cooperate with Tenant and consent to Tenant's use of the sidewalks, so long as such use does not unreasonably obstruct or interfere with Landlord's or Landlord's other tenants' use of the Building and improvements.

(b) Tenant, at Tenant's sole cost and expense, shall perform or cause to be performed, the work (the "Work") in the Premises provided for in the Approved Plans (as hereinafter defined). Tenant hereby represents to Landlord and hereby covenants and agrees that the value of the Permanent Alterations (as defined in Paragraph 8.03) shall meet or exceed the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00), and that the value of all improvements constructed or installed within the Premises, including, but not limited to the Permanent Alterations, together with all other "soft" costs and expenses for the Work, Tenant's furniture fixtures and equipment, and pre-opening expenses, shall in the aggregate meet or exceed the sum of Three Million Five Hundred Thousand and 00/100 Dollars (\$3,500,000.00).

(i) Prior to commencing any construction within the Premises, Tenant shall submit the following information and items to Landlord for Landlord's review and approval:

1. The names and addresses of the general contractors to be engaged by Tenant for the Work and the subcontractors to be retained by such general contractors to perform electrical, HVAC and fire/life safety work (individually, a "Tenant Contractor," and collectively, "Tenant's Contractors"). Tenant's Contractors shall be licensed, bonded and carry insurance (in the amounts and coverages hereinafter provided).
2. Certified copies of insurance policies or certificates of insurance as hereinafter provided. Tenant shall not permit Tenant's Contractors to commence work until the required insurance has been obtained and certified copies of policies or certificates have been delivered to Landlord.
3. The Plans for the Work, which Plans shall be subject to Landlord's reasonable approval as hereinafter provided.
4. Tenant will update such information and items by notice to Landlord of any changes.

(ii) As used herein the term "Approved Plans" shall mean the Plans (as hereinafter defined), as and when reasonably approved in writing by Landlord. As used herein, the term "Plans" shall mean architectural and engineering plans and specifications covering the Work (including, without limitation, architectural, mechanical and electrical working drawings

for the Work) in sufficient detail for Tenant to obtain required permits. The engineer to prepare the Plans for the structural work shall be selected by Tenant and retained by Tenant at Tenant's sole cost; Tenant, not Landlord, shall be responsible for causing the Approved Plans to comply with the requirements of this Lease and all applicable laws, codes, ordinances, and the rules and regulations of all governmental agencies or bodies with jurisdiction over the Building and Premises. The Plans shall be subject to Landlord's reasonable approval and the approval of all local governmental authorities requiring approval of the Work and/or the Approved Plans. Landlord shall give its approval or disapproval (giving specific reasons in case of disapproval) of the Plans within ten (10) business days after delivery of two (2) copies to Landlord. If Landlord fails to approve or disapprove any Plans within ten (10) business days after delivery, then Landlord shall be deemed to have approved such Plans. Landlord agrees not to unreasonably withhold, condition or delay its approval of said Plans; provided, however, that Landlord shall not withhold its approval of the Plans unless, in Landlord's reasonable opinion: the Work as shown in the Plans is likely to adversely affect the structure of the Building or the safety of the Building and/or its occupants; the Work would violate any governmental laws, rules or ordinances (or interpretations thereof); the Work contains or uses Hazardous Materials or toxic materials or substances; or the Work would adversely affect the appearance of the Building. If Landlord notifies Tenant that changes are required to the final Plans submitted by Tenant, Tenant shall submit to Landlord, for its approval (in accordance with the process described above), the Plans amended in accordance with the changes so required. The Plans shall also be revised, and the Work shall be changed, all at Tenant's sole cost and expense, to incorporate any work required in the Premises by any local governmental field inspector. Landlord's approval of the Plans shall in no way be deemed to be (i) an acceptance or approval of any element therein contained which is in violation of any applicable laws, ordinances, regulations or other governmental requirements, or (ii) an assurance that Work done pursuant to the Approved Plans will comply with all applicable laws (or with the interpretations thereof) or satisfy Tenant's objectives and needs.

(iii) No Work shall be undertaken or commenced by Tenant in the Premises until (A) Tenant has delivered, and, to the extent Landlord's approval is required, Landlord has approved, in Landlord's reasonable discretion, all items set forth in Paragraph 1.01(b)(i) above, and (B) Tenant has obtained all necessary building permits.

(c) All work done in or upon the Premises by Tenant shall be done according to the standards set forth in this Paragraph (c), except as the same may be modified in the Approved Plans approved by or on behalf of Landlord and Tenant.

(i) Tenant's Approved Plans and all design and construction of the Work shall comply with all applicable statutes, ordinances, regulations, laws, codes and industry standard.

(ii) Tenant shall, at its own cost and expense, obtain all required building permits and occupancy permits. Tenant's failure to obtain such permits shall not cause a delay in the commencement of the Term or the obligation to pay Rent or any other obligations set forth in the Lease.

(iii) Tenant's Contractors shall be licensed contractors, possessing good labor relations, capable of performing quality workmanship.

(iv) Tenant and Tenant's Contractors shall take all precautionary steps to minimize dust, noise and construction traffic, and to protect their facilities and the facilities of others affected by the Work and to properly police same.

(v) Landlord shall have the right to order Tenant or any of Tenant's Contractors who violate the requirements imposed on Tenant under this Lease to cease work and remove its equipment and employees from the Building if such violation continues for more than ten (10) days after written notice from Landlord to Tenant (excluding emergencies, where Landlord may order Tenant or its contractors to immediately cease work). No such action by Landlord shall delay the commencement of the Term or the obligation to pay Rent or any other obligations therein set forth.

(vi) Utility costs or charges for any service to the Premises, and all other costs for using and operating the Premises (excluding Taxes) shall be the responsibility of Tenant from the Effective Date and shall be paid for by Tenant. Tenant shall apply and pay for all utility meters required. Tenant shall pay for all support services provided by Landlord's contractors at Tenant's request, or at Landlord's discretion resulting from defaults regarding the Work constructed by Tenant under this Lease. Tenant shall arrange and pay for removal of construction debris.

(vii) Tenant shall permit access to the Premises, and the Work shall be subject to inspection, by Landlord and Landlord's architects, engineers, contractors and other representatives, at all reasonable times during the period in which the Work is being constructed and installed. Landlord shall use commercially reasonable efforts not to interfere with Tenant's performance of the Work in connection with any such inspections.

(viii) Tenant shall notify Landlord upon completion of the Work and shall furnish Landlord with such further documentation as may be reasonably requested by Landlord or necessary under Paragraph 1.01(d) below.

(ix) Tenant shall furnish to Landlord "as-built" drawings of the Work within thirty (30) days after completion of the Work.

(x) Tenant shall impose on and enforce all applicable terms of this Lease against Tenant's architect and Tenant's Contractors.

(d) Insurance and Indemnification.

(i) In addition to any insurance which may be required under the Lease, Tenant shall secure, pay for and maintain or cause Tenant's Contractors to secure, pay for and maintain during the continuance of construction of the Work within the Premises, insurance in the following minimum coverages and the following minimum limits of liability.

(ii) Worker's Compensation and Employer's Liability Insurance with limits of not less than \$500,000.00, or such higher amounts as may be required from time to time by any Employee Benefit Acts or other statutes applicable where the work is to be performed, and in any event sufficient to protect Tenant's Contractors from liability under the aforementioned acts.

(iii) Comprehensive General Liability Insurance (including Contractors' Protective Liability) in an amount not less than \$1,000,000.00 per occurrence, whether involving bodily injury liability (or death resulting therefrom) or property damage

liability or a combination thereof with a minimum aggregate limit of \$2,000,000.00, and with umbrella coverage with limits not less than \$5,000,000.00. Such insurance shall provide for explosion and collapse, completed operations coverage and broad form blanket contractual liability coverage and shall insure Tenant's Contractors against any and all claims for bodily injury, including death resulting therefrom, and damage to the property of others and arising from its operations under the contracts whether such operations are performed by Tenant's Contractors or by anyone directly or indirectly employed by any of them.

(iv) "All-risk" builder's risk insurance upon the entire Work to the full insurable value thereof. This insurance shall include the interests of Landlord and Tenant (and their respective contractors and subcontractors of any tier to the extent of any insurable interest therein) in the Work and shall insure against the perils of fire and extended coverage and shall include "all-risk" builder's risk insurance for physical loss or damage including, without duplication of coverage, theft vandalism and malicious mischief. If portions of the Work are stored off the site of the Building or in transit to said site are not covered under said "all-risk" builder's risk insurance, then Tenant shall effect and maintain similar property insurance on such portions of the Work. Any loss insured under said "all-risk" builder's risk insurance is to be adjusted with Landlord and Tenant and deposited into the Escrow (as hereinafter defined).

(v) All policies (except the worker's compensation policy) shall be endorsed to include as additional insured parties the parties listed on, or required by, the Lease and Landlord's Mortgagee. The waiver of subrogation provisions contained in the Lease shall apply to all insurance policies (except the workmen's compensation policy) to be obtained by Tenant pursuant to this paragraph. The insurance policy endorsements shall also provide that all additional insured parties shall be given thirty (30) days' prior written notice of any reduction, cancellation or non-renewal of coverage (excluding cancellation for nonpayment of premium, when ten (10) days' prior written notice will be acceptable) and shall provide that the insurance coverage afforded to the additional insured parties thereunder shall be primary to any insurance carried independently by said additional insured parties. Additionally, where applicable, each policy shall contain a cross-liability and severability of interest clause.

(vi) Without limitation of the indemnification provisions contained in the Lease, to the fullest extent permitted by law Tenant agrees to indemnify, protect, defend and hold harmless Landlord, the parties listed, or required by, the Lease to be named as additional insureds, Landlord's contractors, Landlord's architects, and their respective partners, directors, officers, employees and agents, from and against all claims, liabilities, losses, damages and expenses of whatever nature arising out of or in connection with the Work or the entry of Tenant or Tenant's Contractors upon the Premises, including, without limitation, mechanic's liens, the cost of any repairs to the Premises necessitated by activities of Tenant or Tenant's Contractors, bodily injury to persons or damage to the property of Tenant, its employees, agents, invitees, licensees or others. It is understood and agreed that the foregoing indemnity shall be in addition to the insurance requirements set forth above and shall not be in discharge of or in substitution for same or any other indemnity or insurance provision of the Lease. Nothing in this Paragraph shall be deemed to require Tenant to indemnify Landlord or any other party from and against any claim, liability, loss, damage or expense arising out of Landlord's negligence or willful misconduct.

1.02 TERM.

(a) **Initial Term.** Subject to and upon the conditions set forth herein, the term of this Lease shall commence on the date (the "Commencement Date") which is the later of (x) March 1, 2005 or (y) the one hundred eightieth day after Landlord delivers to Tenant possession of the Premises, and the term of this Lease shall terminate at 11:59 p.m. E.S.T. on the last day (the "Expiration Date") of the one-hundred and eightieth (180th) full calendar month following the Commencement Date unless sooner terminated or renewed or extended as may be hereinafter provided (such term, taking into account any such sooner termination or renewal or extension, is hereinafter referred to as the "Term"). Promptly following the Commencement Date, Landlord and Tenant shall enter into a letter agreement in the form attached hereto as Exhibit B confirming the Commencement Date and the Expiration Date and acknowledging Tenant's acceptance of delivery of the Premises. The letter agreement shall be executed and returned to Landlord promptly within ten (10) business days following Tenant's receipt from Landlord thereof. If Tenant fails to execute and return such agreement within such ten (10) day period, then the Commencement Date and the Expiration Date shall be deemed to be the dates designated by Landlord therein unless Tenant shall have notified Landlord prior to the expiration of such ten (10) day period of a dispute regarding such dates.

(b) **Renewal Term.** Tenant shall have the right to renew the Term of the Lease for two (2) additional periods of five (5) years each (each such period being hereinafter referred to as a "Renewal Term") by giving Landlord prior written notice not less than twelve (12) months prior to the expiration of the initial Term or the first Renewal Term, as the case may be, that Tenant has exercised such renewal right, subject to the following conditions:

(i) There shall not be an Event of Default under any of the terms or provisions of the Lease at the time such notice is given or at the time of the commencement of the applicable Renewal Term.

(ii) Tenant shall not be entitled to more than two (2) Renewal Terms.

(iii) If Tenant is entitled to and gives Landlord notice in accordance with the terms of this subparagraph 1.02(b), it being understood and acknowledged that time is of the essence, the Renewal Term(s) shall be upon the same terms and conditions as set forth in this Lease, except as otherwise provided herein below, without the necessity for the execution of any further instrument and Base Rent and all Additional Rent required hereunder shall continue to be paid during the Renewal Term(s) in accordance with the provisions of this Lease.

(c) **Fair Market Rental Rate.** During any Renewal Term(s), Tenant shall pay Base Rent equal to the Fair Market Rental Rate.

(i) The term "Fair Market Rental Rate" shall mean the annual amount per rentable square foot then offered by Landlord in a retail transaction between non-affiliated parties from new, non-expansion, non-renewal and non-equity tenants of comparable credit-worthiness, for comparable space, for a comparable use for a comparable period of time ("Comparable Transactions") in the Building, or if there are not a sufficient number of

Comparable Transactions in the Building, what a comparable landlord of a comparable building in the Park Avenue core business district of Winter Park, Florida would accept in Comparable Transactions; provided, however, the Fair Market Rental Rate shall in no event be less than the Base Rent payable on the last day of the Term or immediately preceding Renewal Term, as applicable. Subject to the foregoing, in any determination of Comparable Transactions appropriate consideration shall be given to the annual rental rates per rentable square foot, the standard of measurement by which the rentable square footage is measured, the ratio of rentable square feet to usable square feet, the type of escalation clause (e.g., whether increases in additional rent are determined on a net or gross basis, and if gross, whether such increases are determined according to a base year or a base dollar amount expense stop), the extent of Tenant's liability under the lease, abatement provisions reflecting free rent and/or no rent during the period of construction or subsequent to the commencement date as to the space in question, brokerage commissions, if any, which would be payable by Landlord in similar transactions, length of the lease term, size and location of premises being leased, building standard work letter and/or tenant improvement allowances, if any, and other generally applicable conditions of tenancy for such Comparable Transactions. The intent is that Tenant will obtain the same rent and other economic benefits that Landlord would otherwise give in Comparable Transactions and that Landlord will make, and receive the same economic payments and concessions that Landlord would otherwise make, and receive in Comparable Transactions.

(ii) Landlord shall determine the Fair Market Rental Rate by using its good faith judgment. Landlord shall provide written notice of such amount within fifteen (15) business days after Tenant provides the notice to Landlord exercising Tenant's option rights which require a calculation of the Fair Market Rental Rate. Tenant shall have fifteen (15) business days ("Tenant's Review Period") after receipt of Landlord's notice of the new rental within which to accept such rental in writing. In the event Tenant fails to accept the new rental proposed by Landlord, the matter shall be submitted to arbitration in accordance with subsections (a) through (e) below. Failure of Tenant to so elect in writing within Tenant's Review Period shall conclusively be deemed its disapproval of the Fair Market Rental Rate determined by Landlord.

(iii) If Landlord and Tenant are unable to agree upon the Fair Market Rental Rate, Landlord and Tenant shall within five (5) business days each appoint an M.A.I. appraiser who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of comparable commercial properties in the Winter Park area. Each appraiser shall thereupon independently make a determination of the Fair Market Rental Rate (taking into account the provisions of this Section). If the two (2) appraisers' determinations are the same, then such determination shall be the Fair Market Rental Rate. If the two appraisers' determinations are not the same, and the higher of such two values is one hundred five percent (105%) or less than the lower of them, then the Fair Market Rental Rate shall be the rate which is the average of the two determinations. If the two appraisers' determinations are not the same, but the higher of such two values is more than one hundred five percent (105%) of the lower of them, then the two appraisers shall jointly appoint a third appraiser within ten (10) days after the determinations described above have been rendered. The third appraiser shall independently make a determination of the Fair Market Rental Rate within twenty (20) days after his or her appointment. The highest and the lowest determinations of value among the three appraisers shall be disregarded and the remaining determination shall be

deemed to be the Fair Market Rental Rate; provided, however, that in no event shall the Fair Market Rental Rate determined as aforesaid be less than the Rent payable under this Lease on the last day of the Lease Year immediately preceding the first Lease Year of the Renewal Term. Within thirty (30) days after the Fair Market Rental Rate is determined as aforesaid, the parties shall execute an amendment to this Lease setting forth the new Rent to be paid for the Renewal Term.

1.03 DEFINITIONS.

(a) **Act of God or Force Majeure.** An "Act of God" or "force majeure" is defined for purposes of this Lease as strikes, lockouts, restrictions by any governmental authority, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including wet grounds or inclement weather which prevents or hinders construction), unavailability of or delays in obtaining permits or other governmental approvals, power outages, acts of the public enemy, wars, insurrections, terrorism and any other cause not reasonably within the control of Landlord or Tenant, as the case may be; provided, however, that financial inability to perform, including, without limitation, Tenant's obligation to pay rent shall not be included within the definition of an Act of God or force majeure.

(b) **Additional Rent.** "Additional Rent" as used in this Lease shall mean all sums due Landlord from Tenant under this Lease, other than Base Rent.

(c) **Base Rent.** "Base Rent" as used in this Lease shall have the definition set forth in Paragraph 5 of the Summary as Base Rent.

(d) **Building.** "Building" means the 102,000 square foot, Class "A" office building known as The 250 Park Avenue Building, having an address of 250 South Park Avenue, Winter Park, Florida 32789. For purposes of this Lease, the Building shall be deemed to include the attached Building parking structure and non-structured parking (collectively, the "Parking Structure"), drive-thru facilities, grounds located within the real property boundaries of the land underlying the Building, and all entryways into the Building.

(e) **Commencement Date.** "Commencement Date" shall be the date set forth in Section 1.02. The Commencement Date shall constitute the commencement of the Term of this Lease for all purposes, whether or not Tenant has actually taken possession.

(f) **Effective Date.** "Effective Date" shall be the date of execution of this Lease by the last party to execute, as indicated in Article XIV of this Lease. The respective obligations of Landlord and Tenant hereunder shall commence as of the Effective Date.

(g) **Events of Default.** "Events of Default" as used in this Lease means those events specified in Section 10.01 as Events of Default.

(h) **Expiration Date.** "Expiration Date" as used in this Lease is defined in Section 1.02.

(i) **Hazardous Materials.** "Hazardous Materials" as used in this Lease shall have the meaning set forth in Section 11.01.

(j) **Landlord.** "Landlord" as used in this Lease means the entity or person identified as Landlord in Paragraph 1 of the Summary.

(k) **Lease Year.** "Lease Year" shall mean each full twelve (12) calendar month period during the Term, except that the initial Lease Year shall commence on the Commencement Date and end on last day of the twelfth (12th) full calendar month thereafter.

(l) **Operating Expenses.** "Operating Expenses" as used in this Lease is defined in Section 2.03.

(m) **Premises.** "Premises" as used in this Lease means the Premises described in Paragraph 3 of the Summary and Section 1.01.

(n) **Renewal Term.** "Renewal Term" as used in this Lease means a period of time specified in Section 1.02(b) commencing on the last day of the initial Term or the prior Renewal Term, as the case may be, and terminating at the time specified in Section 1.02(b).

(o) **Rent.** "Rent", "rent", or "rental" means, collectively, Base Rent and Additional Rent. Additional Rent includes, without limitation, Operating Expenses and any and all other sums due from Tenant under this Lease or applicable law.

(p) **Rentable Square Feet.** "Rentable Square Feet," "Rentable Square Foot" or "Rentable Square Footage" as used in this Lease with respect to the Premises shall be determined in the manner described in Section 1.01.

(q) **Taxes.** "Taxes" as used in this Lease is defined in Section 2.03.

(r) **Tenant.** "Tenant" as used in this Lease means the entity or person identified as Tenant in Paragraph 2 of the Summary, and any permitted successor or assign to such entity or person in accordance with the terms of Article IX of this Lease.

(s) **Term.** "Term" as used in this Lease means the period of time specified in Section 1.02(a) commencing on the Commencement Date and terminating at the time specified in Section 1.02(a).

Article II. RENT

2.01 BASE RENT. Tenant agrees to pay monthly as Base Rent during the Term, without notice or demand, set-off or deduction, except as otherwise provided for under this Lease, the sums of money set forth in Paragraph 5 of the Summary, which amount shall be payable to Landlord at the address set forth in Paragraph 11 of the Summary, or at such other address notice of which is given to Tenant by Landlord in accordance with Section 13.07 of this Lease. Tenant shall pay to Landlord the first installment of Base Rent upon Tenant's execution of this Lease. Thereafter, Base Rent shall be due and payable on or before the first day of each calendar month commencing on the first month after the Commencement Date (subject to Section 1.02(a) herein) during the Term; provided, however, if the day on which Base Rent is first due and payable is a day other than the first day of a calendar month, the monthly Base Rent installment paid on the date of Tenant's execution of this Lease shall be prorated on a per diem

basis based on a thirty (30) day month, regardless of the actual number of days in the month in question, to the end of that calendar month and the excess shall be applied as a credit to Tenant against the next monthly Base Rent installment. Tenant shall pay without set-off or deduction, as Additional Rent, all other sums due under this Lease. In addition to the Rent and any other sums or amounts required to be paid by Tenant to Landlord pursuant to the provisions of this Lease, Tenant shall also pay to Landlord, simultaneously with such payment of Rent or other sums or amounts, the amount of any applicable sales, use or excise tax on any such Rent or other sums or amounts so paid by Tenant to Landlord, whether the same be levied, imposed or assessed by the State of Florida or any other federal, state, county or municipal governmental entity or agency. Any such sales, use or excise taxes shall be paid by Tenant to Landlord at the same time that each of the amounts with respect to which such taxes are payable are paid by Tenant to Landlord. Tenant shall also pay with all rentals and other payments due under this Lease an amount equal to all sales, use, excise and other taxes (but expressly excluding income taxes) now or hereafter imposed by any lawful authority any in any form, on all amounts due or required under this Lease and classified as rent by any such authority.

2.02 OPERATING EXPENSES.

(a) Tenant agrees to pay as Additional Rent Tenant's Pro Rata Share of Operating Expenses and Taxes, as set forth herein. Landlord may invoice Tenant monthly for Tenant's Pro Rata Share of the estimated Operating Expenses and Taxes for each calendar year, which amount shall be adjusted each year based upon anticipated Operating Expenses and Taxes. At any time during a calendar year, Landlord shall have the right to revise its estimate of Operating Expenses and Taxes, and Tenant shall thereafter pay such revised amount in accordance with this Section. Notwithstanding anything herein to the contrary, Landlord agrees not to increase in excess of five percent (5%) per calendar year, the portion of the Operating Expenses which are within Landlord's reasonable control (the "Controllable Expenses"). Landlord shall provide Tenant an accounting showing in reasonable detail all computations of Additional Rent due under this section within one hundred twenty (120) days of the close of each calendar year. In the event the accounting shows that the total of the monthly payments made by Tenant exceeds the amount of Additional Rent due by Tenant under this section, Landlord shall credit any such amount against the Base Rent payment next coming due or refund such amount in cash if no Base Rent is coming due. In the event the accounting shows that the total of the monthly payments made by Tenant is less than the amount of Additional Rent due by Tenant under this section, the accounting shall be accompanied by an invoice for the Additional Rent. If this Lease commences on a day other than the first day of a calendar year or ends on a day other than the last day of a calendar year, the amount of any such Operating Expenses payable by Tenant applicable to the year in which the Term commences or ends shall be prorated on the ratio that the number of days from the Commencement Date to the end of the calendar year or from the commencement of the calendar year to the Expiration Date, as the case may be, bears to 365. Tenant agrees to pay any Additional Rent due under this section within thirty (30) days following receipt of the invoice or accounting showing Additional Rent due. The provisions of this Lease concerning the payment of Additional Rent or refunding overpaid Additional Rent by the applicable party shall survive the expiration or earlier termination of the Term.

(b) Notwithstanding anything to the contrary contained herein, in the event the Building is not at least ninety-five percent (95%) occupied at all times during any calendar

year or in the event the entire Building is not provided the services described in Section 4.01 below during any calendar year, appropriate adjustments shall be made by Landlord so as to determine Operating Expenses as though the Building had been ninety-five percent (95%) occupied and such services had been provided to the entire Building at all times during such calendar year.

