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AND WHEN RECORDED, MAIL TO:

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Neal, Gerber & Eisenberg LLP
2 North LaSalle Street, Suite 1700
Chicago, IL 60602

Doc#: 1333010050 Fee: \$84.00
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Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 11/26/2013 01:44 PM Pg: 1 of 8

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "**Agreement**") is made and entered into as of this 18th day of November, 2013, by and among ALBANY BANK AND TRUST COMPANY, N.A. ("**Mortgagee**"), LUMA LIMITED, an Illinois corporation, d/b/a LOU MALNATI'S PIZZERIA ("**Tenant**"), and 4350 N LINCOLN LLC, an Illinois limited liability company ("**Landlord**").

RECITALS

A. Mortgagee is the holder of a certain note (the "**Note**") and Mortgagee under a mortgage (the "**Mortgage**") dated November 18, 2013, in which Landlord is named as the mortgagor, which Mortgage was recorded on November 26, 2013, in the Official Records of Cook County, State of Illinois, as Document No. 1333010018. The Mortgage covers certain real property together with all appurtenances thereto and improvements thereon (the "**Property**") all as more particularly described in **Exhibit A** attached hereto and made a part hereof and which property is commonly known as 4332, 4340, 4342, 4346 and 4350 North Lincoln Avenue and located in Chicago, Illinois 60618. The Note, Mortgage and any other documents evidencing or securing the loan represented thereby are referred to collectively as the "**Loan Documents**."

B. Landlord is the owner in fee simple of the Property and is the current obligor under the Note.

C. By Lease dated as of November 15, 2013 (the "**Lease**"), Landlord leased to Tenant those certain premises (the "**Premises**") which constitutes the Property covered by the Mortgage, all as more particularly described in said Lease.

D. The parties wish to cause the Lease, subject to this Agreement, to be subordinate in priority to the lien of the Mortgage.

E. Tenant wishes to obtain from Mortgagee certain assurances that Tenant's possession of the Premises will not (subject to this Agreement) be disturbed by reason of the enforcement of the Mortgage covering the Premises or a foreclosure of the lien thereunder.

F. Mortgagee is willing to provide such assurances to Tenant upon and subject to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above, the reciprocal promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do mutually agree as follows:

1. **Ratification.** The Lease now is subordinate in all respects to the lien of the Mortgage and to all renewals, modifications and extensions thereof, subject to the terms and conditions of this

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Agreement. Tenant hereby affirms that the Lease is in full force and effect and that the Lease has not been modified or amended. Mortgagee acknowledges receipt of a copy of the Lease.

2. Landlord's Default. From and after the date Tenant receives a fully executed copy of this Agreement, Tenant will not seek to terminate the Lease by reason of any act or omission that constitutes (or would over time constitute) a default of Landlord until Tenant shall have given written notice of such act or omission to Mortgagee (at Mortgagee's last address furnished to Tenant) and until a period of thirty (30) days shall have elapsed, Mortgagee shall have the right, but not the obligation, to remedy such act or omission, provided however that if the act or omission does not involve the payment of money from Landlord to Tenant and (i) is of such a nature that it