(c) Within one hundred twenty (120) days after Tenant receives Landlord's Operating Expenses statement, Tenant may contest such statement by providing written notice to Landlord, provided that there does not then exist a monetary Event of Default hereunder beyond any applicable notice or grace and cure period. The contest shall be conducted by a certified public accountant (who may be the employee of, or a member, officer or director of Tenant, or the employee of, or a member, officer or director of any general partner, manager or member of Tenant) (collectively, the "CPA"), and who is retained on an hourly or fixed-fee basis (but not on a contingency basis). If no such contest is made by written notice to Landlord within such 120-day period, such Operating Expenses statement shall be binding upon Tenant in all respects except for any acts of fraud or intentional misconduct by Landlord in preparing such statement or charging such Operating Expenses. If Tenant timely contests such Operating Expenses statement, Tenant shall have the right to have the CPA inspect and examine, at reasonable times during normal business hours, Landlord's Books of Account and Records pertaining to the Operating Expenses, all at Tenant's sole cost and expense. In connection with any such audit, Tenant shall pay to Landlord as Additional Rent, Landlord's invoice for Landlord's reasonable costs incurred in connection with: the photocopying of documents; the retrieval of documents from Landlord's storage archives; and any other actual, reasonable third party expenses of Landlord incidental to Tenant's Audit. For purposes of this Paragraph and Tenant's Audit, Landlord's "Books of Account and Records" shall be limited to the following: (a) operating expense ledger; (b) reconciliation of operating expense ledger and amount(s) billed as Operating Expenses; (c) cash disbursements journals; (d) accounts payable or distribution journals; (e) copies of paid real estate property tax bills; (f) copies of vendor paid bills; (g) copies of vendor contracts; (h) copy of management agreement and calculation(s) of management fees; (i) gross-up calculations, if applicable; (j) work order tickets; (k) paid and outstanding billings to Tenant; (l) pending and received recoveries from insurers, vendors and others; (m) documentation regarding insurance claims; (n) occupancy records (but not rent rolls pertaining to other tenants), if applicable; (o) overtime HVAC records; and (p) as-built plans. Tenant acknowledges and agrees that under no circumstances shall Tenant or the Auditor have the right to review any income tax returns of Landlord, leases of other tenants in the Building, and any other books or records not listed in subparagraphs (a) through (p) of this Paragraph 2.02(c). Such audit shall be conducted at the offices of the Building manager where such records are kept within sixty (60) days after the date of Tenant's notice. Landlord and/or Landlord's Building manager shall cooperate with Tenant and/or Tenant's representatives with respect to any such specific inquiries or questions and with respect to the conduct of such audit, so as to facilitate the prompt and efficient answer thereto and/or conduct of same, as applicable. Tenant shall notify Landlord of the results of such audit in writing. Landlord may have an agent or employee present during such inspection and audit. Landlord shall have the right to dispute the results of Tenant's audit. Any such dispute shall be resolved by a certified public accountant mutually satisfactory to Landlord and Tenant, or selected by the American Arbitration Association if Landlord and Tenant cannot agree on the identity of such accountant. If the audit by Tenant shall ultimately result in Landlord and Tenant agreeing that Tenant has overpaid Landlord for its share of

Operating Expenses, such overpayment shall be applied to the next accruing installment(s) of Additional Rent due from Tenant, until such credit is depleted or refunded to Tenant in cash if no further Additional Rent is due. Tenant hereby agrees to keep the results of any such audit confidential, and to request Tenant's auditor and its employees and each of their respective attorneys and advisors to likewise keep the results of such audit in strictest confidence. In particular, but without limitation, Tenant agrees that: (i) Tenant shall not disclose the results of any such audit to any past, current or prospective tenant of the Building; and (ii) Tenant shall request, that its auditors, attorneys and anyone associated with such parties shall not disclose the results of such audit to any past, current or prospective tenant of Landlord in the Building; provided, however, that Landlord hereby agrees that nothing in items (i) or (ii) above shall preclude Tenant from disclosing the results of such audit in any judicial or quasi-judicial proceeding, or pursuant to court order or discovery request, or to any current or prospective assignee or sublessee of Tenant, or to any agent, representative, or employee of Landlord who or which requests the same. In the event that the audit reveals that Operating Expenses were overstated by five percent (5%) or more, Landlord shall reimburse Tenant within thirty (30) days of the conclusion of such audit, for all reasonable, third party, out-of-pocket costs incurred by Tenant in connection with such audit.

2.03 DEFINITION OF OPERATING EXPENSES AND TAXES.

(a) The term "Operating Expenses" includes all expenses incurred by Landlord with respect to the ownership, management, maintenance, repair and operation of the Building and all Landlord's personal property used in connection therewith, which Operating Expenses shall be reasonably comparable to those charged by comparable first class office buildings located in Winter Park, Florida, including, but not limited to, the following (subject to the exclusions set forth below): (a) maintenance and repair costs, including without limitation, all inspection fees, services, supplies and other expenses for maintaining and operating the Building including elevators, lighting, parking and common areas limited however, to the portion thereof allocable to the Building common areas, Parking Structure and grounds; (b) electricity, fuel, water, sewer, gas, heating and air conditioning and other utility charges; (c) security, window washing, janitorial services (provided that, in the event that Tenant provides its own janitorial services for the Premises in accordance with Section 4.01(e), the janitorial services included in Operating Expenses shall only consist of those services provided to the common area portions of the Building), trash and snow removal; (d) landscaping and pest control; (e) management fees comparable to those charged by comparable first class office buildings located in Winter Park, Florida, compensation, wages and fringe benefits payable to employees of Landlord, or of any management agent of Landlord providing services in connection with the operation and maintenance of the Building and other direct or indirect costs related thereto; (f) the cost, including interest at then market rates, amortized over its useful life, of any capital improvement made to the Building by Landlord after the date of this Lease which is required under any governmental law or regulation that was not applicable to the Building at the time it was constructed or enhances the Building for the general benefit of tenants or occupants of the Building or is necessary to maintain the first class nature of the Building or the safety of tenants; (g) the cost of installation of any device or other equipment designed to improve the operating efficiency of any system within the Building (but only to the extent of the cost savings therefor as reasonably estimated by Landlord), which cost shall include interest at then market rates, amortized over the shorter of its useful life or the so-called "payback period" of the investment

(i.e. the period determined by dividing the amount of the investment by the annualized reduction in Operating Expenses resulting from the investment in question); provided further, that in the event any local, state or federal government shall, by any legally enforceable legislative, administrative or judicial action, whether by ordinance, act, statute, order, mandate, rule, regulation or otherwise, require during the Term of this Lease any alteration of or improvement to any portion of the Building, excluding the Premises or any premises leased or available to be leased by other tenants of the Building (a "Mandated Alteration"), which, by generally accepted accounting principles would be treated as a capital expenditure, the, provided that such Mandated Alteration is the result of the adoption of a new or changed ordinance, act, statute, order mandate, rule or regulation or interpretation thereof not existing on the Commencement Date of this Lease, the annual Operating Expenses of the Building shall also include the annual amortization of such capital expenditure based upon a reasonable useful life that is in no event less than five (5) years; provided further, that in the event that Landlord shall pay or incur any extraordinary Operating Expenses at any time during the Term of this Lease that would, in accordance with generally accepted accounting principles, be expenses in the year paid or incurred, but for purposes of assessing the Building tenants for its proportionate share of increases in Operating Expenses, Landlord reasonably elects to amortize such expenses over more than a single year, then the Operating Expense for the year in which such expenses are paid or incurred and for each year thereafter over which such expenses are amortized shall include the amount of such expenses that are amortized during such year; provided however, that in the event that such extraordinary expenses are paid or incurred in the Base Year, the Operating Expenses for the Base Year shall not include either such expenses or the amortized amount of such expenses; (h) insurance premiums including, without limitation, commercial general liability insurance, with respect to the Building; provided that the cost of the deductibles for such policies shall not exceed commercially reasonable amounts available in the Central Florida are per occurrence, per building; (i) all other Building services costs; (j) all professional and consulting fees incurred in connection with the operation of the Building, including, without limitation, legal fees and accounting fees for preparing the statements of Operating Expenses required hereunder; (k) decorations for the lobby and other public portions of the Building; (l) Taxes (as defined below); and (m) Landlord's reasonable allocation of a portion of such costs, expenses and premiums which relate to the Building as a whole, and are not specifically allocated to any building, including without limitation, landscaping, repair, maintenance and upkeep of the parking facilities, roadways, walkways, common areas, (including lakes) and outside security services.

(b) The term Operating Expenses does not include the following: (i) repairs, restoration or other work occasioned by fire, wind, the elements or other casualty; (ii) income, inheritance, gift, excise, and franchise taxes and capital levies of Landlord; (iii) expenses incurred in leasing to or procuring of tenants, leasing commissions, advertising expenses and expenses for the renovating of space leased to tenants; (iv) interest or principal payments on any mortgage or other indebtedness of Landlord; (v) operating expenses which are the individual responsibility of Tenant or of other tenants; (vi) any professional fees and costs incurred in connection with disputes with tenants or prospective tenants, negotiation of tenant leases, the enforcement of any leases, requests to assign or sublet, the defense of Landlord's title to or interest in the Building, and the financing, refinancing, sale, exchange or other transfer of the Building; (vii) overhead and profit paid to subsidiaries or affiliates of Landlord for management or other services on or to the Premises or Building, or for supplies or other materials, to the

extent that the costs of the services, supplies, or materials exceed the competitive costs that would be incurred in a competitive arm's length transaction, were they not provided by a subsidiary or affiliate of Landlord; (viii) costs and expenses, including taxes, compensation and benefits paid to attendants or other persons, incurred to operate commercial concessions by Landlord, its subsidiaries or affiliates; (ix) the cost of services provided at no charge to other tenants or occupants in excess of services reasonably provided to Tenant by Landlord (including, without limitation, if applicable and if provided to tenants at no costs, costs incurred in connection with any health club, concierge, conference facility and other amenities), and the cost of repairs performed for other tenants or occupants of the Building, whether or not Landlord is entitled to reimbursement therefor from such other tenants; (x) advertising, administrative, marketing, and promotional expenditures, including costs of tenant-specific signage (except for the Building directories); (xi) any costs, fines, or penalties incurred because Landlord violated any governmental rule or authority; any costs incurred to test for or remedy hazardous wastes (including asbestos-containing materials) from the Building; (xii) ground lease rental payments; (xiii) rental costs for any base building equipment such as HVAC equipment and elevators; (xiv) any expense for repairs or maintenance which are covered by warranties and service contracts, to the extent that such maintenance and repairs are made at no cost to Landlord (except to the extent Landlord, through its' or its agent's or contractor's actions or negligence voided such warranty); (xv) salaries or other compensation benefits paid to asset managers, leasing agents, and officers, directors and executives of Landlord above the rank of Building Manager (other than managers); (xvi) penalties, fines, late payment charges, or interest incurred as a result of the late payment of any Tax, operating expense or other cost or expense related to the ownership or operation of the Building; (xvii) capital costs for the acquisition of sculpture, paintings or other art objects; (xviii) general overhead and general and administrative expenses which occur off-site and are not specifically related to the maintenance or operation of the; (xix) costs associated with the operation of the corporation or other entity which constitutes Landlord, as distinguished from costs of operation of the Building, including accounting and legal costs; (xx) costs which are actually reimbursed to Landlord by insurance companies or other third parties; Landlord shall use commercially reasonable efforts to pursue payment from such insurance companies or other third parties; (xxi) reserves for capital items, bad debts, or rental losses; (xxii) the cost of correcting defects in construction, or (xxiii) depreciation and amortization, except as otherwise set forth herein.

(c) The term "Taxes" shall mean all taxes, assessments (special or otherwise) and charges levied upon or with respect to the Building and ad valorem taxes on personal property used in connection therewith and shall also include any other tax, assessment, fee or excise, however described (whether general or special, ordinary or extraordinary, foreseen or unforeseen), which may be levied or assessed in lieu of, as a substitute for, or as an addition to, any other Taxes. Except as provided in Paragraph 2.01, Taxes shall not include any tax, fee or excise on the act of entering into this Lease, on the occupancy of Tenant, the rent hereunder or in connection with the business of owning and/or renting space in the Building which are now or hereafter levied or assessed against Landlord by the United States of America, the State of Florida or any political subdivision, public corporation, district or other political or public entity. Landlord may pay any such special assessments in installments when allowed by law, in which case Taxes shall include any interest charged thereon. Taxes shall also include (except as restricted in the exclusion to Operating Expenses) legal fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce Taxes; provided, however,

notwithstanding anything to the contrary Taxes shall not include income, franchise, transfer, inheritance or capital stock taxes, unless, due to a change in the method of taxation, any of such taxes are levied or assessed against Landlord, in whole or in part, in lieu of, as a substitute for or as an addition to, any other tax which would otherwise constitute a real property Tax.

2.04 LATE PAYMENT CHARGE. Other remedies for nonpayment of rent notwithstanding, if the monthly rental payment (including Base Rent and Additional Rent) or any other regularly scheduled payment due Landlord by Tenant is not received by Landlord on or before the fifth (5th) day after such payment is due, such late payment shall bear interest at the maximum lawful rate from the date due until paid in full. Landlord also reserves the right to impose a late payment charge of five percent (5%) of such past due amount shall become due and payable as Additional Rent, in addition to any other amounts owed under this Lease. Tenant acknowledges such interest and late payment charge are not intended as a penalty, but instead are intended to compensate Landlord for the additional administrative expenses resulting from any such late payment, which shall be made on demand.

2.05 HOLDING OVER. In the event of holding over by Tenant after the end of the Term without Landlord's permission, the hold over shall be as a tenant at sufferance subject to immediate eviction or dispossession and not as a tenant at will, and Tenant shall otherwise be subject to all the covenants and provisions of this Lease insofar as the same are applicable to a tenant at sufferance, including, without limitation, the payment of Additional Rent. Tenant shall pay Landlord, on demand, as monthly rent for the period of such hold over an amount equal to one hundred fifty percent (150%) of the Base Rent payable by Tenant during the last month of the Term prior to the hold over, together with the amount of any actual, direct or consequential damages suffered or incurred by Landlord, including any claim made by any succeeding tenant to the Premises, on account of such hold over by Tenant or any violation by Tenant of any other term or condition of this Lease during such hold over period; provided, however, Tenant shall only be liable for consequential damages if and only if Landlord has provided Tenant written notice that Landlord has an executed lease with a third party tenant or is then engaged in bona fide good faith negotiations which Landlord reasonably believes will result in such a lease and that damages will be incurred by Landlord if Tenant has not delivered possession by the date specified in Landlord's notice to Tenant.

2.06 DEFAULT. Base Rent, Additional Rent and each and every other charge, fee, cost, or expense which Tenant is obligated to pay, refund or reimburse Landlord hereunder shall, for the purposes of the default provisions of this Lease, be deemed rent due from Tenant, and Tenant's failure to so pay, refund or reimburse when due, beyond any applicable notice or grace and cure period, shall entitle Landlord to all the remedies provided for herein and at law or in equity on account of failure to pay rent. Tenant's covenant to pay Rent shall be independent of every other covenant in this Lease. Except as otherwise set forth in this Lease, Landlord agrees that any charge due hereunder other than scheduled monthly installments of Base Rent and Operating Expenses will not be due until thirty (30) days after Landlord sends a bill or statement therefor with all back-up documentation required hereunder.

Article III. OCCUPANCY AND USE

3.01 USE. The Premises shall be used as a restaurant/bar, lounge and special event facility and uses ancillary thereto. Tenant shall also have the right to warehouse, store or stock in the Premises such food, beverages, and merchandise as Tenant intends to offer for sale at retail, in or from the Premises, and as is permitted under this Lease. Tenant may also use for office or non-restaurant/bar purposes, only such space as is reasonably required for Tenant's business. All of the foregoing is collectively referred to as the "Permitted Use". Landlord shall take no action which would materially impair or limit Tenant's ability to conduct the Permitted Use. Tenant shall continually occupy the Premises, conduct its business and control its agents, employees, invitees and visitors in such a manner as is lawful, reputable and will not create any nuisance. Tenant agrees to operate the Premises during the entire Term of this Lease, unless prevented from doing so because of a Casualty (as such term is defined in Paragraph 7.01 hereof), and to conduct its business at all times in a high-class and reputable manner, maintaining at all times an adequate staff of employees. Tenant agrees that it will conduct its business in the Premises a minimum of five (5) days per week during the Term between the hours of 5:30 P.M. and 10:00 P.M., ("Tenant's Operating Hours").

3.02 SIGNS. Tenant agrees not place any signs on the exterior of the Building, Premises, parking areas, common areas or sidewalks and streets adjacent to the Building or Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. All signage must conform to, and comply with all applicable laws, codes and regulations, including, without limitation, zoning and building codes. Landlord reserves the right to remove any unapproved signage without notice and at Tenant's sole cost and expense. Subject to the foregoing, Tenant may install exterior signage evidencing Tenant's occupancy of the Building and providing directions to the entry to the Premises.

3.03 LICENSES AND PERMITS. Tenant, at Tenant's sole cost and expense, shall obtain all licenses, certificates of occupancy for the Premises and other permits required by any governmental authority with jurisdiction, if any. Tenant shall furnish copies of such licenses, certificates of occupancy and other permits to Landlord. Tenant shall also obtain all necessary approvals and permits, if any, required for the location and layout of all outdoor seating and service areas. Tenant acknowledges and agrees that Landlord has made no representation or warranty regarding the current zoning classification for the Building or whether: (i) Tenant will be able to obtain all required approvals, licenses and permits (including, without limitation, a liquor license) building, permits, occupational licenses, certificates of occupancy, approval of its Plans for the Work; (ii) Tenant will be able to obtain waivers of impact fees, or other ordinances or governmental approvals for construction of the Work and/or other improvements; (iii) the City of Winter Park will grant any incentives, or concessions for construction of the Work or other improvements within Premises and/or in connection with the operation of Tenant's business; (iv) the City of Winter Park will not require operating hours different than the hours Tenant contemplates or desires; (v) the City of Winter Park will authorize use of City sidewalks and property for sidewalk dining or other uses in conjunction with Tenant's business; and (vi) the City of Winter Park will require employees to park within the Parking Structure and will instead permit parking outside of City of Winter Park core business district. Tenant acknowledges and agrees that Tenant's inability to conduct its intended business operations in the Premises because

of Tenant's inability to obtain proper zoning or required licenses, approvals or permits, if applicable, shall not affect or diminish Tenant's obligations hereunder.

3.04 COMPLIANCE WITH LAWS, RULES AND REGULATIONS. Tenant, at Tenant's sole cost and expense, shall comply with all laws, ordinances, orders, rules and regulations of state, federal, municipal or other agencies or bodies having jurisdiction relating to the use, condition and occupancy of the Premises.

3.05 LANDLORD'S WARRANTY. Landlord warrants that it has the right and authority to execute this Lease, and Tenant, upon payment of the required rents and subject to the terms, conditions, covenants contained in this Lease, shall have the right to peaceably and quietly hold and enjoy the Premises during the Term and neither Landlord nor Landlord's agents, nor any party claiming under or through Landlord, shall disturb the Permitted Use or occupancy of the Premises by Tenant. Landlord warrants that it is the fee simple owner of the Building. Notwithstanding the foregoing or anything to the contrary in this Lease, to the best of Landlord's current knowledge, information and belief (without, however, any independent investigation or otherwise), the Permitted Use does not violate any zoning or other governmental laws or regulations which govern the Premises; provided, however, Tenant expressly acknowledges and agrees that Tenant is relying solely upon its own investigation and due diligence with respect to (i) the zoning classification applicable to the Building and Premises, and (ii) whether the Permitted Use is permitted as a matter of right (or otherwise, and in such event, Tenant covenants and agrees to seek or undertake, and thereafter comply with all necessary or required conditional use permits) under the applicable zoning ordinance and regulations of the City of Winter Park, Florida, and/or the applicable zoning ordinance and regulations of Orange County, Florida.

Article IV. UTILITIES AND SERVICES

4.01 BUILDING SERVICES. Landlord shall furnish Tenant the following:

(a) routine maintenance, painting and electric lighting service for all common areas and special service areas of the Building in the manner and to the extent reasonably deemed by Landlord to be standard;

(b) loading dock facilities in common with other tenants of the Building; and

(c) access to the Premises twenty-four (24) hours a day, seven (7) days a week, fifty-two (52) weeks per year over the Term, subject only to reasonable security restrictions, via an access control system to be determined by Landlord.

(d) Landlord may provide additional services not enumerated above and may make changes from time to time in the delivery of services to the Premises consistent with the operation of the Building as a first class, multi-tenant office building. Landlord has the sole right to select utility suppliers to the Premises and the Building.

4.02 CHARGE FOR SERVICE. All reasonable costs of Landlord for providing the services set forth in Article IV (except those charges to be paid by Tenant pursuant hereto or

other tenants pursuant to their leases or other agreements with the Landlord) shall be subject to the Additional Rent provisions in Section 2.02.

4.03 UTILITIES. At Tenant's sole cost and expense, Tenant agrees to install (in compliance with all applicable codes and ordinances) and maintain throughout the Term all connections, pipes, conduits, cables, wires, ducts and condensers, meters and all other fixtures and equipment for the generation, storage, conveyance or measurement of utilities and services to or for the Premises, including, without limitation, for removal of sewage and for the delivery of water, electricity, telephone and cable services, natural gas (if available at the Premises), heating and air conditioning of the Premises and other utilities and services installed by Tenant or used by Tenant in or in connection with the Premises (collectively, the "Utilities"), used in or in connection with the Premises. Throughout the Term, Tenant shall contract for, obtain in Tenant's own name, and be solely responsible for the payment of all connection, service and usage charges imposed or charged in connection with the Utilities. Tenant shall install separate meter(s) for any such Utilities, all of which shall be installed and maintained by Tenant at Tenant's sole cost and expense. Unless billed to Landlord, Tenant shall pay to the appropriate utility company the cost of all such Utilities used upon the Premises (together with any applicable taxes or assessments thereon). If any such charges are not paid when due, Landlord may, but shall not be required to, pay the same, and any amount so paid by Landlord shall immediately thereafter become due to Landlord from Tenant as Additional Rent.

4.04 INTERRUPTION OF SERVICES AND UTILITIES. Notwithstanding anything in this Lease to the contrary, the failure by Landlord to any extent to furnish, or the interruption or termination of, the foregoing Utilities and/or services in whole or in part, resulting from causes beyond the reasonable control of Landlord shall not render Landlord liable in any respect nor be construed as an eviction (constructive or otherwise) of Tenant, nor work an abatement of rent, nor relieve Tenant from obligation to fulfill any covenant or agreement of this Lease.

Article V. REPAIRS AND MAINTENANCE

5.01 LANDLORD REPAIRS. Landlord shall not be required to make any improvements, replacements or repairs of any kind or character to the Premises or Building during the Term, except such repairs as are set forth in this section or otherwise set forth in this Lease. Landlord shall maintain only the roof, foundation, parking and common areas, the structural soundness of the exterior walls, doors, corridors, and windows of the Building. Landlord's cost of maintaining and repairing the items set forth in this section are subject to the terms of Article II. Landlord shall not be liable to Tenant, or Tenant's agents, licensees, invitees or other visitors to the Premises or Building, except as expressly provided in this Lease, for any damage to person or property or inconvenience, or for consequential or punitive damages of any nature, and Tenant shall not be entitled to any abatement or reduction of rent by reason of any repairs, alterations or additions made or to be made by Landlord under this Lease; provided, however, in the absence of a bona fide emergency, Landlord agrees to use commercially reasonable efforts in good faith to undertake and perform all improvements, replacements or repairs required by this Paragraph 5.01 at times other than Tenant's Operating Hours.

5.02 TENANT REPAIRS.

(a) Except for those repairs to be made by Landlord pursuant to Section 5.01 above, Tenant shall, at its sole cost and expense, maintain the Premises in a first class condition, including all necessary repairs and replacements.

(b) Without limitation of any of the foregoing, Tenant shall cause all portions of the Premises and the exterior patio seating areas, if any, used by Tenant in conjunction with the Permitted Use and/or Tenant's use or occupancy of the Premises, to be maintained in a neat, clean and first class condition.

5.03 TENANT DAMAGES. Tenant shall not allow any damage to be committed on any portion of the Premises or Building, and at the termination of this Lease, by lapse of time or otherwise, Tenant shall deliver the Premises to Landlord, broom-clean, in as good condition as existed on the Commencement Date of this Lease, permitted alterations, ordinary wear and tear and damage by casualty or condemnation excepted. The cost and expense of any repairs necessary to restore the condition of the Premises as required by the preceding sentence shall be borne by Tenant.

Article VI. ALTERATIONS AND IMPROVEMENTS

6.01 ALTERATIONS AND IMPROVEMENTS. Tenant shall obtain Landlord's approval (which may be withheld or conditioned in Landlord's sole discretion), prior to making any additions or alterations to the Premises which affect the structural integrity of the Building, including but not limited to, exterior walls and loadbearing walls (collectively, "Structural Alterations"). Except as conditioned by the preceding sentence, Tenant shall have the right to install interior signage (and exterior signage subject to the terms of Paragraph 3.02 hereof), furnishing, fixtures and equipment in the Premises and to make non-structural, alterations and additions to the Premises (collectively, "Improvements", which together with Structural Alterations may hereinafter be referred to as an "Alteration" or "Alterations"). All personal property, business and trade fixtures, furnishings and equipment, other than those which are installed in or affixed to the Premises shall remain the property of Tenant and (i) shall be removed by Tenant on or before the Expiration Date or earlier termination of this Lease, or (ii) may be removed by Tenant (except as otherwise provided by this Lease) at any time during the Term. Tenant agrees to repair any damage to the Premises caused by or in connection with the removal of any articles of personal property, business or trade fixtures, alterations, improvements and installations.

6.02 LIENS. Upon completion of any Alteration, Tenant shall promptly furnish Landlord with sworn contractors' affidavits and full and final waivers of lien covering all labor, materials and services included in such Alteration or Improvement of the Premises (as the term Improvement is defined in Ch. 713, *Florida Statutes*). Tenant shall not permit any claim of lien (including, without limitation, any mechanic's lien, lien for professional services, lien of any contractor, subcontractor, sub-subcontractor, laborer, materialman, and/or professional lienor) to be filed or recorded against the Building, or any part thereof, arising out of any Alteration or Improvement (including the furnishing of labor, services, materials or supplies) performed, or alleged to have been performed, by or on behalf of Tenant. If any such lien or claim of lien is

filed, Tenant shall within ten (10) days thereafter have such lien released of record or deliver to Landlord a bond in form, amount, and issued by a surety satisfactory to Landlord, indemnifying Landlord against all costs and liabilities resulting from such lien and the foreclosure or attempted foreclosure thereof. If Tenant fails to have such lien so released or to deliver such bond to Landlord, Landlord, without investigating the validity of such lien, may pay or discharge the same, and Tenant shall reimburse Landlord upon demand for the amount so paid by Landlord, including Landlord's expenses and reasonable attorneys' fees. Tenant hereby acknowledges and agrees to the following: THE INTEREST OF LANDLORD IN THE BUILDING SHALL NOT BE SUBJECT TO LIENS FOR IMPROVEMENTS (INCLUDING ANY ALTERATION AS DEFINED HEREIN) TO THE PREMISES MADE BY TENANT, NOTWITHSTANDING ANY APPROVAL BY LANDLORD OF ANY CONTRACT(S) WITH ANY CONTRACTOR(S), AND/OR LANDLORD'S APPROVAL OF ANY SUCH IMPROVEMENT(S) AND/OR ALTERATION. PRIOR TO ENTERING INTO ANY CONTRACT FOR THE CONSTRUCTION OF ANY ALTERATION OR IMPROVEMENT, TENANT SHALL NOTIFY THE CONTRACTOR MAKING IMPROVEMENTS TO THE PREMISES OF THE FOREGOING PROVISION, AND TENANT'S KNOWING OR WILLFUL FAILURE TO PROVIDE SUCH NOTICE TO THE CONTRACTOR SHALL RENDER THE CONTRACT BETWEEN TENANT AND THE CONTRACTOR VOIDABLE AT THE OPTION OF THE CONTRACTOR. IN THE EVENT TENANT FAILS TO INCLUDE THE FOREGOING LANGUAGE IN ANY SUCH CONTRACT, LANDLORD MAY, BUT SHALL NOT BE REQUIRED TO, EXERCISE ALL REMEDIES AVAILABLE UNDER THIS LEASE AS A RESULT OF SUCH EVENT OF DEFAULT. All lienors, including without limitation, contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers, professional lienors (as defined by Section 713.03, Florida Statutes, as the same may be amended or restated), and others are called upon to take due notice of this clause, it being the intention of Landlord and Tenant to expressly prohibit any such lien against Landlord's title or interest in and to the Building by the use of this language, as and in the manner contemplated by Section 713.10, Florida Statutes.

Article VII. CASUALTY AND INSURANCE

7.01 CASUALTY DAMAGE.

(a) **Termination Rights.** If the Building or any portion thereof is damaged or destroyed by fire, flood, windstorm, tornado, hurricane, the elements, accident or other casualty including, without limitation, an Act of God or force majeure (collectively, "Casualty") to the extent the Building or Premises is rendered untenable or inaccessible, and if, in Landlords' reasonable opinion (communicated to Tenant in writing not later than forty-five (45) days after the date of the Casualty and supported by a written estimate from a third party contractor and such other evidence as Tenant may reasonably request), the Building or Premises cannot be restored within twelve (12) months after the date of such Casualty, then either Landlord or Tenant shall have the right to terminate the Lease by giving written notice to the other party within sixty (60) days after such Casualty. If this Lease is terminated in accordance with this Section 7.01(a), Tenant shall not be responsible for any Rent allocable to the period commencing on the first day after the date of the Casualty and, Landlord agrees to refund to Tenant any Rent paid by Tenant allocable to such period with Landlord's notice of termination, or, if terminated by Tenant, within thirty (30) days after receipt of Tenant's notice of termination. If Landlord or

Tenant do not elect to terminate this Lease, then Landlord and Tenant shall repair and restore the Building and Premises to substantially the same condition as existed prior to the date of the Casualty, in accordance with Section 7.01(d) hereof.

(b) **Partial Destruction.** In the event of a Casualty which partially destroys or damages the Building or Premises (which, for the purposes of this Article shall be deemed not to include the exterior patio seating areas, if any) which does not result in termination of this Lease by Landlord or Tenant, but which otherwise renders the Premises partially but not wholly untenantable or inaccessible, this Lease shall not terminate and Rent shall be abated in proportion to the rentable area of the Premises which reasonably cannot be used or occupied by Tenant as a result of such Casualty. Landlord and Tenant shall in such event, within a reasonable time after the date of such Casualty (not to exceed 180 days), subject to force majeure, an Act of God, or to any delay caused by either party, restore the Building and Premises to substantially the same condition as existed immediately prior to the date of the Casualty, in accordance with Section 7.01(d) hereof. In no event shall Rent abate nor shall Tenant be entitled to terminate this Lease if any Casualty to the Building or Premises is the result of the gross negligence or willful misconduct of Tenant, or Tenant's agents, employees, representatives, contractors, successors or assigns, licensees, invitees, customers or patrons.

(c) **Last Year of Term.** If, at any time during the last twelve (12) months of the Term as the same may have been extended under the terms of this Lease, more than forty percent (40%) of the Premises (excluding the exterior patio seating area, if any) is destroyed or materially damaged by any Casualty, then either Landlord or Tenant shall have the right to terminate this Lease by giving written notice to the other within sixty (60) days after the date of the Casualty. If neither Landlord nor Tenant elect to terminate this Lease, then the provisions of Section 7.01(d) shall apply. Following the termination of this Lease in accordance with Section 7.01(a) or Section 7.01(c), neither party shall have any further right, duty or obligation to the other, except as otherwise expressly set forth in this Lease. Notwithstanding the foregoing or anything to the contrary in this Lease, if Tenant is permitted to and elects to terminate this Lease pursuant to the terms of Section 7.01(a) or Section 7.01(c), then promptly after receiving Tenant's notice of termination, Landlord (or its designee) shall inspect the Premises to determine the extent of the damages thereto, and Landlord (or its designee) shall list all damages within the Premises (the "Damages List"). Landlord shall furnish a copy of the Damages List to Tenant. If the Damages List reveals that all or any portion of the permanent improvements installed by Tenant as part of the Work (as such term is hereinabove defined) or subsequent alterations have been damaged or destroyed as a result of the Casualty, then within ten (10) days after Tenant's receipt of the Damages List, Tenant shall forward to Landlord payment equal to the then present value of Landlord's interest in the permanent improvements at the end of the unexpired portion of the Term of the Lease, calculated from the date of the Casualty, as reasonably determined in accordance with generally accepted accounting principles, consistently applied.

(d) **Restoration of the Premises.** Following any Casualty which does not result in termination of the Lease, Landlord and Tenant shall each, at its expense, use reasonable efforts to repair and restore the Premises (subject to the limitations hereof) and Building to substantially the former condition to the extent permitted by then applicable laws, codes, regulations and ordinances; provided, however, Landlord's obligations hereunder are limited to the extent sufficient insurance proceeds to enable Landlord to restore and reconstruct the

Premises are made available to Landlord by the holder of any mortgage or deed to secure a debt encumbering the Building, but in no event shall Landlord have any obligation to make repairs or restoration beyond the extent of insurance proceeds received by Landlord for the purpose of making such repairs or restoration. Notwithstanding the foregoing or anything to the contrary in this Lease, Landlord's obligation to restore the Premises shall be limited to the condition and improvements existing as of the Commencement Date. In no event shall Landlord be obligated to restore any improvements installed by Tenant as part of the Work or otherwise, nor shall Landlord have any obligation to restore, repair or replace any of Tenant's Property, trade fixtures or other alterations or improvements existing or installed within the Premises.

(e) **Apportionment of Rent.** In the event of termination of this Lease pursuant to this Section 7.01, then all Rent shall be apportioned and paid to the date on which the damage occurs, and Tenant shall immediately vacate the Premises according to such notice of termination.

7.02 WAIVER OF SUBROGATION. Anything in this Lease to the contrary notwithstanding, subject to the terms of this Section 7.02, Landlord and Tenant hereby waive and release each other of and from any and all rights of recovery, claim, action or cause of action, against each other, their partners, agents, officers and employees, for any loss or damage that may occur to the Premises or Building, or personal property within the Building or the Premises, which is covered by valid and collectible insurance in effect at the time of such loss or damage, or which would have been insurable had the parties maintained the policies and coverages required by this Lease, regardless of cause or origin, including negligence of Landlord or Tenant and their partners, agents, officers and employees. Landlord and Tenant agree to give immediately to their respective insurance companies which have issued policies of insurance covering any risk of direct physical loss, written notice of the terms of the mutual waivers contained in this Section 7.02, and to have the insurance policies properly endorsed, if necessary. If an insurance policy cannot be obtained with a waiver of subrogation, or is obtainable only by the payment of an additional premium charge above that charged by insurance companies issuing policies without waiver of subrogation, the party undertaking to obtain the insurance shall notify the other party of this fact. The other party shall have a period of ten (10) days after receiving the notice either to place the insurance with a company that is reasonably satisfactory to the other party and that will carry the insurance with a waiver of subrogation at no additional cost, or to agree to pay the additional premium if such a policy is obtainable at additional cost. If the insurance cannot be obtained or the party in whose favor a waiver of subrogation is desired refuses to pay the additional premium charged, the other party is relieved of the obligation to obtain a waiver of subrogation with respect to the particular insurance involved. Landlord and Tenant acknowledge that the waivers and releases set forth in this section are intended to result in any loss or damage which is covered by insurance being borne by the insurance carrier of Landlord or Tenant, as the case may be, or by the party having the insurable interest if such loss is not covered by insurance and this Lease required such party to maintain insurance to cover such loss. Landlord and Tenant agree that such waivers and releases were freely bargained for and willingly and voluntarily agreed to by Landlord and Tenant and do not constitute a violation of public policy. Landlord and Tenant understand that waivers of subrogation may not apply to injury and death to individuals. Landlord and Tenant shall each carry insurance, as provided by this Article VII, in connection with injury and death to individuals. Landlord hereby agrees to indemnify and hold harmless Tenant from any liability which Tenant may otherwise have with

respect to injury or death to individuals occurring within the Building but outside the Premises except to the extent that such injury or death is caused by the negligence of Tenant and/or Tenant's employees, contractors, agents, visitors, invitees, guests or independent contractors, and is not covered by the insurance Landlord is required to carry under this Lease. Likewise, Tenant agrees to defend and hold harmless Landlord from any liability for injury or death to persons occurring within the Premises except to the extent such injuries or death are caused by the negligence of Landlord and/or Landlord's employees, contractors, agents, visitors, invitees, guests or independent contractors, and is not covered by the insurance Tenant is required to carry under this Lease. Nothing contained herein shall be deemed a waiver of any claims which Landlord or Tenant may have against the other's respective contractors, agents, visitors, invitees, guests or independent contractors.

7.03 TENANT'S INSURANCE. Tenant covenants and agrees to provide at its expense on or before the Effective Date, and to keep in force during the Term, naming Landlord, its managing agent, and the holders of any mortgages, deeds to secure debt and Tenant as insured parties:

(a) Liability Insurance. Tenant shall obtain and keep in full force a policy of commercial general liability insurance, including but not limited to automobile, personal injury, broad form contractual liability, owner's (i.e., Tenant's) contractors protective and broad form property damage or such successor comparable form of coverage in the broadest form then available (hereinafter referred to as a "Liability Policy") under which Tenant is named as the insured and Landlord, Landlord's agent and any lessors and mortgagees (whose names shall have been furnished to Tenant) are named as additional insureds and under which the insurer agrees to indemnify and hold Landlord, its managing agent and all applicable lessors and mortgagees harmless from and against all cost, expense and/or liability arising out of or based upon the Tenant's indemnification obligations of this Lease. The minimum limits of liability shall be a combined single limit with respect to each occurrence of not less than Two Million Dollars (\$2,000,000.00). The Liability Policy shall, if such is available on a commercially reasonable basis, contain a cross liability endorsement and shall be primary coverage for Tenant and Landlord for any liability arising out of Tenant's and Tenant's employees' use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall provide that it is primary insurance and that insurance, if any, maintained by Landlord is excess and noncontributing. The policy shall contain a severability of interest clause. Not more frequently than once in any three (3) year period, if, in the opinion of Landlord's lender or of the insurance consultant retained by Landlord, the amount of public liability and property damage insurance coverage at that time is not adequate, Tenant shall increase the insurance coverage as required by either Landlord's lender or Landlord's insurance consultant; provided however, that in no event shall any such insurance coverage be increased in excess of that which is from time to time being required by comparable landlords of comparable tenants leasing comparable amounts of space in other comparable buildings in the vicinity of the Building.

(b) Tenant's Property Insurance. Tenant at its cost shall maintain on the tenant improvements, including, without limitation, the Work paid for and installed by or at the direction of Tenant, and all of its furniture, trade fixtures and other personal property in, on, or about the Premises (collectively, the "Tenant's Property"), an "all risk" property policy including coverage against loss or damage by fire, theft, wind damage, sprinkler leakage and such other

risks or hazards, and containing an agreed amount endorsement in an amount not less than one hundred percent (100%) of the full replacement cost valuation under which Tenant is named as the insured and Landlord, Landlord's agents and any lessors and mortgagees (whose names shall have been furnished to Tenant) are named as additional insureds and loss payees as their interests may appear. The proceeds from any such policy shall be used by Tenant for the replacement of such tenant improvements and personal property.

(c) Workers' Compensation Insurance. Tenant shall maintain workers' compensation insurance as required by law and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000).

(d) Business Interruption/Extra Expense Insurance. Tenant shall maintain loss of income, business interruption and extra expense insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings and incurred costs attributable to the perils commonly covered by Tenant's property insurance described above but in no event less than One Million Dollars (\$1,000,000.00). Such insurance will be carried with the same insurer that issues the insurance for the personal property.

(e) Other Coverage. Tenant, at its cost, shall maintain such other insurance as Landlord may reasonably require from time to time, but in no event may Landlord require any other insurance which is (i) not then being required of comparable tenants leasing comparable amounts of space in comparable buildings in the vicinity of the Building or (ii) not then available at commercially reasonable rates.

(f) Insurance Criteria. All the insurance required to be maintained by Tenant under this Lease shall:

(i) Be issued by insurance companies authorized to do business in the state of Florida, with a financial rating of at least an A-VII status for any insurance as rated in the most recent edition of Best's Insurance Reports;

(ii) Be issued as a primary policy;

(iii) Contain an endorsement requiring thirty (30) days' written notice from the insurance company to both parties and to Landlord's lender before cancellation or any material change in the coverage, scope, or amount of any policy or because of the failure to pay insurance premium; and

(iv) With respect to property loss or damage, a waiver of subrogation must be obtained, as required by Section 7.02.

(v) Evidence of Coverage. A duplicate original policy, or a certificate of the insurance policy shall be deposited with Landlord at the Effective Date, and on renewal of the policy a certificate of insurance listing the insurance coverages required hereunder and naming Landlord and any other interested parties as additional insured shall be deposited with Landlord not less than fifteen (15) days before expiration of the term of the policy.

7.04 LANDLORD'S INSURANCE. Beginning on the Commencement Date and at all times thereafter during the Term of this Lease, the Landlord shall maintain: (a) standard all-risk fire and casualty insurance, covering the Building (excluding Tenant's interest in the Tenant's Property) amounts at least equal to one hundred percent (100%) of the replacement cost of the Building (less the amount of any deductible) at the time in question, but in no event less than such coverage as is required to avoid coinsurance provisions; (b) commercial general liability insurance with minimum limits of \$2,000,000.00 for injury to or death of one or more persons in any one occurrence and, \$2,000,000.00 for damage to or destruction of in any one occurrence; (c) employer's liability insurance with a minimum limit of \$2,000,000.00 for bodily injury; (d) worker's compensation insurance in statutory limits; and (e) such other insurance coverage as is customarily carried in respect of first class office buildings in Winter Park, Florida. At the Tenant's request the Landlord shall furnish the Tenant a certificate or certificates of insurance certifying that the insurance coverage required hereby is in force. Any insurance required by the terms of this Lease to be carried by the Landlord may be under a blanket policy (or policies) covering other properties of the Landlord and/or its related or affiliated corporations. If such insurance is maintained under a blanket policy, the Landlord shall procure and deliver to the Tenant a statement from the insurer or general agent of the insurer setting forth the coverage maintained and the amounts thereof allocated to the risks intended to be insured hereunder.

Article VIII. CONDEMNATION

8.01 SUBSTANTIAL TAKING. If all or a substantial part of the Premises are taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain or by purchase in lieu thereof, and the taking would prevent or materially interfere with the use of the Premises as set forth in Section 3.01, then either party may terminate this Lease upon notice to the other within ninety (90) days of the taking, and the rent shall be abated during the unexpired portion of the Term effective on the date physical possession is taken by the condemning authority.

8.02 PARTIAL TAKING. In the event a portion of the Premises shall be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain or by purchase in lieu thereof, and this Lease is not terminated as provided in Section 8.01 above, to the extent sufficient condemnation awards or sale proceeds in lieu thereof to enable Landlord to restore and reconstruct the Premises are made available to Landlord by the holder of any mortgage or deed to secure a debt encumbering the Building, Landlord shall, at Landlord's sole cost and expense, restore and reconstruct the Building and other improvements on the Premises to the extent necessary to make it reasonably tenantable. The rent payable under this Lease during the unexpired portion of the Term shall be adjusted to such an extent as may be fair and reasonable under the circumstances.

8.03 TENANT'S CLAIM. In the event of any total, substantial or partial takings described in Sections 8.01 and 8.02, Landlord shall be entitled to receive the entire condemnation award without deduction therefrom for any interest of Tenant in the Premises, but Tenant shall have the right to make a separate claim with the condemning authority for, and to receive therefor, (a) any moving expenses incurred by Tenant as a result of such condemnation; (b) any costs incurred or paid by Tenant in connection with any alteration or improvement

(excluding any permanent improvements installed as part of the Work or subsequent alterations) made by Tenant to the Premises (the "Permanent Alterations"); provided, however, in the event Landlord receives an award for the Permanent Alterations, Landlord agrees to pay to Tenant an amount equal to the value of Tenant's use of such Permanent Alterations for the remainder of the Term of the Lease, (c) the value of any of Tenant's personal property taken; (d) Tenant's loss of business income; and (e) any other separate claim which Tenant may hereafter be permitted to make under applicable law; provided, however, that such other separate claims shall not reduce or adversely affect the amount of Landlord's award.

Article IX. ASSIGNMENT OR SUBLEASE; RIGHTS OF MORTGAGEES

9.01 LANDLORD ASSIGNMENT. Landlord shall have the right to sell, transfer or assign, in whole or in part, its rights and obligations in this Lease and in the Building or Premises. Any such sale, transfer or assignment shall operate to release Landlord from any and all liabilities under this Lease arising after the date of such sale, transfer or assignment.

9.02 TENANT ASSIGNMENT OR SUBLEASE. Tenant shall not, without the prior written consent of Landlord, assign this Lease or any interest herein or in the Premises, or mortgage, pledge, encumber, hypothecate or otherwise transfer or sublet the Premises or any part thereof or permit the use of the Premises by any party other than Tenant, without prior written consent of Landlord, which will not be unreasonably withheld, conditioned or delayed; provided, however, that Tenant may assign all of its rights under this Lease (but not a portion thereof) or sublease the Premises in connection with a bona-fide sale of Tenant's business (provided (i) the purchaser has on the date of the proposed assignment or sublease, a net worth sufficient (as reasonably determined by Landlord) to capitalize and operate the Premises for the Permitted Use; and (ii) the purchaser (as reasonably determined by Landlord) is qualified to, and otherwise has the experience necessary to carry on the Permitted Use and Tenant's obligations under this Lease), and provided further that each of the following conditions is satisfied to Landlord's reasonable satisfaction: (i) there is no change in the Permitted Use under this Lease; (ii) Landlord is provided with a minimum of thirty (30) days' prior written notice of the proposed assignment or sublease, which notice shall include an explanation of the relationship between Tenant and the proposed assignee/subtenant and/or purchaser (as applicable), and Tenant thereafter promptly provides Landlord with any other information relevant to the assignment/sublease or purchase which Landlord may reasonably request; and (iii) at the time Landlord is provided with written notice of the proposed assignment/sublease or transfer (and thereafter, as Landlord may reasonably request), Landlord is furnished with sufficient financial information to evaluate the assignee/subtenant's or purchaser's credit standing. Consent to one or more such assignments or subleases shall not constitute or otherwise operate as a revocation, termination or waiver of this provision, and all subsequent assignments and subleases shall likewise be made only upon obtaining the prior written consent of Landlord, which will not be unreasonably withheld, conditioned or delayed. Assignees or purchasers of this Lease and/or subtenants of the Premises, as applicable, shall become directly liable to Landlord for all obligations of Tenant hereunder, without relieving Tenant (or any Guarantor of Tenant's obligations hereunder) of any liability therefor, and Tenant shall remain obligated for all liability to Landlord arising under this Lease during the remaining Term. Landlord may, as a prior condition to considering any request for consent to an assignment or sublease, require Tenant to obtain and submit current financial statements of any proposed assignee/subtenant or purchaser and such other financial

documentation relative to the proposed assignee/subtenant or purchaser as Landlord may reasonably require. Notwithstanding the foregoing terms and conditions of this Paragraph 9.02, any direct or indirect owner of a legal or beneficial interest in the Tenant may be transferred (1) upon the death of any individual owner thereof, and (2) voluntarily by an owner thereof, so long as following any such transfer, Brian France or any of his immediate family members or trusts set up for the benefit of such immediate family members (collectively, "France"), retain(s) at least fifty-one percent (51%) or more, directly or indirectly, of the equity ownership interest in Tenant, and France retains management and control of the business operations of Tenant. Within thirty (30) days following the death of the Guarantor (to the extent the Guaranty is then in full force and effect), Tenant shall nominate a substitute guarantor who shall be acceptable to Landlord in its sole but reasonable discretion (the "Substitute Guarantor"), and such Substitute Guarantor shall execute and deliver to Landlord within such thirty (30) day period, a replacement guaranty in form and substance reasonably acceptable to Landlord (the "Replacement Guaranty"), provided such Replacement Guaranty shall not impose upon the Substitute Guarantor liability for obligations under this Lease or otherwise, which exceed the then remaining obligations of the Guarantor under the Guaranty. Regardless of whether Landlord's consent is required, Tenant shall promptly provide Landlord with written notice of any transfer or series of related transfers exceeding twenty-five percent (25%) or more of the equity ownership interests in Tenant, together with a copy (certified to be true and correct by Tenant) of the current operating, partnership or trust agreement, as applicable, setting forth the new allocation(s) of such ownership interests of Tenant. Tenant shall pay, as Additional Rent, all reasonable out-of-pocket costs and expenses incurred by Landlord in connection with the transfer of any ownership interest(s) of Tenant.

9.03 NON-DISTURBANCE AND SUBORDINATION.

(a) Within thirty (30) days after the Effective Date, Landlord shall deliver to Tenant a recordable non-disturbance, subordination and attornment agreement substantially in the form of **Exhibit C** and **Exhibit D** attached hereto and made a part hereof (collectively, the "SNDA"), duly executed by each holder of a deed to secure debt, mortgage, deed of trust, ground or master lease, sale-leaseback transaction or other security instrument encumbering the Premises (collectively, an "Encumbrance") placed on the Premises on or before the date of this Lease, which Non-Disturbance Agreement shall provide that, in the event of a foreclosure, sale under a power of sale, ground or master lease termination or transfer in lieu of any of the foregoing or the exercise of any other remedy pursuant to any such Encumbrance Tenant's use, possession and enjoyment of the Premises shall not be disturbed by the holder or beneficiary of such encumbrance and this Lease shall continue in full force and effect so long as no Event of Default on the part of Tenant has occurred and is continuing. If Landlord breaches its obligation hereunder, Rent shall abate pending delivery of the Non-Disturbance Agreement. The holders of all Encumbrance(s) are hereinafter sometimes collectively referred to as the "Mortgagee."

(b) At Landlord's option, this Lease is subordinate to any Encumbrance placed on the Premises after the date of this Lease, provided that Landlord delivers to Tenant a recordable Non-Disturbance Agreement (as described above in this Section 9.03), duly executed by the holder of the Encumbrance.

9.04 ESTOPPEL CERTIFICATES. Each party agrees to furnish, from time to time, within ten (10) business days after receipt of a request from the other party or from Landlord's mortgagee, a statement certifying, if applicable, the following: that Tenant is in possession of and has accepted the Premises; the Lease is in full force and effect; the Lease is unmodified (or if it is modified, a list of such amendments); Tenant has not claimed and to the certifying party's knowledge has no present charge, lien, or claim of offset against rent; the rent is paid for the current month, but is not prepaid for more than one month and will not be prepaid for more than one month in advance; to such party's knowledge, there is no existing default by reason of some act or omission by the other party; and such other matters as may be reasonably required.

Article X. DEFAULT AND REMEDIES

10.01 DEFAULT BY TENANT. The following shall be deemed to be Events of Default by Tenant under this Lease: (a) Tenant shall fail to pay any installment of Rent or any other payment required pursuant to this Lease and such failure continues for three (3) days after the date notice of such late payment is received by Tenant; provided, however, that if more than two (2) payments due from Tenant hereunder in any one (1) calendar year are not made until after notice of such late payment is received by Tenant then it shall be an Event of Default by Tenant if any subsequent payment due from Tenant in the same calendar year is not received within three (3) days of the date when such payment is due; (b) Tenant shall fail to comply with any term, provision or covenant of this Lease, other than the payment of Rent, and the failure is not cured within thirty (30) days after written notice to Tenant; provided, however, if such failure can be cured but not within thirty (30) days despite the exercise of good faith, diligent efforts by Tenant, Tenant shall have an extended period of time (not to exceed ninety (90) additional days after the date of Landlord's notice to Tenant) to cure such default, provided Tenant commences to cure such default within ten (10) days after notice thereof and thereafter prosecutes the same to completion; (c) Tenant or any guarantor of Tenant's obligations shall file a petition or be adjudged bankrupt or insolvent under any applicable federal or state bankruptcy or insolvency law or admit that it cannot meet its financial obligations as they become due; or a receiver or trustee shall be appointed for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations and such appointment is not discharged within sixty (60) days; or Tenant shall make a transfer to defraud creditors or shall make an assignment for the benefit of creditors; (d) Tenant shall do or permit to be done any act which results in a claim of lien being filed against the Building or Premises, which lien is not removed or bonded over in accordance with Florida law within ten (10) business days after the earlier of (i) the date Tenant first becomes aware of the filing of such claim of lien, (ii) Landlord provides written notice thereof to Tenant, or (iii) such shorter period as required by the holder of any Encumbrance; (e) Tenant fails for a period in excess of five (5) business days during any Lease Year (unless, however, Tenant's failure is the result of a Casualty, other Act of God or force Majeure, or condemnation under Article VIII) to operate during Tenant's Operating Hours; or (f) Tenant fails to commence business operations in the Premises within three hundred sixty-five (365) days after Landlord has delivered to Tenant possession of the Premises.

10.02 REMEDIES FOR TENANT'S DEFAULT. Upon the occurrence of any Event of Default, Landlord may at its option pursue any one or more of the following remedies, and any and all other rights or remedies accruing to Landlord by law or otherwise, without any notice or demand to the extent permitted by applicable law:

(a) Commence dispossessory proceedings with or without the termination of this Lease. If the Lease is not terminated, Tenant shall remain liable for the payment of all Rents accruing after any writ of possession as to the Premises is issued to Landlord.

(b) Terminate Tenant's right to possession without terminating this Lease. Upon any such termination of Tenant's right to possession only without termination of the Lease, Landlord may, at Landlord's option, enter into the Premises, lawfully and without force, remove Tenant's signs and other evidences of tenancy, and take and hold possession thereof as provided below, without such entry and possession terminating the Lease or releasing Tenant, in whole or in part, from any obligation, including Tenant's obligation to pay Rent including any amounts treated as Additional Rent, hereunder for the full Term. Landlord may, without terminating this Lease, relet or attempt to relet the Premises or any part or parts thereof for such term or terms (which may be for a term or terms extending beyond the Term of this Lease), at such rents and upon such other terms and provisions as Landlord, in its sole discretion, may deem advisable. If Landlord relets or attempts to relet the Premises, Landlord shall be the sole judge as to the terms and provisions of any new lease or sublease and of whether or not a particular proposed new tenant or subtenant is acceptable to Landlord. Upon any such reletting, all rents received by the Landlord from such reletting shall be applied (a) first, to the payment of all costs and expenses of recovering possession of the Premises, (b) second, to the payment of any costs and expenses of such reletting, including brokerage fees, reasonable attorneys' fees and the cost of any alterations and repairs reasonably required for such reletting, (c) third, to the payment of any indebtedness, other than Rent, due hereunder from Tenant to the Landlord, (d) fourth, to the payment of all Rent and other sums due and unpaid hereunder, and (e) fifth, the residue, if any, shall be held by the Landlord and applied in payment of future Rents and other sums as the same may become due and payable hereunder. If the rents received from such reletting during any period shall be less than that required to be paid during that period by the Tenant hereunder, Tenant shall promptly pay any such deficiency to the Landlord and failing the prompt payment thereof by Tenant to Landlord, Landlord shall immediately be entitled to institute legal proceedings for the recovery and collection of the same. Such deficiency shall be calculated and paid at the time each payment of Rent and other sum shall otherwise become due under this Lease, or, at the option of Landlord, at the end of the Term. In addition, Landlord shall be immediately entitled to sue for and otherwise recover from Tenant any other damages occasioned by or resulting from any abandonment of the Premises or other Event of Default under this Lease other than a default in the payment of Rent. Landlord may at any time thereafter, upon written notice to Tenant, elect to terminate this Lease or pursue any other remedy available to Landlord for Tenant's previous breach of or default under this Lease. Notwithstanding anything contained herein to the contrary, Tenant shall only be responsible for the prorata portion of any brokerage commissions and improvements or tenant improvement allowances related to and attributable to the balance of the Term of this Lease.

(c) In addition to the foregoing and notwithstanding any other remedy available to Landlord under this Lease or pursuant to applicable law, Landlord may, at its option at any time following an Event of Default, require Tenant to pay Landlord the "Accelerated Rent," discounted to present value as hereinafter provided. The "Accelerated Rent" shall be an amount equal to the Base Rent and Additional Rent payable over the balance of the remainder of the Term of this Lease, discounted to the date payable at an annual interest rate equal to the then current yield of actively traded U.S. Treasury bonds with maturities equal to the remainder of the

Term of the Lease, as published in the Federal Reserve Statistical Release for the week prior to the date of Landlord's acceleration of the Rent hereunder. Landlord may then proceed to recover and collect all such Accelerated Rent and other sums so sued for from Tenant by distress, levy, execution or otherwise. Notwithstanding anything herein to the contrary, Landlord agrees to use commercially reasonable efforts to mitigate its damages upon any Event of Default. Any amounts treated as Additional Rent hereunder (calculated for this purpose only in an amount equal to the Additional Rent payable during the calendar year most recently ended prior to the occurrence of such Event of Default) shall likewise be due for the remainder of the stated Term hereof. The payment of the foregoing amounts shall not constitute payment of Rent in advance for the remainder of the Term. Instead, such sum shall be paid as agreed liquidated damages and not as a penalty; the parties agree that it is difficult or impossible to calculate the damages which Landlord will suffer as a result of Tenant's default, and this provision is intended to provide a reasonable estimate of such damages. Tenant waives any right to assert that Landlord's actual damages are less than the amount calculated hereunder (provided, however, the foregoing shall not limit either Landlord's or Tenant's right to contest the total fair market value of the Premises for the remainder of the Term); Landlord waives any right to assert that its damages are greater than the amount calculated hereunder. Landlord shall use reasonable efforts to relet the Premises. Upon making such payment and after Landlord has received in full the balance of the Accelerated Rent and other sums it would have received over the remainder of the Term as hereinabove provided, (i.e., the difference between face amount of Rent and Additional Rent due hereunder for the entire Term and the Accelerated Rent), together with the reimbursement or payment of any sums expended by Landlord on account of the cost of repairs, alterations, additions, redecorating, and Landlord's expenses of reletting and collection of the rental accruing therefrom (including reasonable attorney's fees and broker's commissions), Tenant shall receive from Landlord all Base Rent received by Landlord from other tenants on account of the Premises during the Term hereof, provided that the amounts to which Tenant shall become so entitled shall in no event exceed the entire amount actually paid by Tenant to Landlord pursuant to this subsection 10.02(b).

(d) Commence proceedings against Tenant for all amounts owed by Tenant to Landlord, whether as Base Rent, Additional Rent, damages or otherwise.

(e) Terminate the Lease, in which event Tenant shall immediately surrender the Premises to Landlord.

(f) Upon any termination of Tenant's right to possession only, without termination of the Lease, Landlord may, at Landlord's option in accordance with all applicable laws, enter into the Premises, remove Tenant's signs and other evidences of tenancy, and take and hold possession thereof as provided below, without such entry and possession terminating the Lease or releasing Tenant, in whole or in part, from any obligation, including Tenant's obligation to pay Rent, including any amounts treated as Additional Rent, hereunder for the full Term. In any such case, Landlord may relet the Premises on behalf of Tenant for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such terms and conditions (which may include concessions of free rent and alteration, repair and improvement of the Premises) as Landlord, in its sole discretion, may determine and receive directly the Rent by reason of the reletting. Tenant agrees to pay Landlord on demand any deficiency that may arise by reason of any reletting of the Premises.

Tenant further agrees to reimburse Landlord upon demand for any reasonable expenditures made by it for remodeling or repairing in order to relet the Premises and for all other expenses incurred in connection with such reletting (including, without limitation, actual reasonable attorney's fees and reasonable brokerage commissions). Landlord shall use commercially reasonable efforts to relet the Premises or any part thereof but shall in no event be liable for failure to relet the Premises or any part thereof (except for its failure to use commercially reasonable efforts to do so), or, in the event of any such reletting, for refusal or failure to collect any rent due upon such reletting. No such refusal or failure shall operate to relieve Tenant of any liability under this Lease. Tenant shall instead remain liable for all Rent and for all such expenses.

(g) Enter upon and take possession of the Premises, without being liable for prosecution of any claim for damages or for trespass or other tort, except as provided by law.

(h) Do or cause to be done whatever Tenant is obligated to do under the terms of this Lease, in which case Tenant agrees to reimburse Landlord on demand as Additional Rent for any and all reasonable costs or expenses which Landlord may thereby incur. Tenant agrees that Landlord shall not be liable for any damages resulting to Tenant from effecting compliance with Tenant's obligations under this Section 10.02, whether caused by the negligence of Landlord or otherwise.

(i) Enforce the performance of Tenant's obligations hereunder by injunction or other equitable relief (which remedy may be exercised upon any breach or default or any threatened breach or default of Tenant's obligations hereunder).

10.03 LANDLORD DEFAULT. Landlord shall be deemed in default of its obligations under this Lease if Landlord shall fail to perform, in a timely manner in accordance with the terms of this Lease, any obligation under this Lease required to be performed by Landlord, and such failure shall continue for thirty (30) days after written notice of such failure from Tenant or such additional period as may be reasonably required to cure such failure, if the same may not be reasonably cured within thirty (30) days so long as Landlord commences such cure within ten (10) days after notice thereof and thereafter diligently prosecutes the same to completion, but in any event such cure must be completed to Tenant's reasonable satisfaction within ninety (90) days of Tenant's notice to Landlord subject to the parties' mutual agreement to extend such time period and subject to delays caused directly by Casualty, other force majeure, an Act of God or matters outside Landlord's reasonable control so long as Landlord has acted diligently, with dispatch, and in good faith to prevent or shorten any such delays. If Landlord fails to complete such cure as provided in the foregoing sentence, then subject to the provisions of Section 10.04 below, Tenant shall thereupon be entitled to exercise any and all remedies available to Tenant for such default under this Lease or at law or in equity. Without waiving or limiting any other remedies available to Tenant, upon such default by Landlord (and subject to the notice and cure rights of Landlord and the holder of any Encumbrance), Tenant shall be entitled (but not obligated) to perform or cause such obligations to be so performed on behalf of Landlord, and Landlord shall reimburse Tenant for its reasonable third party out-of-pocket costs and expenses incurred by Tenant in doing so, which amount shall be due within thirty (30) days of Landlord's receipt of a written statement of the costs and expenses so incurred by Tenant.

10.04 MORTGAGEE PROTECTION. Tenant agrees to give the Mortgagee, by registered or certified mail at the address set forth in the SNDA, or if no address is specified in the SNDA, to such other address for the Mortgagee as Tenant has been notified in writing, a copy of any notice or claim of default served upon Landlord by Tenant. Tenant further agrees that if Landlord has failed to cure a default within thirty (30) days after such notice to Landlord (as such period may be extended pursuant to Section 10.03 above), then the Mortgagee shall have an additional period of thirty (30) days within which to cure or correct such default (or if a default cannot be cured or corrected within that time, then such additional time as may be necessary if such Mortgagee has commenced cure or correction within such thirty (30) days and is pursuing diligently the remedies or steps necessary to cure or correct such default, including the time necessary to obtain possession if possession is necessary to cure or correct such default).

Article XI. HAZARDOUS MATERIALS

11.01 COVENANTS AS TO HAZARDOUS MATERIALS. Tenant covenants and agrees not to suffer, knowingly permit, introduce or maintain in, on or about any portion of the Premises or Building any asbestos, polychlorinated biphenyls, petroleum products or any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such in any federal, state or local laws, rules or regulations (whether now existing or hereafter enacted or promulgated) or any judicial or administrative interpretation of any thereof, including any judicial or administrative orders or judgments. Any such asbestos, polychlorinated biphenyls, petroleum products and any such other hazardous or toxic materials, wastes and substances are herein collectively called "Hazardous Materials". Notwithstanding the foregoing, Tenant may use in the Premises those products which are customarily used in a restaurant/bar or general office use, such as cleaning agents and toner for fax and copy machines, so long as such products are used and stored in a safe manner and in accordance with applicable law. Tenant further covenants and agrees to indemnify, protect and save Landlord harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against Landlord and arising from or out of any Hazardous Materials on, in, under or affecting all or any portion of the Premises or Building, which Hazardous Materials were introduced by, or on behalf of, Tenant including, without limitation, (a) the costs of removal and/or remediation of any and all such Hazardous Materials from all or any portion of the Premises or Building, (b) additional costs required to take necessary precautions to protect against the release of such Hazardous Materials on, in, under or affecting the Premises or Building, into the air, any body of water, any other public domain or any surrounding areas, and (c) any costs incurred to comply, in connection with all or any portion of the Premises or Building with all Encumbrances and applicable laws, orders, judgments and regulations with respect to such Hazardous Materials. Landlord agrees not to suffer, permit, introduce or maintain in, on or about the Building any Hazardous Materials. Landlord agrees to indemnify and hold Tenant harmless from and against any claims, damages, liabilities, costs, penalties, and fines incurred or sustained by Tenant as a result of damage or injury from any Hazardous Materials brought into the Building by or on behalf of Landlord, its agents, employees or contractors. The provisions of this Section 11.01 shall survive the expiration or earlier termination of this Lease.

Article XII. MISCELLANEOUS

12.01 WAIVER. Failure of either party to declare an Event of Default immediately upon its occurrence, or delay in taking any action in connection with an Event of Default, shall not constitute a waiver of default, but such party shall have the right to declare the default at any time and take such action as is lawful or authorized under this Lease. The foregoing sentence shall in no way limit the defaulting party's right to such notice and opportunity to cure as is provided herein. Pursuit of any one or more of the remedies set forth in Article X above shall not preclude pursuit of any one or more of the other remedies provided elsewhere in this Lease or provided by law, nor shall pursuit of any remedy constitute forfeiture or waiver of any rent or damages accruing to the non-defaulting party by reason of the violation of any of the terms, provisions or covenants of this Lease. Failure by a party to enforce one or more of the remedies provided upon an Event of Default shall not be deemed or construed to constitute a waiver of the default or of any other violation or breach of any of the terms, provisions and covenants contained in this Lease. No agreement to accept a surrender of the Premises and no act or omission by Landlord or Landlord's agents during the Term shall constitute an acceptance or surrender of the Premises or a termination of this Lease unless made in writing and signed by Landlord, except as otherwise provided by law. No re-entry or taking possession of the Premises by Landlord shall constitute an election by Landlord to terminate this Lease unless a written notice of such intention is given to Tenant, except as otherwise provided by law. No custom or practice which may develop between the parties in connection with the terms of this Lease shall be construed to waive or lessen either party's right to insist upon strict performance of the terms of this Lease, without written notice thereof to the other party.

12.02 ACT OF GOD. Except as specifically provided to the contrary under the terms of this Lease, neither party shall be required to perform any covenant or obligation set forth in this Lease, nor be liable in damages to the other party or such party's invitees, licensees or other visitors to the Premises or Building, so long as the performance or nonperformance of the covenant or obligation is delayed, caused or prevented by an Act of God or force majeure or by the other party. Any time periods provided in this Lease shall be extended by the number of days of delay caused by such Act of God or force majeure. Except as otherwise expressly provided in this Lease, Tenant's obligation to pay Rent shall not be affected, reduced or otherwise diminished by any Act of God or force majeure.

12.03 ATTORNEY'S FEES. In the event either party defaults in the performance of any of the terms, covenants, agreements or conditions contained in this Lease and the non-defaulting party places in the hands of an attorney the enforcement of all or any part of this Lease, the collection of any rent due or to become due, or recovery of the possession of the Premises, the defaulting party agrees to pay the non-defaulting party's costs of collection, including reasonable attorney's fees for the services of the attorney, whether suit is actually filed or not. If either party commences an action against the other arising out of or in connection with the Lease, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of suit.

12.04 SUCCESSORS. This Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, personal representatives, successors and assigns, subject, however, to Sections 9.02 and 9.03 of this Lease. It is hereby covenanted and agreed

that should Landlord's interest in the Premises cease to exist for any reason during the Term of this Lease, then notwithstanding the happening of such event, this Lease nevertheless shall remain unimpaired and in full force and effect and Tenant hereunder agrees to attorn to the then owner of the Premises, subject to the terms of Sections 9.02 and 9.03 of this Lease.

12.05 RENT TAX. If applicable in the jurisdiction where the Premises are situated, Tenant shall pay and be liable for all rental, sales and use taxes or other similar taxes, if any, levied or imposed by any city, state or county or other governmental body having authority, such payments to be in addition to all other payments required to be paid to Landlord by Tenant under the terms of this Lease. Any such payment shall be paid concurrently with the payment of the Rent, Additional Rent, Operating Expenses or other charge upon which the tax is based as set forth above.

12.06 CAPTIONS. The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any section.

12.07 NOTICE. All rent and other payments required to be made by Tenant shall be payable to Landlord at the address set forth in Paragraph 11 of the Summary. All payments required to be made by Landlord to Tenant shall be payable to Tenant at the address set forth in Paragraph 12 of the Summary. Any notice, demand or document required or permitted to be delivered by the terms of this Lease shall be written in the English language and shall be deemed to be delivered and received (whether or not actually received) (a) on the date of personal delivery (including, without limitation, delivery by any commercial courier service or recognized overnight delivery service) or (b) three (3) business days after deposit in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to Landlord at the address set forth in Paragraph 10 of the Summary and addressed to Tenant at the address set forth in Paragraph 12 of the Summary. Either party may by notice to the other specify a different address for payments or for delivery of notices.

12.08 SUBMISSION OF LEASE. The negotiation and submission of this Lease to Tenant for signature does not constitute an offer to lease to Tenant or a reservation of space or an option to lease. Landlord shall not be bound until it has executed and delivered such Lease to Tenant.

12.09 AUTHORITY. Each party executing this Lease on behalf of Landlord and Tenant represents that he or she is duly authorized to execute this Lease on behalf of Landlord or Tenant, as the case may be, and that the execution and delivery of this Lease has been authorized by all necessary corporate or partnership action. Landlord and Tenant agree to provide the other upon request reasonable evidence confirming the existence of such authority.

12.10 SEVERABILITY. If any provision of this Lease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

12.11 LANDLORD'S LIABILITY. If Landlord shall be in default under this Lease and, if as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the right, title and interest of Landlord in the Building (including the rent, profits, insurance and condemnation proceeds therefrom) as the same may then be encumbered and neither Landlord nor any person or entity comprising Landlord shall be liable for any deficiency. In no event shall Tenant have the right to levy execution against any property of Landlord nor any person or entity comprising Landlord other than its interest in the Building as herein expressly provided. In no event shall any partner of Landlord nor any joint venturer in Landlord, nor any officer, director or shareholder of Landlord or any such partner or joint venturer of Landlord be personally liable hereunder.

12.12 NO BROKER CLAIMS. Landlord and Tenant acknowledge that the brokers set forth in Paragraph 14 of the Summary (referred to collectively for purposes of this section as "Brokers") have acted as brokers with respect to the Premises and will be paid by Landlord pursuant to the terms of separate agreements. Landlord and Tenant hereby warrant and represent to the other that the party making said warranty and representation has not dealt with any broker, agent or finder, other than Brokers. In connection with this Lease, and, subject to the default and remedies provisions of Article X hereof, Landlord and Tenant covenant and agree to indemnify and hold the other harmless from and against any and all loss, liability, damage, claim, judgment, cost or expense (including but not limited to attorney's fees and expenses and court costs) that may be incurred or suffered by the other because of any claim for any fee, commission or similar compensation with respect to this Lease, made by any broker, agent or finder, other than Brokers, claiming by, through or under the indemnifying party, whether or not such claim is meritorious. Such obligations shall survive the expiration or earlier termination of this Lease.

12.13 NO ESTATE IN LAND. Tenant shall be granted a usufruct only in the Premises under this Lease, and not a leasehold or other estate in land, and that Tenant's interest hereunder is not subject to levy, execution and sale and is not assignable except as otherwise expressly provided in Article IX hereof.

12.14 NO JOINT VENTURE. Nothing contained in this Lease or any exhibits hereto shall be deemed or construed to create a partnership or joint venture between Landlord and Tenant or to create any relationship between them except the relationship of landlord and tenant.

12.15 OWNERSHIP AND MANAGEMENT. The name and address of the person authorized to act for and on behalf of the owner of the Building for the purpose of receiving and receipting for demands and notices is set forth in Paragraph 10 of the Summary of Lease Provisions. Landlord shall advise Tenant of any change in the foregoing names and addresses either by notice hereunder.

12.16 TIME OF ESSENCE. Time is of the essence of this Lease.

12.17 PARKING. Tenant shall have the use of the code required garage parking spaces at a cost of \$50/month per space for employees. Landlord will provide at no charge to Tenant two reserved parking spaces for its chef and manager. Tenant may be required to lease parking spaces for each employee, agent, contractor or other worker present on the Premises (other than the Chef and the Manager) between the hours of 7:30 a.m. and 6:00 p.m. on days when normal

office hours are maintained in the Building (generally Monday through Friday, except holidays) if alternate parking arrangements are not made for Tenant's employees outside of the Park Avenue core business district with the approval of the City of Winter Park. Landlord and Tenant shall cooperate to provide a valet service serving both Tenant's customers and such other patrons as may use Landlord's parking garage during non business hours. Landlord and Tenant will establish operating and quality control standards for the valet service consistent with each of their respective business operations and needs. In the event Landlord contracts with the valet service, Tenant, or at Tenant's option, Tenant's customers, will pay Landlord and/or the valet service for the valet services Tenant's customers utilize; provided, however, Tenant and/or its customers will not pay more for such valet services than they would pay if Tenant contracted directly with the valet service. During normal office hours, Landlord will attempt to make available customer valet parking spaces at a cost of \$50/month per space for a number of spaces equal to one space for each 250 usable square feet the Tenant occupies on the first floor, minus the number of all parking spaces utilized by Tenant's employees (including the Chef and Manager) during normal office hours. Landlord shall make available to Tenant's customers after normal office hours, at no cost to Tenant (other than the valet service fees described above if Landlord contracts for the valet service) a minimum of 150 parking spaces in Landlord's parking garage. During the normal office hours of 5:00 p.m. to 6:00 p.m., Landlord will make available to Tenant's customers at no cost to Tenant or its customers (other than the valet service fees described above) as many of the 150 parking spaces as will not conflict with Landlord's obligations to its office tenants to provide parking to the office tenants during normal office hours.

12.18 JOINT AND SEVERAL LIABILITY. If Tenant comprises more than one person, corporation, partnership or other entity, the liability hereunder of all such persons, corporations, partnerships or other entities shall be joint and several.

12.19 NO LIGHT OR AIR EASEMENT. Any diminution or shutting off of light or air by any structure which is now or hereafter erected upon property adjacent to the Building shall not affect this Lease or impose any liability on Landlord.

12.20 ENTIRE LEASE. It is expressly agreed by Tenant, as a material consideration for the execution of this Lease, that this Lease, with the specific references to written extrinsic documents, is the entire agreement of the parties; that there are, and were, no oral representations, warranties, understandings, stipulations, agreements or promises pertaining to this Lease or the expressly mentioned written extrinsic documents not incorporated in writing in this Lease. This Lease may not be altered, waived, amended or extended except by an instrument in writing executed and delivered by Landlord and Tenant in the same manner as the execution and delivery of this Lease. Landlord and Tenant expressly agree that there are and shall be no implied warranties of merchantability, habitability, fitness for a particular purpose or of any other kind arising out of this Lease and there are no warranties which extend beyond those expressly set forth in this Lease.

12.21 EXHIBITS AND SUMMARY OF LEASE PROVISION. The content of each and every exhibit which is referenced in this Lease is incorporated into this Lease as fully as if set forth in the body of this Lease. The content of each and every provision of the Summary

which is referenced in this Lease is incorporated into this Lease as fully as if set forth in the body of this Lease.

12.22 NO IMPLIED WARRANTY. EXCEPT AS EXPRESSLY PROVIDED HEREIN TENANT ACCEPTS THE PREMISES "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER IMPLIED WARRANTIES. EXCEPT AS EXPRESSLY STATED OTHERWISE HEREIN, TO THE EXTENT LANDLORD PROVIDES TENANT WITH MATERIALS, EQUIPMENT, SERVICES OR UTILITIES IN CONJUNCTION WITH THE PREMISES (INCLUDING WITHOUT LIMITATION THOSE REFERRED TO IN ARTICLE IV ABOVE), LANDLORD ALSO PROVIDES SUCH MATERIALS, EQUIPMENT AND SERVICES "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER IMPLIED WARRANTIES.

12.23 GOVERNING LAW. This Lease shall be governed by and construed in accordance with the law of the State of Florida. Venue for any and all actions or proceedings in connection with this Lease and Guaranty shall be the State of Florida, in any State or Federal court having jurisdiction over the subject matter thereof. Tenant and Guarantor each hereby consents to service of process and any pleading relating to any such action at the Premises. Tenant and Guarantor each hereby waives any objection to the venue of any action filed in any court with jurisdiction located in Orange County, Florida, and Tenant and Guarantor each hereby waives any right under the doctrine of forum non conveniens or otherwise, to transfer any such action filed in any such court to any other court.

12.24 RADON GAS DISCLOSURE. The following notice is provided pursuant to Section 404.056(5), *Florida Statutes*:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

12.25 CONTINGENCIES. This Lease and the obligations of Landlord and Tenant shall be contingent upon the Mortgagee's approval of the terms and conditions of this Lease on or before October 15, 2004. If the Mortgagee has not approved the terms and conditions of this Lease on or before October 15, 2004, then either Landlord or Tenant may thereafter terminate this Lease by written notice to the other (the "Contingency Failure Termination Notice"); provided, however, such termination right shall be automatically null and void and of no further force and effect whatsoever if, prior to either Landlord's or Tenant's delivery of the Contingency Failure Termination Notice, the Mortgagee actually approves the terms and conditions of this Lease.

12.26 GUARANTY. As a part of the inducement to the Landlord to enter into this Lease, Tenant has caused BRIAN FRANCE ("Guarantor") to execute the Unconditional and Irrevocable Guaranty (the "Guaranty") in favor of Landlord which is attached hereto and made a part hereof as Exhibit E. Tenant covenants and agrees that Guarantor shall fully perform, comply with and abide by the terms of such Guaranty.

12.27 LANDLORD'S LIEN. Tenant hereby grants to Landlord a lien and security interest on all property of Tenant now or hereafter placed in or upon the Premises (but specifically excluding any personal property of the officers, directors, employees and agents of Tenant) (collectively, "Tenant's Property"), and Tenant's Property shall be and remain subject to such lien and security interest of Landlord for payment of all rent and other sums agreed to be paid by Tenant herein. It is provided, however, that Landlord's lien hereunder shall be subordinate to a lien from a lending institution, supplier or leasing company (collectively, "Financing Company"), if such Financing Company has a security interest in the equipment, furniture or other tangible personal property and which security interest has its origin in a transaction whereby Tenant acquired such equipment, furniture or other tangible personal property. The provisions of this Section 12.27 relating to such lien and security interest shall constitute a security agreement under the subject to the Uniform Commercial Code of the State of Florida so that Landlord shall have and may enforce a security interest on all of Tenant's Property now or hereafter placed in or on the Premises, in addition to and cumulative of Landlord's liens and rights provided by law or by the other terms and provisions of this Lease. Tenant agrees to execute as debtor such financing statement or statements and such other documents as Landlord may now or hereafter request in order to protect or further perfect Landlord's security interest. Notwithstanding the above, Landlord shall neither sell nor withhold from Tenant, Tenant's business records. Landlord agrees to execute such reasonable and customary documents or statements as may be necessary to subordinate its Landlord's Lien to the lien of any Financing Company having a security interest in all or any of Tenant's Property, as provided above in Subsection 12.27.

12.28 EXTERMINATOR SERVICE AND CERTAIN MAINTENANCE.

(a) Without limiting Tenant's obligations under Section 5.02 of this Lease, throughout the Term, Tenant shall cause extermination services, including treatment for insects, spiders, rats, mice, moles, vermin and other rodents, to be provided to the Premises by a reputable exterminator on a monthly basis, or more often as Landlord, in Landlord's reasonable discretion, may require, at Tenant's expense.

(b) Without limiting Tenant's obligations under Section 5.02, the kitchen waste and exhaust systems, including the grease trap and all risers, piping and fans used in connection with such waste and exhaust systems, whether located in or outside of the Building, and all other pipes or ducts used by Tenant, shall be maintained in good repair, and so as to meet the highest standards of cleanliness and health, in a manner consistent with the operation of a first-class restaurant and in accordance with all applicable laws, codes and regulations of any governmental authority having jurisdiction, at Tenant's expense.

(c) Tenant shall install and maintain in good working order and condition and in accordance with the rules and regulations of all appropriate insurers and all applicable laws,

codes and regulations of any governmental authority, all fire extinguishing systems in the Premises.

(d) Within ten (10) days after Landlord's request at any time during the Term, Tenant shall furnish to Landlord copies of all maintenance and extermination contracts. Tenant, within ten (10) days of Landlord's request therefor, shall also provide evidence to Landlord of payment for services performed under such contracts (subject to Tenant's right to contest, in good faith, amounts allegedly due under such contracts).

12.29 SERVICES. Landlord reserves the right to require Tenant to terminate the contract(s) of, and substitute any contractors or vendors providing services to the Premises, if such contractor(s) or vendor(s) are objectionable or offensive in Landlord's reasonable discretion. Landlord agrees to provide Tenant with (a) written notice of any such objectionable and/or offensive contractors or vendors, and/or the conditions, characteristics, traits, or activities, as applicable, deemed by Landlord to be objectionable or offensive, and (b) an opportunity to cure, or cause such contractors or vendors to cure, the objectionable or offensive conditions, characteristics, traits, or activities, as applicable. Landlord and Tenant acknowledge and agree the length of time within which Tenant may cure, or cause the cure, of the foregoing shall be determined on a case-by-case basis, in Landlord's reasonable good faith discretion.

12.30 GARBAGE. Tenant shall be responsible for wrapping, covering and otherwise securing garbage and transporting such garbage from the Premises frequently enough so that it will not accumulate in the Premises, for arranging for waste collection and disposal and for daily removal of garbage. Tenant shall be responsible for repairing and paying for any damage to walls or other parts of the Building caused in transporting garbage and shall immediately clean up any spilled refuse.

12.31 WAIVER OF JURY TRIAL. LANDLORD AND TENANT EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE.

12.32 LAWS, RULES AND REGULATIONS. To the extent applicable to and not in conflict with the terms and conditions of this Lease, Tenant shall comply with all applicable laws, ordinances, rules and regulations of any governmental entity, agency or authority having jurisdiction of the Premises or Tenant's use and occupancy of the Premises. To the extent applicable to and not in conflict with the terms and conditions of this Lease, Tenant shall comply with the current Building Rules and Regulations attached hereto as **Exhibit F**, together with any changes approved by Tenant, which approval shall not be unreasonably withheld, conditioned or delayed, to the extent that such Rules and Regulations apply to all retail tenants of the Building, and Tenant agrees to use reasonable efforts to cause all of its customers, licensees, invitees, agents and employees to do so. All proposed changes to such rules will be furnished by Landlord to Tenant in writing. Notwithstanding the foregoing, the Rules and Regulations shall not be read and interpreted so as to interfere with or prevent the operation of Tenant's business in connection with the Permitted Use, as contemplated by the terms and conditions of this Lease, and to that end, the contrary terms, conditions and/or provisions set forth in the following rules shall not apply to this Lease: 4, 6, 7, 8, 11, 13, 14, 16, 17, and 34. Rule 36 shall apply to the Premises

(excluding the exterior patio seating area, if any, but only to the extent persons may legally smoke in outdoor restaurant settings) while applicable laws, codes, ordinances, governmental rules and regulations prohibit smoking in restaurants or other eating establishments.

12.33 SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS.

(a) Tenant, Guarantor and Landlord each hereby certify to each other that:

(i) It is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and

(ii) It is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation.

(b) Tenant, Guarantor and Landlord each hereby agree to defend, indemnify, and hold harmless the other from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorneys' fees and costs) arising from or related to any breach of the foregoing certification.

12.34 CERTAIN RIGHTS RESERVED TO LANDLORD. Landlord reserves the following rights exercisable without notice or liability to Tenant and without being guilty of an eviction or disturbance of Tenant's use or possession:

(a) To have pass keys to the Premises.

(b) To have reasonable access for inspection, repairs, alterations, additions and improvements to the Premises or to the Building.

(c) To show the Premises to prospective tenants or brokers during the last year of the Term, and to prospective purchasers at all reasonable times provided prior notice is given to Tenant in each case, and Tenant's use and occupancy of the Premises shall not be materially inconvenienced by any such action of Landlord.

(d) To approve the weight, size and location of safes or heavy equipment or articles, which articles may be moved, in, about, or out of the Building or Premises only at such times and in such manner as Landlord shall direct and in all events, however, at Tenant's sole risk and responsibility.

(e) To close the Building after regular working hours and on legal holidays subject, however, to Tenant's right to admittance, under such regulations as Landlord may prescribe from time to time, which may include, by way of example but not of limitation, that persons entering or leaving the Building identify themselves to a watchman by registration or otherwise and that said persons establish their right to enter or leave the Building.

(f) To change the name or street address and place and maintain signs on the exterior and in hallways, stairs, lobby and corridors of the Building

(g) To grant to anyone the exclusive right to conduct any particular business in the Building, provided such exclusive right shall not operate to exclude or materially restrict in any way Tenant from the Permitted Use of the Premises hereby expressly permitted.

12.35 COUNTERPARTS. This Lease may be executed by facsimile and in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

12.36 MEMORANDUM OF LEASE. In connection with this Lease, Landlord and Tenant agree to execute and deliver the Memorandum of Lease attached hereto and made a part hereof as **Exhibit G**. Landlord may record the Memorandum of Lease at any time during the Term or any Renewal Term, as applicable.

[Remainder of Page Intentionally Left Blank]

Article XIII. SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed under seal, effective as of the date set forth below.

LANDLORD:

250 Park Avenue Trustee, Inc. a Florida corporation, as successor Trustee of the 250 PARK AVENUE TRUST dated March 30, 2000

By: [Signature]
Name: SCOTT STANLEY
Title: President
Date: 10/4/04

[Signature]
Signature of Witness
Deborah B. Crupe
Print Name

[Signature]
Signature of Witness
Jacqueline A. Lucenti
Print Name

TENANT:

Luma on Park LLC, a Florida limited liability company

By: _____
Name: _____
Title: _____
Date: _____

Signature of Witness

Print Name

Signature of Witness

Print Name

Article XIII. SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed under seal, effective as of the date set forth below.

LANDLORD:

250 Park Avenue Trustee, Inc. a Florida corporation, as successor Trustee of the 250 PARK AVENUE TRUST dated March 30, 2000

Signature of Witness

Print Name

Signature of Witness

Print Name

By: _____

Name: _____

Title: _____

Date: _____

TENANT:

Luma on Park LLC, a Florida limited liability company

Amy Firoozabadi _____
Signature of Witness

AMY FIROOZABADI _____
Print Name

Ingrid Holliday _____
Signature of Witness

Ingrid Holliday _____
Print Name

By: *Rex Coton* _____

Name: *REX COTON* _____

Title: *President* _____

Date: *10-7-04* _____

EXHIBIT A-1

SKETCH OF GROUND FLOOR PREMISES

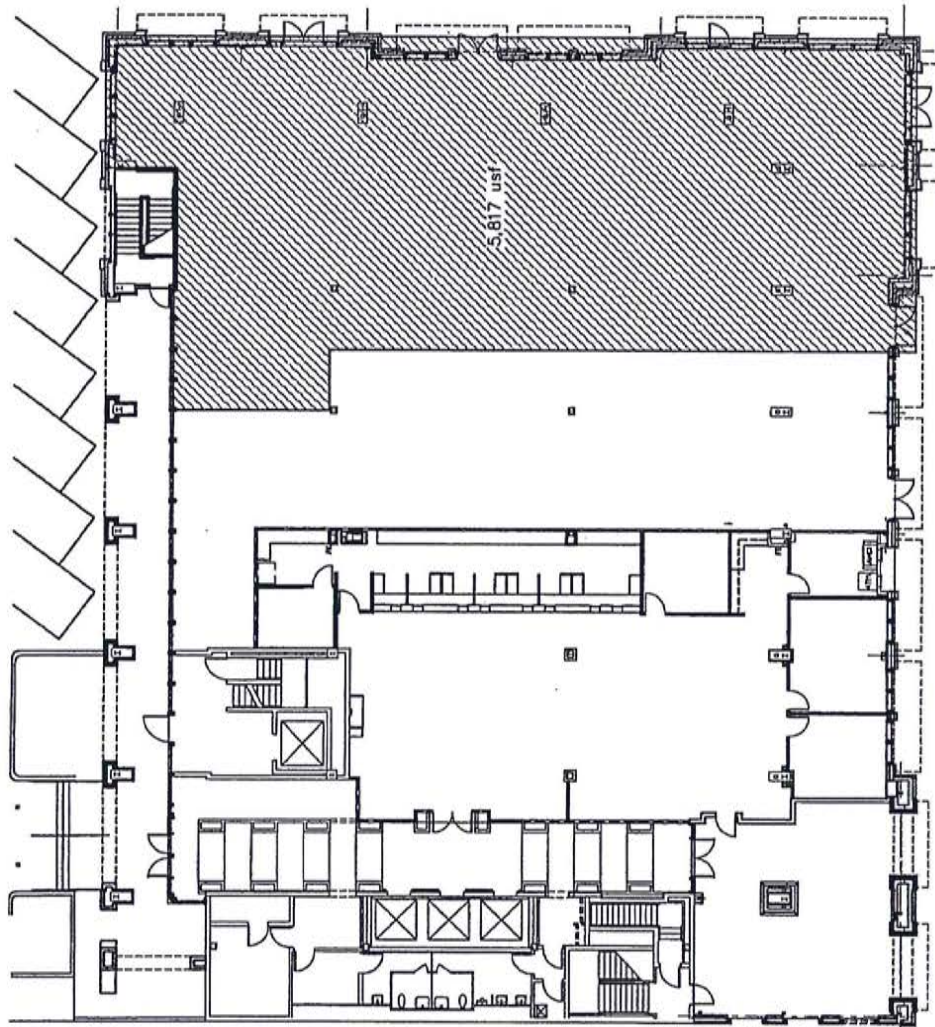


EXHIBIT A-2

SKETCH OF BASEMENT PREMISES

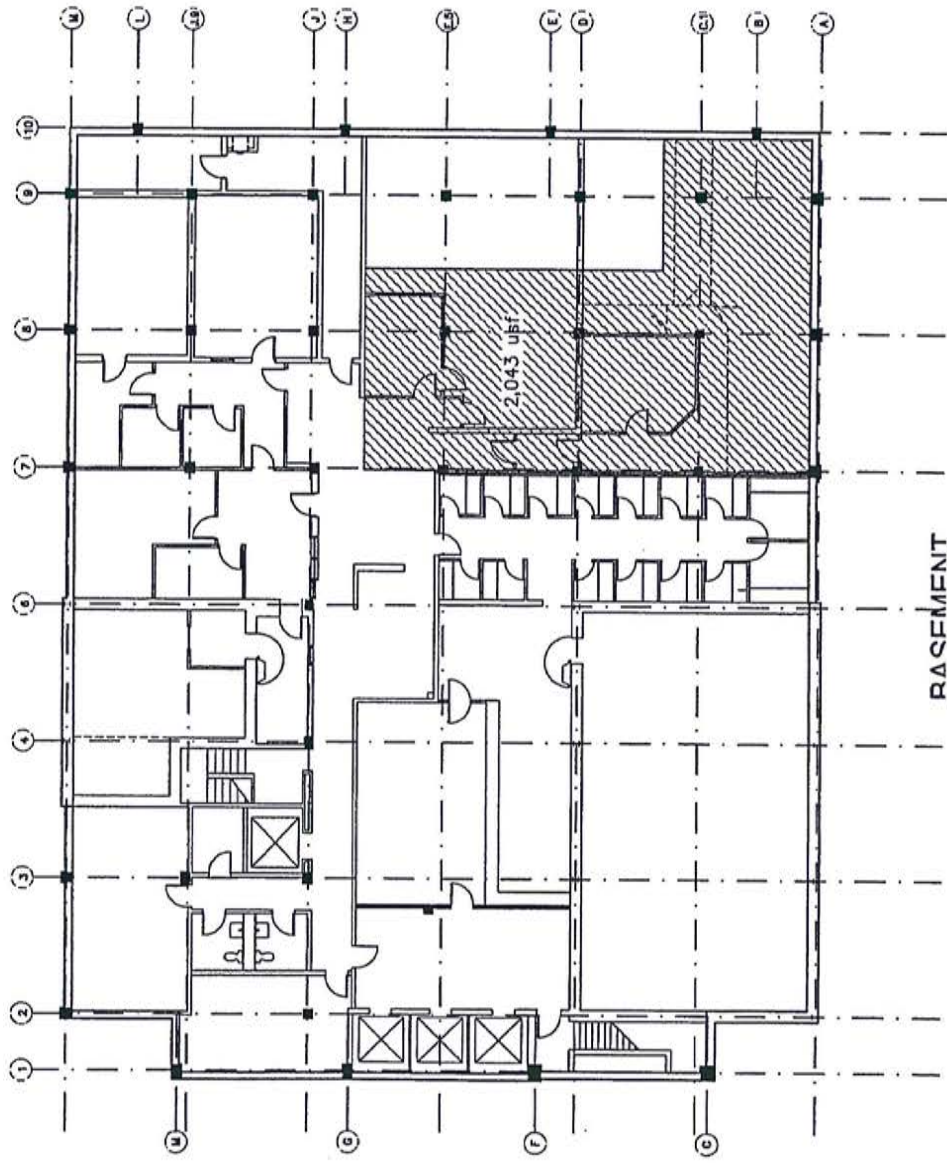


EXHIBIT A-3

LEGAL DESCRIPTION OF BUILDING

250 S. Park Avenue
Winter Park, Florida 32789

Abbreviated Legal Description:

TOWN OF WINTER PARK A/67 & B/86 & MISC BOOK 3/220 LOTS 2 3 4 & 5 (LESS E 33 FT OF LOT 2 & LESS S 10 FT THEREOF) & ALL OF LOTS 10 THRU 16 & LOT 17 (LESS E 14 FT LOT 17 & LESS N 10 FT OF LOTS 16 & 17) BLK 39 OR B&P 5797/1613, ON 07-12-99, INST SM

EXHIBIT B

LETTER AGREEMENT AS TO TERM AND PREMISES

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

(Insert Date)

Luma on Park LLC,

RE: Lease Agreement dated _____, 2004 by and between 250 Park Avenue Trustee, Inc., a Florida corporation ("Landlord") and Luma on Park LLC, a Florida limited liability company ("Tenant") for approximately 8,000 square feet of space on the ground floor and basement (the "Premises") of the office building known as The 250 Park Avenue Building, having an address of 250 S. Park Avenue, Winter Park, Florida 32789 (the "Building")

Dear _____:

This letter shall constitute the letter agreement confirming the Commencement Date referenced in Section 1.02 of the Lease. All capitalized terms used but not otherwise defined shall have the same meaning ascribed thereto in the Lease. Landlord and Tenant each hereby certify to each other as follows:

1. The Effective Date is _____.
2. Landlord delivered to Tenant the Premises on _____.
3. The Commencement Date is _____.
4. The Ground Floor Premises contains _____ rentable square feet of space.
5. The Basement Premises contains _____ rentable square feet of space.
6. Tenant's Pro Rata Share is _____.
7. The deadline by which Landlord must receive from Tenant notice of its written exercise of Tenant's first Renewal Term is _____. The deadline by which

Landlord must receive from Tenant notice of its written exercise of Tenant's second Renewal Term is _____.

8. Section 1.02(a) of the Lease requires that Tenant execute and return to Landlord a signed counterpart of this original letter agreement within ten (10) business days after Tenant's receipt of this letter agreement. Accordingly, please sign this original Commencement Date Notice and return it to Landlord no later than _____. Tenant's failure to execute and return an original counterpart of this letter agreement within ten (10) business days shall be deemed to be Tenant's acceptance of the terms hereto.

9. From and after the Commencement Date through the last day of the Term, Tenant shall pay Base Rent equal to the amounts shown below, plus applicable sales, use and excise taxes, as provide in the Lease.

The Base Rent for the Ground Floor Premises shall be as follows:

Lease Years	Rental Rate (per square foot)	Annually	Monthly
1 – 3	\$29.00	\$ _____	\$ _____
4 – 6	\$31.03	\$ _____	\$ _____
7 – 9	\$33.20	\$ _____	\$ _____
10 – 12	\$35.52	\$ _____	\$ _____
13 – 15	\$38.00	\$ _____	\$ _____

The Base Rent for the Basement Premises shall be as follows:

Lease Years	Rental Rate (per square foot)	Annually	Monthly
1 - 3	\$3.00	\$ _____	\$ _____
4 - 6	\$3.21	\$ _____	\$ _____
7 - 9	\$3.43	\$ _____	\$ _____
10 - 12	\$3.67	\$ _____	\$ _____
13 - 15	\$3.93	\$ _____	\$ _____

Very truly yours,

250 Park Avenue Trustee, Inc. a Florida corporation, as successor Trustee of the 250 Park Avenue Trust dated March 30, 2000

By: _____
Name: _____
Title: _____

cc: Michael J. Kirwin, Esq.
Alfred G. Adams, Jr., Esq.

Tenant acknowledges receipt of the foregoing letter agreement and agrees to the terms stated therein

Luma on Park LLC, a Florida limited liability company

By: Rep. J. Cole
Name: _____
Title: _____
Date: _____

C. Landlord has made, executed and delivered to Lender a certain promissory note (the "Note") secured by, among other things, a first lien Deed of Trust [or Mortgage (the "Deed of Trust [Mortgage]") on the Premises;

D. The Lease has been or may be assigned by Landlord to Lender as further security for the Note;

E. It is a condition precedent to obtaining Lender's consent to said Lease that the Deed of Trust shall unconditionally be and remain at all times a lien or charge upon the Premises prior and superior to the Lease;

F. Lender is willing to provide such consent to the Lease provided (i) the Deed of Trust is a lien or charge upon the Premises prior and superior to the lien or charge, if any, of the Lease, (ii) Tenant will specifically and unconditionally subordinate the Lease to the lien or charge of the Deed of Trust in favor of Lender and (iii) in the event of foreclosure, trustee's sale or other proceeding to enforce the Deed of Trust or deed in lieu thereof, Tenant agrees to attorn to Lender and its successor and assigns;

G. Tenant is willing to execute the unrecorded Lease so long as Lender, on behalf of itself, its successors and assigns, whether by assignment, foreclosure, trustee's sale, deed-in-lieu of foreclosure or otherwise, acknowledges the rights of Tenant in the unrecorded Lease, so long as Tenant is not then in default thereunder, and

H. It is to the mutual benefit of the parties hereto that Lender approve the Lease, and acknowledge for itself, its successors and assigns, and on the terms and conditions contained herein, Tenant's right to the leasehold interest and Tenant agrees that the Deed of Trust securing the same is a lien or charge upon the Premises which is unconditionally prior and superior to the Lease.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, Landlord, Tenant and Lender, intending to be legally bound hereby, covenant and agree as follows:

1. Tenant represents and warrants to Lender that the Lease has been duly authorized, executed and delivered by Tenant. Landlord and Tenant each represent and warrant to Lender that: (a) the Lease is in full force and effect, (b) except as expressly set forth in Recital B hereof, the Lease has not been modified or amended in any way, and (c) neither party to the Lease is in default with respect to such party's obligations under the Lease as of the date of this Agreement.

2. The Deed of Trust and any and all terms, conditions and provisions thereof, all advances made or to be made thereunder, and any other amendments, modifications, renewals, extensions, alterations or replacements thereof are and shall unconditionally be and remain at all times a lien or charge upon the Premises prior and superior to the Lease, the leasehold estate created thereby and all rights and privileges of Tenant or any other lessee

thereunder. The Lease, the leasehold estate created thereby and all rights and privileges of Tenant or any other lessee thereunder are hereby unconditionally subjected and made subordinate to the lien or charge of the Deed of Trust and to all the terms, conditions and provisions thereof, to all advances made or to be made thereunder, and to any amendments, modifications, renewals, extensions, alterations or replacements thereof.

3. As long as Tenant is in compliance with the terms of this Agreement and is not in default in the performance of its obligations under the Lease, which default has continued beyond any cure periods provided in the Lease or at law, the Lease shall not be terminated in connection with, or by reason of, foreclosure, trustee's sale or other proceedings for the enforcement of the Deed of Trust, or by reason of a transfer of Landlord's interest under the Lease pursuant to the taking of a deed or assignment (or similar device) in lieu or in contemplation of foreclosure, nor shall Tenant's use or possession of the Premises be interfered with, and the rights of Tenant under the Lease shall remain in full force and effect, except that the person acquiring or succeeding to the interests of Landlord as the result of any such action or proceeding and such person's successors and assigns (any of the foregoing being hereinafter referred to as the "Successor") shall not be:

(a) bound by any prepayment of rent paid more than thirty (30) days in advance of the due date or for any security deposit unless actually received by Successor and then limited to the amount of such security deposit actually received subject to all rights, privileges and benefits of Landlord set forth in the Lease with respect thereto;

(b) liable for any act or omission of any prior landlord (including, without limitation, Landlord) or for any claim for damages against any such prior landlord (including, without limitation, Landlord);

(c) subject to any offsets, defenses or counterclaims which Tenant may have against any prior landlord (including, without limitation, Landlord); or

(d) bound by any amendment or modification of the Lease made without the written consent of Lender.

4. If the interest of Landlord under the Lease shall be transferred by reason of any foreclosure, trustee's sale or other proceeding for enforcement of the Deed of Trust or by deed in lieu thereof, then as long as the Tenant is not in default past any applicable cure periods provided in the Lease or at law, and except as provided in this Agreement, Successor shall be bound to Tenant, and Tenant shall be bound to Successor, under all of the terms, covenants and conditions of the Lease for the balance of the term thereof (if any) with the same force and effect as if Successor were the original lessor under the Lease. Tenant does hereby attorn to Successor, including Lender if Lender becomes a Successor, as the lessor under the Lease, provided such Successor will not disturb the possession of Tenant and will be bound by all of the obligations imposed on Landlord by the Lease. Said attornment shall be effective and self-operative without the execution of any further instruments upon Successor's succeeding to the interest of the lessor under the Lease. Tenant agrees to provide Successor a written confirmation of his attornment to Successor within ten (10) days after receipt of a written request therefor from Successor, but

failure to receive such written confirmation from Tenant shall not derogate from Tenant's obligations to Successor hereunder.

5. Upon the written request of either Successor or Tenant to the other given at the time of foreclosure, trustee's sale or other proceeding for enforcement of the Deed of Trust or by deed in lieu thereof, the parties shall execute a lease of the Premises upon the same terms and conditions as the Lease between Landlord and Tenant, which Lease shall cover any unexpired term of the Lease existing prior to such foreclosure, trustee's sale or conveyance in lieu thereof.

6. Notwithstanding anything to the contrary in the Lease, Tenant shall not terminate or cancel the Lease or the term thereof by reason of a default or breach by Landlord thereunder and shall not commence any action against Landlord or otherwise pursue any right or remedy against Landlord in consequence of a default or breach by Landlord under the terms and provisions of the Lease unless written notice by Tenant specifying such default is mailed to Lender at its address set forth above. Tenant further agrees that Lender shall have the right, but shall not be obligated, to cure such default on behalf of Landlord within thirty (30) days after receipt of such notice, or if such default cannot reasonably be cured in such 30-day period, Lender shall have the right to commence the cure of such default in such 30-day period and thereafter diligently pursue such cure until completed. Tenant further agrees not to invoke any of its remedies either express or implied, under the Lease (except in the case of emergency repairs) unless such default shall remain uncured at the expiration of the 30-day period after receipt of such notice of default, or if such default cannot reasonably be cured in such 30-day period, unless the cure of such default shall not be commenced within such 30-day period and thereafter prosecuted diligently to completion.

7. Tenant agrees that neither this Agreement nor the Deed of Trust shall, prior to Successor's succession to Landlord's interest in the Premises, through any foreclosure, trustee's sale or other proceeding for enforcement of the Deed of Trust or by deed in lieu thereof, operate to place responsibility for the control, care, management or repair of the Premises upon Lender, or impose responsibility for the carrying out of the terms and conditions of the Lease, nor shall Lender be responsible for or liable for any waste committed on the Premises by any party whosoever or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in any damage to property or in any loss or injury or death to any person.

8. In the event that Lender notifies Tenant of any default under the Deed of Trust and demands that Tenant pay rent and all other sums due under the Lease to Lender, Tenant (waiving any proof of the occurrence of such event of default other than receipt of Lender's notice) shall pay rent and all other sums due under the Lease directly to Lender. Any payments made to Lender by Tenant shall not affect or impair the other rights and remedies of Lender under the Deed of Trust or otherwise against Landlord. Any and all payments made to Lender by Tenant pursuant to the foregoing shall be credited against Tenant's rental obligations under the Lease regardless of whether Lender had the right to make such demand and regardless of any contrary demands which may hereafter be made by Landlord.

9. This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the Lease to the lien or charge of the Deed of Trust in favor of Lender, and shall supersede and cancel, but only insofar as would affect the priority of the Lease as to such subjection or subordination, all other subjection or subordination agreements including, but not limited to, those provisions, if any, contained in the Lease which provide for the subjection or subordination of said Lease to a deed of trust or to a mortgage or mortgages.

10. This Agreement may not be modified except by any agreement in writing signed by the parties. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

11. Nothing contained in this Agreement shall in any way impair or affect the lien created by the Deed of Trust, except as specifically set forth herein.

12. Tenant acknowledges that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement with respect to the Deed of Trust. In the event there is any inconsistency between the terms and provisions hereof and the terms and provisions of the Lease dealing with non-disturbance, the terms and provisions hereof shall be controlling.

13. All notices, demands or requests made pursuant to, under or by virtue of this Agreement shall be in writing and delivered by hand, sent by an overnight courier service providing dated evidence of delivery or mailed by certified or registered mail, return receipt requested, to the person to whom the notice, demand or request is being made at its address set forth herein. Such notices shall be deemed to have been promptly given and received for all purposes (a) if hand delivered, effective upon delivery; (b) if mailed, by United States registered or certified mail, postage prepaid, return receipt requested, effective on date shown on the return receipt; or (c) if sent by Federal Express or other reliable express courier, effective on the next business day after delivery to such express courier service. Any person may change the place that notices and demands are to be sent by written notice delivered in accordance with this Agreement.

14. This Agreement shall be deemed to have been made in the State of California and shall be governed by the laws of the State of California. If any of the terms of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of any such terms to any person or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. In the event any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Agreement, or to recover damages for the breach thereof, the party prevailing in any such action or proceeding shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees, costs and expenses incurred by the prevailing party.

16. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed under seal as of the day and year first above written.

LANDLORD:

By: _____

By: _____
Its: _____

TENANT:

By: _____
Its: _____

LENDER:

By: _____
Its: _____

EXHIBIT D

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made as of this _____ day of _____, 20____, between _____, a _____ (the "Tenant") and CNLBANK (together with its successors and/or assigns the "Lender").

The Tenant is the lessee under the lease described in Exhibit A attached hereto (as the same may from time to time be assigned, subleased, renewed, extended, amended, modified or supplemented, collectively the "Lease").

The Lender has previously made or is about to make a loan to _____, a _____ or its successor and/or assigns with respect to the landlord's interest under the Lease (the "Landlord"), evidenced by a promissory note in the original principal amount of approximately \$ _____ executed by the Landlord and payable to the Lender and secured by a first priority deed of trust, mortgage or deed to secure debt on the premises, recorded or to be recorded in the appropriate records of _____ County, _____ (the "Security Instrument").

The Lender has requested the Tenant to confirm the fact that the Lease is subject and subordinate to the Security Instrument.

The Tenant is willing to confirm the subordination of the Lease, provided it obtains assurance from the Lender that its possession of the demised premises and its right to use any common areas will not be disturbed by reason of or in the event of the foreclosure of the Security Instrument.

The Lender is willing to give such assurance.

NOW, THEREFORE, for and in consideration of the mutual agreements herein contained and other good and valuable consideration, the parties hereto do hereby mutually covenant and agree as follows:

1. The Tenant hereby subordinates the Lease to the Security Instrument and the lien thereof, and to all renewals, extensions, amendments, modifications and/or supplements of same, to the extent of all advances heretofore or hereafter made to the Landlord in pursuance thereof.

2. So long as no event of default on the part of the Tenant under the Lease shall exist which would entitle the Landlord to terminate the Lease, or if such an event of default shall exist, so long as the Tenant's time to cure the default shall not have expired, the term of the Lease shall not be terminated or modified in any respect whatsoever and the Tenant's right of possession to

the premises and its rights in and to any common areas and its other rights arising out of the Lease will all be fully recognized and protected by the Lender and shall not be disturbed, canceled, terminated or otherwise affected by reason of the Security Instrument or any action or proceeding instituted by the Lender to foreclose the Security Instrument, or any extension, renewal, consolidation or replacement of same, irrespective of whether the Tenant shall have been joined in any action or proceeding.

3. In the event that the Lender takes possession of the premises, either as the result of foreclosure of the Security Instrument or accepting a deed to the premises in lieu of foreclosure, or otherwise, or the premises shall be purchased at such a foreclosure by a third party, the Tenant shall attorn to the Lender or such third party and recognize the Lender or such third party as its landlord under the Lease, and the Lender or such third party will recognize and accept the Tenant as its tenant thereunder, whereupon, the Lease shall continue in full force and effect as a direct lease between the Lender or such third party and the Tenant for the full term thereof, together with all extensions and renewals thereof, and the Lender or such third party shall thereafter assume and perform all of the Landlord's obligations, as the landlord under the Lease with the same force and effect as if the Lender or such third party were originally named therein as the Landlord; provided, however, that the Lender or such third party shall not be:

(a) liable for any act or omission of any prior landlord (including the Landlord), except to the extent the Lender was furnished notice and opportunity to cure the same in accordance with the provisions of this Agreement prior to taking possession of such premises; or

(b) subject to any offsets or defenses which the Tenant might have against any prior landlord (including the Landlord), except to the extent the Lender was furnished notice and opportunity to cure the same in accordance with the provisions of this Agreement prior to taking possession of such premises; or

(c) bound by any rent or additional rent which the Tenant might have paid for more than two (2) months in advance to any prior landlord (including the Landlord); or

(d) bound by any amendment or modification of the Lease not consented to in writing by the Lender.

4. Notwithstanding anything to the contrary in this Agreement or otherwise, in the event the Lender or a third party takes possession of the premises as provided in paragraph 3 above, the liability of the Lender or such third party under the Lease shall be limited to the Lender's or such third party's, as the case may be, interest in the premises.

5. Tenant agrees not to subordinate the Lease to any other lien or encumbrance which (i) affects the premises under the Lease, or any part thereof, or (ii) is junior to the Security Instrument, without the express written consent of the Lender, and any such subordination or any such attempted subordination or agreement to subordinate without such consent of Lender, shall be void and of no force and effect.

6. Tenant agrees to provide copies of all notices given Landlord under the Lease to Lender at the following address:

Lender:	CNLBank	
	450 South Orange Avenue	
	4 th	Floor
	Orlando,	FL 32802
	Attn: Real Estate Loan Administration	

or to such other address as Lender shall designate in writing; and all such notices shall be in writing and shall be considered as properly given if (i) mailed to the addressee by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the addressee, or (iii) by delivery to a third party commercial delivery service for same day or next day delivery to the office of the addressee with proof of delivery; any notice so given shall be effective, as applicable, upon (a) the third (3rd) day following the day such notice is deposited with the United States mail, (b) delivery to the addressee, or (c) upon delivery to such third party delivery service; and any notice given in any other manner shall be effective only if and when received by the addressee.

7. In the event Landlord shall fail to perform or observe any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to Lender and Lender shall have the right (but not the obligation) to cure such default. Tenant shall not take any action with respect to such default under the Lease (including without limitation any action in order to terminate, rescind or avoid the Lease or to withhold any rent or other monetary obligations thereunder) for a period of thirty (30) days following receipt of such written notice by Lender; provided, however, that in the case of any default which cannot with diligence be cured within such thirty (30) day period, if Lender shall proceed promptly to cure such default and thereafter prosecute the curing of such default with diligence and continuity, then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of such default with diligence and continuity.

8. Nothing contained in this Agreement shall in any way impair or affect the lien created by the Security Instrument, except as specifically set forth herein.

9. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of the Lender to a party that assumes the Lender's obligations and liabilities hereunder, all obligations and liabilities of the Lender under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom the Lender's interest is assigned or transferred.

WITNESS/ATTEST:

Amy Firoozabady
AMY FIROOZABADY

WITNESS/ATTEST:

✓ Ingrid Holliday
Ingrid Holliday

WITNESS/ATTEST:

WITNESS/ATTEST:

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that _____, personally came before me this day and acknowledged that (s)he is a _____ of _____, the _____ of _____, that executed the foregoing instrument, and acknowledged to me that the same was the act of the said _____, and that (s)he executed the same as the act of such _____ for the purposes and consideration therein expressed and in the capacity therein stated.

WITNESS my hand and official stamp or seal, this _____ day of _____, 20____.

TENANT:

By: Raf. A. [Signature]
Name: _____
Title: _____

LENDER:

CNLBANK

By: _____
Name: _____
Title: _____

Notary Public
My Commission Expires:

(Notary Seal)

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that _____, personally came before me this day and acknowledged that (s)he is a _____ of CNLBank, the banking association that executed the foregoing instrument, and acknowledged to me that the same was the act of the said national banking association, and that (s)he executed the same as the act of such national banking association for the purposes and consideration therein expressed and in the capacity therein stated.

WITNESS my hand and official stamp or seal, this _____ day of _____, 20____.

Notary Public

My Commission Expires:

(Notary Seal)

EXHIBIT E

GUARANTY OF BRIAN FRANCE

(Social Security Number: [REDACTED])

THIS IS A GENERAL GUARANTY, WHICH IS ENFORCEABLE BY THE LANDLORD, ITS SUCCESSORS AND ASSIGNS. THIS IS ALSO AN ABSOLUTE AND UNCONDITIONAL GUARANTY.

The undersigned (the "Guarantor"), absolutely and unconditionally guarantees the prompt and full performance and observance by Luma on Park LLC, a Florida limited liability company (the "Tenant"), and by each of their legal representatives, successors, and assigns, of all of the obligations to be performed by the Tenant under that certain Lease Agreement dated as of the date hereof (the "Lease") between 250 Park Avenue Trustee, Inc., a Florida corporation, as successor trustee to the 250 Park Avenue Trust dated March 30, 2000 (the "Landlord") and Tenant for approximately 8,000 square feet of rentable area (the "Premises") in the office building having an address of 250 S. Park Avenue, Winter Park, Florida 32789 (the "Building"), which obligations accrue between the Effective Date (as such term is defined in the Lease) and 11:59 P.M., EST on the day which is the second (2nd) anniversary of the Commencement Date (as such term is defined in the Lease) (the "Guaranty Expiration Date"), but not otherwise, irrespective of any bankruptcy, transfer, assignment, subletting or termination of the Lease. In no event shall the obligations guaranteed by this Guaranty include (a) any amounts, including Rent which become due after the Guaranty Expiration Date or any other obligations to be performed by Tenant under the Lease which accrue, arise or otherwise become due after the Guaranty Expiration Date, or (b) any amounts, including Rent, which are scheduled to become due under the Lease after the Guaranty Expiration Date, but which as a result of acceleration by Landlord following an Event of Default, become due prior to the Guaranty Expiration Date. Guarantor represents and warrants that he has a direct financial interest in Tenant, that he has received substantial consideration in exchange for making this Guaranty, and that he currently possesses a minimum net worth of not less than Fifteen Million and 00/100 Dollars (\$15,000,000.00) in assets which are subject to the claims of creditors (the "Minimum Net Worth Requirement"). Guarantor covenants and agrees that at all times during which this Guaranty remains in full force and effect, Guarantor shall maintain the Minimum Net Worth Requirement. Prior to executing the Lease by Tenant, and thereafter from time to time prior to the Guaranty Expiration Date, upon Landlord's written request, Guarantor shall forward to Landlord a certification, in form and substance reasonably satisfactory to Landlord, confirming Guarantor's satisfaction of the Minimum Net Worth Requirement.

This is a guaranty of payment and not collection and Landlord may proceed directly against the Guarantor without first proceeding with any remedies against Tenant. Insofar as the payment by Tenant of any sums of money to Landlord is involved, this Guaranty is a guaranty of payment and not of collection, and shall remain in full force and effect (subject to the limitations contained herein) until payment in full to Landlord of all sums payable under the Lease. Guarantor waives any right to require that Landlord bring any legal action against Tenant,

before, simultaneously with, or after enforcing its rights and remedies hereunder against Guarantor. Landlord shall not be required to make any demand on Tenant, apply any security or other deposit held by Landlord on behalf of Tenant, or any other credit in favor of Tenant, or otherwise pursue or exhaust its remedies against Tenant before, simultaneously with, or after enforcing its rights and remedies hereunder against Guarantor.

This Guaranty shall not be impaired by, and Guarantor consents to, any modification, supplement, extension, or amendment of the Lease to which the parties to the Lease may hereafter agree. Presentment, notice, and demand on Tenant or the Guarantor and subsequent dishonor are not conditions to proceeding against such Guarantor. Without limiting the generality of the foregoing, Guarantor expressly agrees that Landlord may, in its sole and absolute discretion, without notice to or further consent of Guarantor and without in any way releasing, affecting, or impairing the obligations and liabilities of Guarantor hereunder: (i) waive compliance with any of the terms of the Lease; (ii) modify, amend, or change any provisions of the Lease by agreement between the Landlord and Tenant; (iii) grant extensions or renewals of the Lease and/or effect any release, compromise or settlement in connection therewith; (iv) assign or otherwise transfer all or part of the Landlord's interest in the Lease, the Premises, or this Guaranty or any interest therein or herein; and (v) consent to an assignment, subletting, conveyance, or other transfer of all or any part of the interest of Tenant in the Lease.

In connection with any suit, action, or other proceeding, including arbitration or bankruptcy, arising out of or in any manner relating to the Lease or this Guaranty, the prevailing party or parties shall be entitled to recover reasonable attorneys', paralegals', and legal assistants' fees and disbursements (including disbursements which would not otherwise be taxable as costs in the proceeding) and expert witness fees through and including all post-judgment and appellate levels.

This Guaranty shall be governed by the laws of the State of Florida. Proper venue for any action which may be brought under this Guaranty shall be Orange County, Florida. GUARANTOR KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY. GUARANTOR CONSENTS TO JURISDICTION OF THE COURTS OF FLORIDA AND AGREES THAT ORANGE COUNTY, FLORIDA SHALL BE THE PROPER VENUE FOR ANY ACTION BROUGHT UNDER THIS GUARANTY.

This Guaranty is a continuing guaranty that shall be effective and remain in full force and effect, irrespective of any bankruptcy, transfer, assignment, subletting or termination of the Lease, from and after the Effective Date (as such term is defined in the Lease) until 11:59 P.M., EST on the Guaranty Expiration Date.

The liability of Guarantor under this Guaranty shall in no way be affected, modified, or diminished by reason of (a) any assignment, renewal, modification, amendment, or extension of the Lease, or (b) any modification or waiver of or change in any of the terms, covenants, and conditions of the Lease by Landlord and Tenant, or (c) any extension of time that may be granted by Landlord to Tenant, or (d) any consent, release, indulgence, or other action, inaction, or

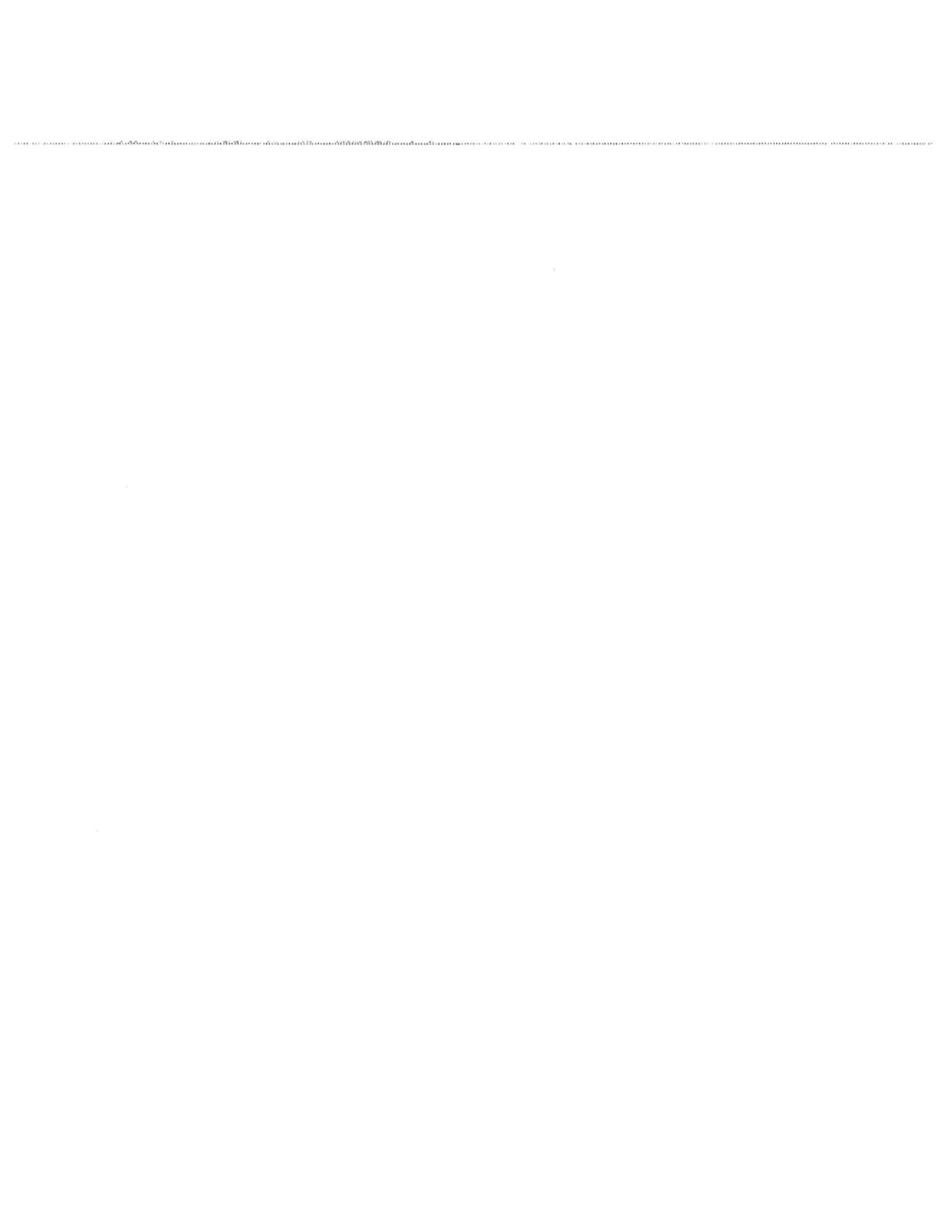


EXHIBIT F

BUILDING RULES AND REGULATIONS

Landlord has adopted the following Building rules and regulations for the care, protection and benefit of your Premises and the Building and for the general comfort and welfare of all tenants. These rules and regulations are subject to amendment by the Landlord from time to time.

1. Tenant shall store all trash and garbage within the Premises, or within the area designated by Landlord for such trash pick up and removal and under no circumstances shall Tenant operate an incinerator or burn trash or garbage within any portion of the Building. Notwithstanding the foregoing, in the event Tenant's business conducted on the Premises is a restaurant, cafe, diner, ice cream parlor, bakery, grocery store, caterer or any other type of operation in which Tenant prepares or sells food or beverages to its customers or in the event Tenant's business conducted on the Premises is medical in nature or of any other type to which federal, state or local laws, rules, statutes, regulations, codes or ordinances proscribed specific requirements for disposal of all or any part of the garbage, trash, waste or debris created from such business operations, Tenant shall, at its own cost and expense, be responsible for the collection, removal and disposal of its garbage, trash, waste and debris in accordance with such requirements and Tenant shall not, under any circumstances whatsoever, dispose of such garbage, trash, waste or debris in the garbage cans or dumpsters provided by Landlord for the Building.

2. Sidewalks, doorways, vestibules, halls, stairways, and similar areas shall not be obstructed (except as expressly permitted in any Lease) or used for any purpose other than ingress and egress to and from the Premises and for going from one part of the Building to another part of the Building.

3. Plumbing fixtures and appliances shall be used only for the purposes for which constructed, and no sweepings, rubbish, rags or other unsuitable material shall be thrown or placed therein. The expense of a stoppage or damage resulting to any such fixtures or appliances from a violation of this provision shall be borne by Tenant who shall, or whose officer, employees, agents, patrons, customers, licensees, visitors, or invitees, shall have caused the damage.

4. Tenant shall not, without Landlord's prior written consent, (a) make any alteration, change, improvement or addition in or to the Premises, (b) install any signs, drapes, blinds, shades or other coverings on exterior windows or doors, or (c) install or alter any furniture, fixtures, decorations or furnishings (including, without limitation, carpeting or other floor treatments, ceiling treatments, wall treatments and signs) which can be viewed from the lobby or Building elevators (notwithstanding that such lobby may be part of the Premises), from the Common Area or from any other point outside the Premises.

5. Landlord will provide and maintain in a conspicuous location in the Building lobby area a directory for all tenants, and no other directory shall be permitted. Tenants will be

identified on such directory by the name of the tenant. The style and size of lettering on such directory shall be determined by Landlord.

6. Tenants shall not do anything, or permit anything to be done, in or about the Building, or bring or keep anything therein, that will in any way increase the possibility of fire or other casualty or obstruct or interfere with the rights of, or otherwise injure or annoy, other tenants, or do anything in conflict with the valid pertinent laws, rules or regulations of any governmental authority.

7. Corridor doors, when not in use, shall be kept closed at all times in accordance with the fire codes.

8. All deliveries must be made via the service entrance and service elevators during Normal Business Hours. Prior approval must be obtained from the Landlord for any deliveries that must be received after Normal Business Hours.

9. Each tenant shall cooperate with Building employees in keeping the Building clean.

10. Nothing (including, without limitation, boxes, crates or excess trash) shall be swept into, disposed of or deposited, in the corridors, halls, elevator shafts or stairways. No birds, animals or reptiles, or any other creatures, shall be brought into or kept in or about the Building. Notwithstanding anything to the contrary contained herein, service animals are of course welcome to accompany any disabled individual entering the Building as an employee or visitor of tenant or otherwise. Please notify Landlord if any special arrangements need to be made to accommodate disabled persons with such service animals.

11. Should Tenant require any telegraphic, telephonic, muzak, annunciator or any other communication or entertainment service installed or changed, such work will be done at expense of Tenant, with approval and under the direction of Landlord.

12. Tenants shall not make or permit any unseemly, disturbing or improper noises in the Building, or otherwise interfere in any way with other tenants, or persons having business with them.

13. No equipment of any kind shall be operated on the Premises that could in any way annoy any other tenant's use of its premises in the Building or the Common Areas of the Building without the prior written consent of the Landlord.

14. Tenants shall not place or use or keep in the Building gasoline, kerosene oil, acids, caustics or any inflammable or explosive fluid or substance, or any illuminating material, unless it is battery powered, UL approved.

15. All electrical fixtures hung in the Premises must be of a quality, type, design, bulb color, size and general appearance approved by Landlord.

16. No air conditioning unit or system or other apparatus (including a satellite disk) shall be installed or used by a tenant without the prior written consent of Landlord.

17. All tenants will refer all contractors, contractors' representatives, installation technicians and repair persons rendering any service to them to Landlord for Landlord's supervision, approval and control before the performance of any contractual or other services.

18. Movement in or out of the Building of furniture or office equipment, or dispatch or receipt by tenants of any bulky material, merchandise or materials which requires use of elevators or stairways, or movement through the Building entrances or lobby shall be restricted to such hours as Landlord shall designate, and shall not be undertaken without Landlord's prior written consent. All such movement shall be under the supervision of Landlord and in the manner agreed between tenant and Landlord by prearrangement before performance. Such prearrangement initiated by tenant will include determination by Landlord, and subject to its decision and control, as to the time, method and routing of movement, and as to limitations for safety or other concerns which may prohibit any article, equipment or any other item from being brought into the Building. Tenants assume all risks as to damage to articles moved and injury of persons or public engaged or not engaged in such movement, including equipment, property and personnel of Landlord if damaged or injured as a result of acts in connection with carrying out this service for a tenant; and Landlord shall not be liable for acts of any person engaged in, or any damage or loss to any of said property or persons resulting from, any act in connection with such service performed for a tenant.

19. Tenants shall not place a load upon any floor of the premises which exceed the floor load per square foot which such floor was designed to carry or which is allowed by applicable Building code. Landlord shall have the right to prescribe the weight and position of safes, concentrations of file cabinets, computers and other heavy equipment, property or installations, which shall in all cases distribute weight and stand on supporting devices approved by Landlord. All damage done to the floor, the walls or any part of the Building by taking in or removing any property of a tenant, or done by a tenant's property while in the property, shall be repaired at the expense of such tenant.

20. Tenant shall notify Building Management when heavy equipment or property is to be taken in or out of the Building, and the moving shall be done under the supervision of Building Management, after written permission from Landlord. Persons employed to move such equipment or property must be acceptable to Landlord.

21. Business machines and mechanical equipment belonging to the Tenant which cause noise and/or vibration that may be transmitted to the structure of the Building or to any premises so as to be objectionable to Landlord or any tenants in the Building shall be placed and maintained by the Tenant, at the Tenant's expense, in adequate settings of cork, rubber, or spring type noise and/or vibration eliminators.

22. No portion of any tenant's premises shall at any time be used or occupied as sleeping or lodging quarters.

23. Landlord will not be responsible for lost or stolen personal property, money or jewelry from a tenant's premises or public areas regardless of whether such loss occurs when such area is locked against entry or not.

24. Canvassing, soliciting, and peddling in the Building or garage facilities is prohibited.

25. Hand trucks, except those equipped with rubber tires or the like shall not be used in any space, or in the public halls of the Building, either by any tenant or by jobbers or others, in the delivery or receipt of merchandise. Use of hand trucks, dollies and all such conveyances shall be restricted to freight elevators or other passageways designated by Landlord.

26. The Premises shall not be used for conducting any barter, trade, or exchange of goods or sale through promotional give-away gimmicks or any business involving the sale of second-hand goods, insurance salvage stock, or fire sale stock, and shall not be used for any auction or pawnshop business, any fire sale, bankruptcy sale, going-out-of-business sale, moving sale, bulk sale, or any other business which, because of merchandising methods or otherwise, would tend to lower the character of the Building, or which would be in violation of any law.

27. Tenants must dispose of crates, boxes, etc., which will not fit into office waste paper baskets.

28. Tenants will be responsible for any damage to carpeting and flooring as a result of rust or corrosion of file cabinets, pot holders, roller chairs, and metal objects.

29. Tenants shall not advertise the business, profession or activities of tenants in any manner which violates the letter or spirit of any code of ethics adopted by any recognized association or organization pertaining thereto or use the name of the Building for any purpose other than that of the business address of tenant or use any picture or likeness of the Building or the Building name in any circulars, notices, advertisements, containers, or wrapping material, without Landlord's express consent in writing.

30. All glass, locks and trimmings in or upon the doors and windows of the Building shall be kept whole and when any part thereof shall be broken the same shall be immediately replaced or repaired and put in good repair.

31. Tenant shall not (without Landlord's written consent) install or operate any computer, duplicating or other large business machine, equipment, or any other machinery upon the Premises or carry on any mechanical business thereon. Tenant shall not (without Landlord's written consent) operate any device which may emanate electrical waves which will impair radio or television broadcasting or reception from or in the Building.

32. If the Premises becomes infested with vermin, Tenant, at its sole cost and expense, shall cause the Premises to be exterminated from time to time, to the satisfaction of Landlord, and shall employ such exterminators therefore as shall be approved by Landlord.

33. It is the express obligation of the tenant to inform in a timely manner each of its employees, agents, invitees or guests of the rules and regulations of the Building and to cause such parties to comply therewith

34. All holiday and other temporary or special installations or decorations which a tenant desires to install in a tenant's premises must be first approved by Landlord and must be flame retardant.

35. Landlord has the right to evacuate the Building in event of emergency or catastrophe.

36. Tenant hereby acknowledges and agrees that the Building, including the Premises, is a smoke-free environment and smoking of any type, including, without limitation, the smoking of any cigarettes, cigars, pipes or any other lighted tobacco product, is strictly prohibited in all portions of the Building, including the Premises. Tenant shall require all of its employees, agents, guests and invitees to comply with the no smoking provisions of this Lease.

EXHIBIT G

FORM OF MEMORANDUM OF LEASE

Prepared By and Return to:

Michael J. Kirwin, Esquire
Broad and Cassel
P.O. Box 4961
Orlando, Florida 32802-4961

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made and entered into this ___ day of October, 2004, by and between **250 Park Avenue Trustee, Inc. a Florida corporation, as successor Trustee of the 250 PARK AVENUE TRUST dated March 30, 2000**, with an address of 250 S. Park Avenue, Winter Park, Florida 32789 ("Landlord"), and **Luma on Park LLC, a Florida limited liability company** with an address of _____ ("Tenant").

LEASE. Landlord and Tenant entered into that certain Office Building Lease dated as of the date hereof (the "Lease"), pursuant to which Landlord leased to Tenant approximately 7,000 rentable square feet of space (the "Premises") located within the building having an address of 250 S. Park Avenue, Winter Park, Florida 32789 (the "Building"), as more particularly described on Exhibit A attached hereto and made a part hereof. All capitalized terms used but not otherwise defined in this Memorandum shall have the meanings ascribed thereto in the Lease.

LEASE TERM. The initial term of the Lease shall begin on the Commencement Date and expire (unless sooner terminated in accordance with the Lease) on the last day of the One Hundred Eightieth (180th) consecutive calendar month after the Commencement Date ("Expiration Date").

RENEWAL OPTION. Subject to the terms and conditions of the Lease, Tenant shall have two (2) periods of five (5) years each (each a "Renewal Option"). Tenant shall have no further right or option to extend the Term of the Lease.

LEASE INCORPORATED AND RATIFIED HEREIN. The terms, conditions, provisions and covenants of the Lease are hereby incorporated herein as if fully set forth in this Memorandum, and are hereby ratified and affirmed by Landlord and Tenant. To the extent that any of the terms hereof are inconsistent with the terms of the Lease, the terms of the Lease shall control.

MECHANICS' LIENS. Tenant hereby acknowledges and agrees to the following:

THE INTEREST OF LANDLORD IN THE BUILDING SHALL
NOT BE SUBJECT TO LIENS FOR IMPROVEMENTS
(INCLUDING ANY ALTERATION AS DEFINED HEREIN) TO
THE PREMISES MADE BY TENANT, NOTWITHSTANDING

ANY APPROVAL BY LANDLORD OF ANY CONTRACT(S) WITH ANY CONTRACTOR(S), AND/OR LANDLORD'S APPROVAL OF ANY SUCH IMPROVEMENT(S) AND/OR ALTERATION. PRIOR TO ENTERING INTO ANY CONTRACT FOR THE CONSTRUCTION OF ANY ALTERATION OR IMPROVEMENT, TENANT SHALL NOTIFY THE CONTRACTOR MAKING IMPROVEMENTS TO THE PREMISES OF THE FOREGOING PROVISION, AND TENANT'S KNOWING OR WILLFUL FAILURE TO PROVIDE SUCH NOTICE TO THE CONTRACTOR SHALL RENDER THE CONTRACT BETWEEN TENANT AND THE CONTRACTOR VOIDABLE AT THE OPTION OF THE CONTRACTOR. IN THE EVENT TENANT FAILS TO INCLUDE THE FOREGOING LANGUAGE IN ANY SUCH CONTRACT, LANDLORD MAY, BUT SHALL NOT BE REQUIRED TO, EXERCISE ALL REMEDIES AVAILABLE UNDER THIS LEASE AS A RESULT OF SUCH EVENT OF DEFAULT.

All lienors, including without limitation, contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers, professional lienors (as defined by Section 713.03, Florida Statutes, as the same may be amended or restated), and others are called upon to take due notice of this clause, it being the intention of Landlord and Tenant to expressly prohibit any such lien against Landlord's title or interest in and to the Building by the use of this language, as and in the manner contemplated by Section 713.10, Florida Statutes.

LIMITATION ON LANDLORD'S LIABILITIES. As set forth in the Lease, the obligations and liabilities of the Landlord hereunder shall be binding upon the Landlord only during its ownership of the Building. In the event of the sale or other transfer of Landlord's right, title and interest in the Building, Landlord shall be released from all liability and obligations under this Lease arising thereafter. Further, in the event of any default by Landlord under the Lease, for which Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of Landlord's estate and interest in the Building, as the same may then be encumbered, including, but not limited to, the proceeds of the sale of the Building, and Tenant shall have no right to levy execution against any other property of Landlord.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease as of the date and year first above written.

WITNESSES:

LANDLORD:

Signature of Witness 1

250 Park Avenue Trustee, Inc. a Florida corporation, as successor Trustee of the 250 PARK AVENUE TRUST dated March 30, 2000

Print or type name of Witness 2

By: _____

Signature of Witness 2

Name: _____

Print or type name of Witness 2

Title: _____

[CORPORATE SEAL]

TENANT:

Signature of Witness 1

Luma on Park LLC, a Florida limited liability company

Print or type name of Witness 1

By: _____

Signature of Witness 2

Name: _____

Print or type name of Witness 2

Title: _____

[CORPORATE SEAL]

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of October, 2004 by _____, President of 250 Park Avenue Trustee, Inc. a Florida corporation, as successor Trustee of the 250 PARK AVENUE TRUST dated March 30, 2000, on behalf of said corporation. He is (a) ___ personally known to me or (b) ___ has produced as identification.

NOTARY PUBLIC

Signature: _____

Print _____

Notary Public – State of Florida

MY COMMISSION EXPIRES: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of October, 2004
by _____, the _____ of Luma on Park LLC, a Florida limited liability
company, on behalf of said _____. She/ He is (a) ____ personally known to me or
(b) ____ has produced _____ as identification.

NOTARY PUBLIC

Signature: _____

Print _____

MY COMMISSION EXPIRES: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF BUILDING

TOWN OF WINTER PARK A/67 & B/86 & MISC BOOK 3/220 LOTS 2 3 4 & 5 (LESS E 33 FT OF LOT 2 & LESS S 10 FT THEREOF) & ALL OF LOTS 10 THRU 16 & LOT 17 (LESS E 14 FT LOT 17 & LESS N 10 FT OF LOTS 16 & 17) BLK 39 OR B&P 5797/1613, ON 07-12-99, INST SM

EXHIBIT "B"

IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT IN AND FOR ORANGE
COUNTY, FLORIDA

250 PARK AVENUE TRUSTEE, INC.,
a Florida corporation,

Plaintiff/
Counter-Defendant,

v.

LUMA ON PARK, LLC, a Florida limited
liability company; and BRIAN FRANCE, an
individual,

Case No.: 06-CA-009596
Division: 32
Complex Business Litigation Court

Defendants/
Counterclaimants,

and

WILLIAM BATTAGLIA,

Additional
Counterclaim Defendant.

/

**FINAL AND BINDING
MEDIATED SETTLEMENT AGREEMENT**

1. PREAMBLE

- a. The parties to this Mediated Settlement Agreement and the above-styled lawsuit, have resolved, or established a procedure for the final and binding resolution of, all claims and disputed issues raised in the above-styled lawsuit, whether raised in the complaint, counter-claim or third-party complaint or in any defenses.
- b. Capitalized terms in this agreement shall be given the definitions set forth in the Lease Agreement.
- c. The parties to this Mediated Settlement Agreement, upon full execution hereof, shall file a joint stipulation of dismissal of all claims, without prejudice, of the above-styled lawsuit.

2. CHILLED WATER CAPACITY

- a. Landlord has alleged in the above-styled lawsuit that the cooling loads of Tenant exceed the capacity of the existing cooling system of the Building. Tenant has denied this allegation. The parties have agreed to engage in an alternative dispute resolution process to resolve this issue outside of litigation.
- b. The parties shall, within 7 days of execution hereof, select a mutually agreeable consultant with expertise in mechanical engineering, and the costs associated with the consultant's services shall be borne equally by the parties (hereinafter "M.E. Neutral"). The sole issues for determination by the M.E. Neutral shall be (1) whether the existing cooling system of the Building, specifically the chillers, cooling tower and pumps, have adequate capacity to service the projected maximum cooling loads of Tenant with the assumption of a fully-leased, occupied Building and 35 tons of cooling load attributed to Taste the Wine; or (2) if the projected maximum cooling loads of Tenant exceed the capacity of the existing system, what is the most reasonable and economical scope of work required to provide Tenant with air conditioning (and attendant timeframe for construction), either by (i) upgrading or replacing Landlord's existing cooling system to reach appropriate capacity; or (ii) Tenant disconnecting from Landlord's cooling system and installing its own, independent air conditioning system and equipment, to provide separate air conditioning to its own Leased Premises; and (3) a reasonable market rate for chilled water usage (expressed in ton hours).
- c. The parties shall each provide to the M.E. Neutral, within seven (7) days of selection thereof, their written data and reports on the cooling loads and capacity issues, including but not limited to, the letter reports of Thompson Engineering and T.G. Albers, and may submit updated or supplemental reports before the hearing discussed below. The parties shall thereafter accord the M.E. Neutral reasonable access to the Building and Leased Premises so that the M.E. Neutral can independently analyze the issues in dispute. The parties shall further make their engineering consultants reasonably available to answer any questions of the M.E. Neutral with respect to their written data.
- d. Upon the M.E. Neutral completing his or her independent analysis, the M.E. Neutral shall convene, at a mutually convenient time and place, a special hearing to evaluate the issues in dispute. The parties agree that such hearing shall take place as soon as reasonably possible, with a good-faith effort to conduct the hearing within thirty (30) days hereof. The hearing shall not involve legal counsel. Each party will be accorded a full opportunity to present oral and documentary evidence to the M.E. Neutral. Neither party shall have the right to question or cross-examine the other party or its witnesses, with such right being reserved only for the M.E. Neutral. To the extent necessary, either party may tender expert witness evidence. Formal rules of evidence shall not be followed. Thereafter, if

necessary for a final decision, the M.E. Neutral may confer directly with the parties' experts, together, or other persons the M.E. Neutral deems appropriate, but in the presence of both parties' experts.

- e. Following the presentation of all evidence, the M.E. Neutral shall issue a final decision (with load and capacity calculations stated in the ruling) within seven (7) days thereof or as soon thereafter as practicable. The final decision shall be binding on the parties, and if necessary shall be enforceable as an arbitration award and may be reduced to a judgment by any court of competent jurisdiction. Any change in Tenant's operating hours, or increase in cooling loads by Tenant in excess of the loads presented to the M.E. Neutral, shall give grounds to Landlord raising capacity issues in accordance with the process described above.
- f. In the event that the M.E. Neutral determines that the existing cooling system of the Building does not have adequate cooling capacity to service Tenant's needs, Tenant will agree to undertake at its sole expense, and its sole option, either the upgrade or replacement of the existing cooling system of the Building or install independent air conditioning equipment to service the Leased Premises. Landlord shall accept as binding the work scope outlined by the M.E. Neutral for either the upgrade or installation of independent equipment, and agrees to make reasonable accommodation for such work to be undertaken, including but not limited to, permitting Tenant to install equipment on or in Landlord's parking garage at no charge of space up to a maximum of two parking spaces, at a reasonable rental rate for any additional space required..
- g. Tenant shall complete such work within the timeframe dictated by the M.E. Neutral ruling. In the event that the work ordered by the M.E. Neutral cannot be completed prior to a month where the cooling load exceeds or is expected to exceed capacity, the M.E. Neutral has the authority to direct Tenant to undertake at its expense interim measures to ensure adequate capacity for the entire Building while the permanent upgrades or modifications are being implemented by Tenant.

3. CHILLED WATER BILLING

- a. Tenant shall pay Landlord, within fourteen (14) days of execution hereof, the amount of \$42,000.00 for all chilled water usage from possession of the Leased Premises through February 28, 2007.
- b. Unless ~~after~~ ^① Tenant installs an independent air conditioning system, all future monthly chilled water usage by Tenant shall be billed to Tenant by Landlord, and paid by Tenant in accordance with the Lease Agreement, by measuring the monthly usage in terms of British Thermal Units (BTU), converted to ton hours (conversion rate of 12,000 BTU/ton), at the ton hour rate to be determined by the M.E. Neutral, and this rate shall be in effect through December 31, 2007.

Thereafter, chilled water charges shall be reasonably determined by Landlord and shall be deemed an "Operating Expense" for purposes of the Lease Agreement and governed by the Operating Expense provisions thereunder, with all audit rights provided. Prior to the M.E. Neutral establishing the ton hour rate, Tenant shall pay future chilled water billings at the cost of \$0.20 per ton hour, and upon the M.E. Neutral determining the rate, upward or downward adjustments shall be made to all amounts paid for chilled water usage since March 1, 2007.

4. EXHAUST SYSTEMS

- a. Tenant shall retain at its sole expense an independent architect and engineering firm (hereinafter "Tenant's A/E") to design and implement code and NFPA 96 compliant exhaust and exhaust filtration systems for Tenant's cooking and mechanical systems, from hood/intake to exhaust system termination, including but not limited to, extending the existing exhaust systems to meet the directives of the City of Winter Park as set forth in the letter of January 18, 2006. It is the intent of the parties that Tenant shall convert its wood burning cooking systems to natural gas, and that Tenant shall design and install new exhaust systems (or modifications thereof) on the Leased Premises that are fully code compliant, reasonably in keeping with the architectural aesthetics of the Building and which meet all prior Lease Agreement obligations.
- b. Tenant's A/E shall consult with and secure the approval of the architect or engineer selected by Landlord (hereinafter "Landlord A/E"), as to an exterior housing or chase finish or enclosure for any exhaust system extension, including materials and color, that is in keeping with the aesthetics and architectural character of the Building. The parties have agreed that the newly-designed system will extend to the outer edge of the exterior columns of the Building in a manner that meets the code requirements, and will not have fan assemblies protruding from the outer surface of the chase or housing which encloses the exhaust systems. Landlord's approval shall not be unreasonably withheld. If such approval is withheld, Tenant shall seek resolution in accordance with the dispute resolution clause set forth in paragraph 10 of this Settlement Agreement. If approval from Landlord's A/E is obtained, such approval shall be final and binding on Landlord as to aesthetic issues only. Tenant shall concurrently work on the aesthetic consultations and approval set forth above, along with the preparation of code and NFPA 96 compliant exhaust and exhaust filtration systems from hood intake to exhaust system termination.
- c. Tenant shall provide to Landlord for its final review and approval on code compliance issues, within 15 business days of execution hereof, a complete set of drawings and specifications for the exhaust system extension and modification in a form that Tenant believes is capable of receiving a permit from the governing

local jurisdiction. In the event that a dispute arises as to whether the proposed plans meet all applicable codes and ordinances, the final decision of the City of Winter Park, and any of its departments (including the Building Department and Fire Department), following any appeal that is allowed therefrom, shall be final and binding on the parties.

- d. Tenant shall undertake such obligations as set forth herein in an expeditious manner in order to meet the May 11, 2007 deadline imposed by the City of Winter Park in its latest Code Enforcement Board ruling, or any reasonable extensions thereof, and Landlord shall reasonably cooperate with Tenant in that regard. Time is of the essence with respect to meeting this deadline and the obligations hereunder.
 - e. The parties have not resolved, and this Settlement Agreement does not address, any disputed issues in the above-styled lawsuit regarding the pollution control devices originally installed in connection with Tenant's cooking exhaust systems. The parties do not agree on whether the conversion from wood-burning fuel to natural gas, coupled with the exhaust system modifications outlined above, will eliminate or lessen the additional issues and claims raised by Landlord regarding the smoke, odor, pollution, grime or other nuisances and safety concerns related to Tenant's cooking and exhaust systems. The parties reserve all rights and claims with regard to the pollution control devices and any attendant functions, such as cleaning, filtering and deodorizing. Any future disputes regarding the entitlement or need for any such pollution control devices, or disputes as to any future nuisances or safety concerns, shall be resolved in accordance with the dispute resolution clause set forth in paragraph 10 of this Settlement Agreement.
 - f. Tenant shall remove, within thirty (30) days of installation of natural gas cooking systems described above, the enclosure for the wood storage area located in the parking garage, including removing all wood and other related debris, and shall further restore such space to its original condition. Tenant shall have no further rights to this space. Tenant shall clean and repaint as necessary all building surfaces exposed to smoke and grime in or near the exhaust area.
 - g. Tenant agrees to maintain its exhaust systems in accordance with manufacturer's specifications and otherwise in a commercially reasonable manner by appropriately skilled and certified technicians.
5. EXTERIOR WATER HEATER ENCLOSURE
- a. The parties agree that the exterior water heater enclosure shall be reconstructed to a permanent enclosure that is in keeping with the architectural aesthetics of the Building and is reasonably priced. The parties agree to work cooperatively to reach an accord on a design and construction for a mutually acceptable permanent

enclosure for the Building. In the event that the parties cannot reach a final accord on the appropriate enclosure, that parties shall submit their differences and proposed designs for resolution in accordance with the dispute resolution clause set forth in paragraph 10 of this Settlement Agreement. Tenant agrees to construct at its sole expense a permanent enclosure as may be ordered by the Arbitrator or agreed to by the parties. There shall be no additional rent due for the water heater space.

- b. Landlord shall construct at its sole expense a new access ramp to the Building that is compliant with all governing regulations, including but not limited to the Americans with Disability Act and as required by the City of Winter Park in its letter dated October 30, 2006.
- c. Each party shall use good-faith best efforts to coordinate the work and the requirements of the governing jurisdictions and existing conditions, and shall not permit their respective improvements under this paragraph to interfere with or impede the other party's improvements hereunder.

6. BASEMENT STORAGE AREA

- a. Tenant is currently using a certain amount of square feet of non-lease space in Landlord's basement, for additional storage, at a rate of \$16.00 per square foot on a month-to-month basis. All rent for this space is current. Tenant is also currently using additional square feet of space in the basement for placement of grease tanks and doorway access.
- b. Landlord shall prepare, and the parties shall execute, an amendment to the Lease Agreement, to provide that this additional 971 square feet of basement space (designated as spaces B25 and B30 on Exhibit "1" hereto) shall become part of the Leased Premises along the same terms set forth in the Lease Agreement, at the rate of \$22.00 per square foot. Such agreement shall be co-terminus with the Lease Agreement with reasonable terms for escalation in an amount no greater than escalations paid by other Tenants renting basement space and along terms similar to the most favored tenant lease for basement space, excluding the leases of the parties. Tenant shall have sublease rights to the basement space hereunder, subject to Landlord's right of first refusal on such space or Landlord's right to terminate this specific additional lease space, and subject to Landlord's approval on subletting, which approval shall not being unreasonably withheld.
- c. In order to resolve any remaining dispute on past due rent for this additional space, Tenant shall pay to Landlord within fourteen (14) days of execution hereof, the lump sum of \$1,450.00

7. SOUND TRANSMISSION ISSUES

- a. The parties shall jointly select and retain, with retainer and expenses to be borne equally between the parties, an architectural/acoustical expert to evaluate the Building and Leased Premises to determine why sound from Tenant's music system is transmitting beyond the Leased Premises and causing disturbances with Landlord's adjacent tenants. Such expert shall also propose the most reasonable, cost-efficient resolution to any such problem.
- b. If the sound transmission problem is caused by Tenant's design and construction of the Leased Premises, use and operation of the music system, lack of reasonable sound insulation or filtration systems for the sound system installed by Tenant, or some combination thereof, then Tenant shall construct at its sole expense the acoustical measures identified by the parties' expert, and shall pay the fees of such expert. If the sound transmission problem is caused by issues related to Landlord's demising of the Premises independent of Tenant's design and construction of the Leased Premises, Landlord may undertake the measures identified by the parties' expert, and shall pay the fees of such expert.

8. ADDITIONAL MONETARY ISSUES

Other than as expressed in this Mediated Settlement Agreement, each party waives any rights to any other payments claimed or alleged in the above-styled litigation. All previous default letters by both parties are hereby withdrawn.

9. ADDITIONAL NUISANCE ISSUES

Any nuisances issues that arise after the date of this Mediated Settlement Agreement shall be resolved in accordance with the terms of the Lease Agreement and the alternative dispute resolution procedures set forth in paragraph 10 of this agreement.

10. DISPUTE RESOLUTION

- a. All future disputes or claims that arise between the parties that relate in any way to the Lease Agreement, this Mediated Settlement Agreement, or the restaurant operations of Tenant, shall be governed by this dispute resolution clause, with the sole exception of disputes involving the payment of Rent. All disputes regarding the payment of Rent shall continue to be governed by the terms of the Lease Agreement, including but not limited to, Article X. Nothing in this dispute resolution clause shall alter the rights and obligations of the Guaranty of Brian France, attached as Exhibit "E" to the Lease Agreement; provided, however, that Landlord shall not object to Mr. France designating an authorized representative to represent him at future arbitration or legal proceedings in connection with the

Lease or this Mediated Settlement Agreement. The terms and applicability of the Guaranty shall be extended to cover and apply to the agreements and issues set forth in this Mediated Settlement Agreement.

- b. Each party shall provide notice to the other party of any disputes or claims that arise out of or relate in any way to the Lease Agreement, this Mediated Settlement Agreement, or the restaurant operations of Tenant, within fourteen (14) days of notice or discovery thereof. Notice shall be provided in accordance with the requirements of the Lease Agreement, and shall include a detailed written description of the disputes or claims. The party receiving Notice of disputes or claims shall have seven (7) days after the receipt thereof, to provide the other party with a detailed written description of its position and defenses.
- c. Thereafter, the parties shall endeavor to settle the disputes or claims first through a step-negotiation process. The parties' designated representatives shall meet in person, at the Leased Premises, within seven (7) days of receipt of the written response to the disputes or claims, to discuss and attempt in good faith to resolve such disputes or claims. If the representatives are not able to resolve the disputes or claims within seven (7) days after the first meeting, the parties' senior representatives, William Battaglia and Rex Caton, shall confer to discuss and attempt in good faith to resolve such disputes or claims. If the parties' senior representatives cannot resolve the disputes or claims within seven (7) days after the first meeting, either party shall have the right to proceed with the pursuit of its disputes or claims in accordance with this Agreement. The parties shall have the express right to cure any alleged defaults during the step-negotiation period set forth herein.
- d. All unresolved disputes or claims shall be submitted to a binding arbitration process as described herein. The parties agree to select, within three (3) days of the conclusion of the step-negotiation process, an arbitrator for all unresolved disputes or claims under this dispute resolution clause, a certified construction or commercial arbitrator from the American Arbitration Association (hereinafter "Arbitrator"). If for any reason the parties cannot agree on the selection of an arbitrator, the parties shall select an arbitrator from the American Arbitration Association roster. If the parties still cannot reach an accord, Larry Watson shall make the arbitrator selection using the AAA roster, and his decision shall be final and binding on the parties.
- e. The binding arbitration process shall commence by either party providing Arbitrator with written notice of the disputes or claims, including a detailed description of the issues, within fourteen (14) days of conclusion of the step-negotiation process, unless the parties agree that additional time is required. The other party shall have seven (7) days after the receipt thereof, to provide Arbitrator and the other party with a detailed written description of its position

and defenses. The Arbitrator shall make reasonable efforts to convene a dispute resolution hearing within thirty (30) days of receipt of the parties' written submissions. No later than seven (7) days prior to the dispute resolution hearing, the parties shall exchange, and provide a copy to the Arbitrator, all documents that they intend to submit as evidence at the dispute resolution hearing. No other documents will be permitted at the hearing. Failure to comply with the requirements of this subparagraph will result in a waiver of the claims or defenses of the party not in compliance.

- f. The arbitration shall be governed by the American Arbitration Association Construction Industry Rules; provided however that the parties are not required to arbitrate under the auspices of the AAA administration.
- g. The arbitrator's decision shall be final and binding as to all parties with respect to all matters in which the relief sought is compensation or specific performance of Lease Agreement terms. In the event Landlord raises a dispute involving a claim for eviction, the Arbitrator shall not have binding authority to order eviction, but instead shall act as the finder of fact, and after following the dispute resolution process herein, shall issue a report within seven (7) days stating his or her finding as to the material facts in dispute and shall make a recommendation to the Circuit Court of the Ninth Judicial Circuit as to the appropriate ruling on the eviction issue. The determined facts, along with the legal recommendation on eviction, will then be submitted to the Circuit Court for final determination.
- h. Following the presentation of all evidence, Arbitrator shall issue a decision within seven (7) days thereof. Except as provided above, the final decision shall be binding on the parties and shall be enforceable as a judgment by any court of competent jurisdiction. The Arbitrator shall award the prevailing party in the dispute resolution hearing all reasonable costs and fees, including reasonable attorney and expert fees incurred in the dispute.
- i. Notices shall be provided to the persons designated in the Lease Agreement and to counsel of record in the litigation.

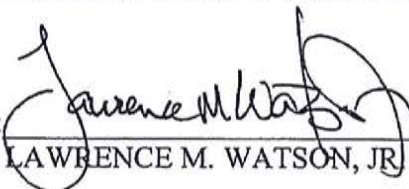
IN WITNESS WHEREOF, Landlord and Tenant have executed this Mediated

Settlement Agreement on the dates indicated below.


MEDIATOR:

UPCHURCH, WATSON, WHITE & MAX

DATED: 3/23, 2007.


By: 
LAWRENCE M. WATSON, JR.

COUNSEL FOR LANDLORD
AND BILL BATTAGLIA:


ROBERT ALFERT, JR., P.A.

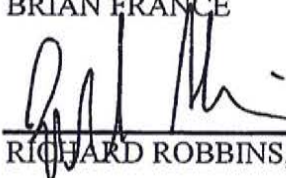
LANDLORD:

250 Park Avenue Trustee, Inc. a Florida
corporation, as successor Trustee of the 250
PARK AVENUE TRUST dated March 30, 2000

By: 
Name: W.P. Battaglia
Title: President
Dated: 03/23, 2007

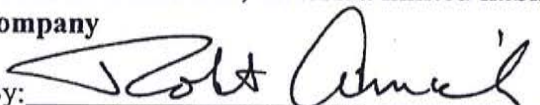
[CORPORATE SEAL]

COUNSEL FOR TENANT AND
BRIAN FRANCE


RICHARD ROBBINS, ESQ.

TENANT:

Luma on Park LLC, a Florida limited liability
company

By: 
Name: Robert Amick
Title: _____
Dated: 3/23, 2007

[CORPORATE SEAL]

Brian France
by Robert Amuck

**BRIAN FRANCE, an individual, by this
authorized representative**

Dated: _____, 2007

W.P. Battaglia
WILLIAM BATTAGLIA, an individual

Dated: 03/23 _____, 2007

EXHIBIT "C"



Luma on Park, LLC
290 S. Park Ave.
Winter Park, FL 32789

April 18, 2019

VIA EMAIL AND HAND DELIVERY

BFC Park Avenue, LLC
P.O. Box 3100
Winter Park, FL 32790
Attn: William P. Battaglia

Kirwin Norris, P.A.
15 W. Church Street, Suite 301
Orlando, Florida 32801
Attn: Michael J. Kirwin

Re: Lease Agreement (the "Lease") dated October 7, 2004 by and between 250 Park Avenue Trustee, Inc. ("Landlord"), and Luma on Park, LLC ("Tenant"); Exercise of Renewal Option

Gentlemen:

Please accept this notice to Landlord that, pursuant to Section 1.02(b) of the Lease, Tenant hereby exercises the renewal option to extend the Lease for the occupied spaces at 290 S. Park Ave., Winter Park, FL 32789 (the "Property"). Per our prior discussions, Tenant's exercise of the option also includes Tenant's proposal to extend this option term to a period of ten (10) years.

Tenant further proposes that Landlord and Tenant discuss the investment of additional capital into the Property and how such investment would align with the new rental rates and the length of the renewal terms.

Pursuant to the terms outlined in Section 1.02(c)(ii) of the Lease, we look forward to receiving the Landlord's determination of the Fair Market Rental Rate for each of the spaces currently occupied by Tenant.

Sincerely,

A handwritten signature in black ink, appearing to be "AT" or "Austin Tate".

Austin Tate
President
Luma on Park, LLC

Cc: Quino Martinez, Esq.
Alex Dobrev, Esq.

0914830\183310\8870649v1

EXHIBIT “D”

Dear Tenant,

This letter is in response to your request for temporary relief of your rental obligations. Due to the current uncertain times we are facing, please send a letter with the following information:

- Describing how the COVID-19 virus is impacting your business in further detail. Please include a timeline of pertinent milestones (i.e., reduced hours, reduced staff, shutting doors, etc.).
- Detailing efforts you have made or plan to make to adapt during the requested reduced rent period (i.e., close dining room but advertise takeout and delivery, etc.)
- Laying out a recovery timeline for your operations to return to normal

Please also provide the following:

- Monthly sales reports for the last two years
- Detailed income statement with operating expense information for Year-End 2019 and Year to Date 2020
- Prior two years' tax returns for both the business and any guarantors

This request for additional information is **not** an agreement to the terms requested in your original telephone communication with Bill Battaglia on March 30, 2020. We are currently evaluating the effects of COVID-19 on our business as well as on our tenants' businesses. We likewise await with great interest the pending federal legislation that among other items will address relief for small businesses and their affected employees and contractors. If we are able to formally agree to any rent adjustments, the following tenants will be prioritized:

- Those who were communicative and responsive with the requested information
- Those who do not have outstanding rent balances
- Those who attempted to adapt their historical business strategy to the current environment

Requests will be reviewed on a case-by-case basis, with the first date of review occurring on April 15, 2020. Concessions will not be effective until May 1, at the earliest.

As funds are recently being made available by various governmental bodies, we encourage you to quickly review those programs for appropriate consideration and benefit to your business, if you have not already considered it, please follow this link to the SBA disaster relief loan application.

<https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources#section-header-0>

During the interim, we will continue to hope for the best for your personnel's health and safety and the success of your business as we work through this challenging time. We look forward to your response.

All the best,

Brenna Vecchio
Real Estate Manager

cc: Bill Battaglia

EXHIBIT "E"



Nicolette C. Vilmos, Esquire
Partner
Nicolette.vilmos@nelsonmullins.com

ATTORNEYS AND COUNSELORS AT LAW

Bank of America Center
390 North Orange Avenue | Suite 1400
Orlando, FL 32801
T: 407.839.4200 F: 407.425.8377

nelsonmullins.com
* In Florida, known as Nelson Mullins Broad and Cassel

June 19, 2020

VIA FEDERAL EXPRESS

Luma on Park LLC,
a Florida limited liability company
Attention: Rex Caton
2049 Century Park East
Suite 3000
Los Angeles, California 90067

VIA FEDERAL EXPRESS

Concentrics
Attention: Robert Amick
566 Dutch Valley Road
Suite C
Atlanta, Georgia 30324

VIA FEDERAL EXPRESS

Sutherland Asbill & Brennan LLP
Attention: Alfred G. Adams, Jr.
999 Peachtree Street, NE
Atlanta, Georgia 30309-3996

VIA FEDERAL EXPRESS

Mr. Austin Tate
President
Luma on Park LLC
290 South Park Avenue
Winter Park, Florida 32789

Re: Lease Agreement Dated as of October 7, 2004 Between 250 Park Avenue Trustee, Inc., a Florida corporation, as Successor Trustee to the 250 Park Avenue Trust Dated March 30, 2000, and Luma on Park LLC, a Florida limited liability company for the Premises Located in the Six (6) Story, 102,000 Square Foot, Class "A" Office Building Known as The 250 Park Avenue Building Located at 250 South Park Avenue, Winter Park, Florida 32789; and Final Binding Mediated Settlement Agreement Dated as of March 23, 2007

Dear Sirs:

This Firm represents BFC Park Avenue, LLC, a Florida limited liability company, successor by conversion to 250 Park Avenue Trustee, Inc., a Florida corporation, as successor trustee to the 250 Park Avenue Trust Dated March 30, 2000 ("Landlord") with regard to the Lease Agreement dated as of October 7, 2004, which was renewed on April 18, 2019, between Landlord and Luma on Park LLC, a Florida limited liability company ("Tenant") for the premises located in the six (6) story, 102,000 square foot, Class "A" office building known as The 250 Park Avenue Building located at 250 South Park Avenue, Winter Park, Florida 32789 (the "Building") consisting of a total of approximately 8,000 square feet of the Building, approximately 6,000 square feet of which is located within a portion of the ground floor (the "Ground Floor Premises") and approximately 2,000 square feet of which is located within the basement of the Building (the

Luma on Park LLC
Concentrics
Sutherland Asbill & Brennan LLP
Mr. Austin Tate
June 19, 2020
Page 2

“Basement Premises”), as amended by that certain Final Binding Mediated Settlement Agreement dated as of March 23, 2007 (collectively, the “Lease”). Tenant also occupies the additional premises within the Building consisting of approximately 881 square feet of basement level storage space (“Suite B30”) and approximately 100 square feet of basement level space which houses Tenant’s grease trap (“Suite B25”) on a month-to-month basis, without a written agreement. The Ground Floor Premises, the Basement Premises, Suite B30, and Suite B25 shall be referred to herein collectively as the “Premises”.

Tenant is currently in default under the Lease by reason of its failure to pay the following amounts:

Luma on Park LLC
 Concentrics
 Sutherland Asbill & Brennan LLP
 Mr. Austin Tate
 June 19, 2020
 Page 3

Aging Detail

20 -> 2011-11-15 (Property: 5075) -> Multi-tenant (K&M) -> 40 -> 04/20/2020 -> 1011 -> 10/20/20

Property	Customer	Lease	Status	Tran#	Charge Code	Date	Month	Current	0-30	31-60	61-90	Over	Pre-	Total
								Due	Over	Over	Over	90	payments	Over
350 South Park Avenue (330780)														
Luma on Park LLC (002380)														
53076	Luma on Park LLC		Current	4-46210	rent	4/1/2020	04/2020	22,665.16	0.00	0.00	22,665.16	0.00	0.00	22,665.16
53076	Luma on Park LLC		Current	4-46211	rent	4/1/2020	04/2020	727.31	0.00	0.00	727.31	0.00	0.00	727.31
53076	Luma on Park LLC		Current	4-46212	rent	4/1/2020	04/2020	664.46	0.00	0.00	664.46	0.00	0.00	664.46
53076	Luma on Park LLC		Current	4-46213	rent	4/1/2020	04/2020	29.99	0.00	0.00	29.99	0.00	0.00	29.99
53076	Luma on Park LLC		Current	4-46214	rent	4/1/2020	04/2020	1,294.67	0.00	0.00	1,294.67	0.00	0.00	1,294.67
53076	Luma on Park LLC		Current	4-46215	rent	4/1/2020	04/2020	77.68	0.00	0.00	77.68	0.00	0.00	77.68
53076	Luma on Park LLC		Current	4-46216	rent	4/1/2020	04/2020	5,551.11	0.00	0.00	5,551.11	0.00	0.00	5,551.11
53076	Luma on Park LLC		Current	4-46217	rent	4/1/2020	04/2020	333.07	0.00	0.00	333.07	0.00	0.00	333.07
53076	Luma on Park LLC		Current	4-46218	rent	4/1/2020	04/2020	516.90	0.00	0.00	516.90	0.00	0.00	516.90
53076	Luma on Park LLC		Current	4-46219	rent	4/1/2020	04/2020	21.01	0.00	0.00	21.01	0.00	0.00	21.01
53076	Luma on Park LLC		Current	4-46220	rent	4/1/2020	04/2020	400.00	0.00	0.00	400.00	0.00	0.00	400.00
53076	Luma on Park LLC		Current	4-46221	rent	4/1/2020	04/2020	24.00	0.00	0.00	24.00	0.00	0.00	24.00
53076	Luma on Park LLC		Current	4-46224	rent	5/1/2020	05/2020	26,363.50	0.00	0.00	26,363.50	0.00	0.00	26,363.50
53076	Luma on Park LLC		Current	4-46225	rent	5/1/2020	05/2020	1,583.01	0.00	0.00	1,583.01	0.00	0.00	1,583.01
53076	Luma on Park LLC		Current	4-46226	rent	5/1/2020	05/2020	3,222.08	0.00	0.00	3,222.08	0.00	0.00	3,222.08
53076	Luma on Park LLC		Current	4-46227	rent	5/1/2020	05/2020	193.32	0.00	0.00	193.32	0.00	0.00	193.32
53076	Luma on Park LLC		Current	4-46228	rent	5/1/2020	05/2020	154.33	0.00	0.00	154.33	0.00	0.00	154.33
53076	Luma on Park LLC		Current	4-46229	rent	5/1/2020	05/2020	9.50	0.00	0.00	9.50	0.00	0.00	9.50
53076	Luma on Park LLC		Current	4-46230	rent	5/1/2020	05/2020	1,279.08	0.00	0.00	1,279.08	0.00	0.00	1,279.08
53076	Luma on Park LLC		Current	4-46231	rent	5/1/2020	05/2020	82.74	0.00	0.00	82.74	0.00	0.00	82.74
53076	Luma on Park LLC		Current	4-46232	rent	5/1/2020	05/2020	5,551.11	0.00	0.00	5,551.11	0.00	0.00	5,551.11
53076	Luma on Park LLC		Current	4-46233	rent	5/1/2020	05/2020	333.07	0.00	0.00	333.07	0.00	0.00	333.07
53076	Luma on Park LLC		Current	4-46234	rent	5/1/2020	05/2020	1,926.74	0.00	0.00	1,926.74	0.00	0.00	1,926.74
53076	Luma on Park LLC		Current	4-46235	rent	5/1/2020	05/2020	115.68	0.00	0.00	115.68	0.00	0.00	115.68
53076	Luma on Park LLC		Current	4-46236	rent	5/1/2020	05/2020	53.23	0.00	0.00	53.23	0.00	0.00	53.23
53076	Luma on Park LLC		Current	4-46237	rent	5/1/2020	05/2020	4.49	0.00	0.00	4.49	0.00	0.00	4.49
53076	Luma on Park LLC		Current	4-46238	rent	5/1/2020	05/2020	463.67	0.00	0.00	463.67	0.00	0.00	463.67
53076	Luma on Park LLC		Current	4-46239	rent	5/1/2020	05/2020	27.82	0.00	0.00	27.82	0.00	0.00	27.82
53076	Luma on Park LLC		Current	4-46240	rent	5/1/2020	05/2020	403.03	0.00	0.00	403.03	0.00	0.00	403.03
53076	Luma on Park LLC		Current	4-46241	rent	5/1/2020	05/2020	24.00	0.00	0.00	24.00	0.00	0.00	24.00
53076	Luma on Park LLC		Current	4-46242	rent	6/1/2020	06/2020	26,363.50	0.00	0.00	26,363.50	0.00	0.00	26,363.50
53076	Luma on Park LLC		Current	4-46243	rent	6/1/2020	06/2020	1,583.01	0.00	0.00	1,583.01	0.00	0.00	1,583.01
53076	Luma on Park LLC		Current	4-46244	rent	6/1/2020	06/2020	3,222.08	0.00	0.00	3,222.08	0.00	0.00	3,222.08
53076	Luma on Park LLC		Current	4-46245	rent	6/1/2020	06/2020	193.32	0.00	0.00	193.32	0.00	0.00	193.32
53076	Luma on Park LLC		Current	4-46246	rent	6/1/2020	06/2020	154.33	0.00	0.00	154.33	0.00	0.00	154.33
53076	Luma on Park LLC		Current	4-46247	rent	6/1/2020	06/2020	9.50	0.00	0.00	9.50	0.00	0.00	9.50
53076	Luma on Park LLC		Current	4-46248	rent	6/1/2020	06/2020	1,279.08	0.00	0.00	1,279.08	0.00	0.00	1,279.08
53076	Luma on Park LLC		Current	4-46249	rent	6/1/2020	06/2020	82.74	0.00	0.00	82.74	0.00	0.00	82.74
53076	Luma on Park LLC		Current	4-46250	rent	6/1/2020	06/2020	5,551.11	0.00	0.00	5,551.11	0.00	0.00	5,551.11
53076	Luma on Park LLC		Current	4-46251	rent	6/1/2020	06/2020	333.07	0.00	0.00	333.07	0.00	0.00	333.07
53076	Luma on Park LLC		Current	4-46252	rent	6/1/2020	06/2020	1,926.74	0.00	0.00	1,926.74	0.00	0.00	1,926.74
53076	Luma on Park LLC		Current	4-46253	rent	6/1/2020	06/2020	115.68	0.00	0.00	115.68	0.00	0.00	115.68
53076	Luma on Park LLC		Current	4-46254	rent	6/1/2020	06/2020	53.23	0.00	0.00	53.23	0.00	0.00	53.23
53076	Luma on Park LLC		Current	4-46255	rent	6/1/2020	06/2020	4.49	0.00	0.00	4.49	0.00	0.00	4.49
53076	Luma on Park LLC		Current	4-46256	rent	6/1/2020	06/2020	463.67	0.00	0.00	463.67	0.00	0.00	463.67
53076	Luma on Park LLC		Current	4-46257	rent	6/1/2020	06/2020	27.82	0.00	0.00	27.82	0.00	0.00	27.82
53076	Luma on Park LLC		Current	4-46258	rent	6/1/2020	06/2020	403.03	0.00	0.00	403.03	0.00	0.00	403.03
53076	Luma on Park LLC		Current	4-46259	rent	6/1/2020	06/2020	24.00	0.00	0.00	24.00	0.00	0.00	24.00
53076	Luma on Park LLC		Current	4-46260	rent	6/1/2020	06/2020	1,011.90	0.00	0.00	1,011.90	0.00	0.00	1,011.90
53076	Luma on Park LLC		Current	4-46261	rent	6/1/2020	06/2020	10.71	0.00	0.00	10.71	0.00	0.00	10.71
53076	Luma on Park LLC		Current	4-46262	rent	6/1/2020	06/2020	4,234.72	0.00	0.00	4,234.72	0.00	0.00	4,234.72
53076	Luma on Park LLC		Current	4-46263	rent	6/1/2020	06/2020	254.08	0.00	0.00	254.08	0.00	0.00	254.08
								111,718.75	67,072.40	41,000.00	22,337.36	0.00	0.00	111,718.75

Tenant currently owes Landlord the sum of \$111,718.75, plus interest, attorneys' fees, and costs.

Landlord demands full payment of \$111,718.75, plus interest, attorneys' fees, and costs, within three (3) days of your receipt or refusal of this notice. Should Tenant fail to make this payment, Tenant's right to possession of the Premises may be terminated. If the sums due to Landlord are not paid to Landlord within three (3) days, Landlord may exercise all of its rights and remedies under the Lease, and at law or in equity, which may be available to it, including, but not

Luma on Park LLC
Concentrics
Sutherland Asbill & Brennan LLP
Mr. Austin Tate
June 19, 2020
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limited to, instituting actions against Tenant under the Lease, and to initiate eviction proceedings pursuant to §83.20, *Florida Statutes*.

This notice is given to Tenant pursuant to the applicable Florida Statutes and the Lease. Nothing contained in this letter or in previous or subsequent discussions or communications between Landlord, Tenant, or their respective representation or counsel shall serve or be deemed to waive or modify any provision of the Lease, nor waive, modify, or postpone any right or remedy of Landlord thereunder; and each and every one of said rights and remedies are expressly reserved by Landlord. Any capitalized terms used but not defined herein shall have the definitions attributed to them in the Lease.

Please govern yourselves accordingly.

Very truly yours,
NELSON MULLINS BROAD AND CASSEL

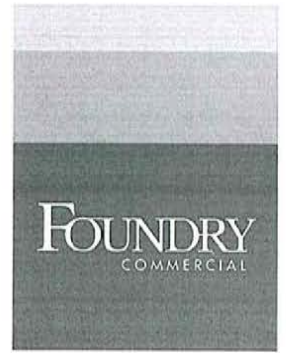
/s/ Nicolette C. Vilmos

Nicolette C. Vilmos, Esquire
Partner

NCV/njh

EXHIBIT "F"

July 24, 2020



RE: Luma on Park COVID Rent Relief Structure

Thank you for your cooperation as the landlord continues to evaluate how to assist your business during these unique times and to present a realistic rent relief structure to strengthen landlord / tenant relationship, assist in getting back to a healthy place, and look forward to the post COVID-19 environment for Luma as a top notch restaurateur. After careful review of Luma on Park's financials and other supporting documentation, the landlord proposes the following rent relief structure:

- Rent equal to the greater of \$13,000 per month or 9% of monthly gross sales from April 1, 2020 to February 28, 2021.
- Fixed Renewal rates per the February 2020 Consortium Appraisal, to commence on the earlier date of March 1, 2021 or (30) days following Governmental restrictions being lifted to allow restaurants to operate with full seating capacity.
- Provided tenant submits plans for Landlord approval and completes leasehold improvements at a minimum value of \$500,000 (not including FF&E) - which amount will require to be guaranteed by a credit worthy guarantor, within (12) months following the commencement of the agreed upon fixed renewal rates, landlord will forgive all deferred rent during the time of tenant's revised percentage rent structure.

We believe this rent relief structure is reasonable and provides tenant an opportunity for continued success. Based on the review of Luma's financials and what is typically found in the marketplace, the rental rates are non-negotiable. The landlord looks forward to moving forward with a resolution and would appreciate a response within (7) days.

Thank you,

Brenna Vecchio

Brenna Vecchio
Real Estate Manager

CC: Bill Battaglia, Nicolette Vilmos, Michael Kirwin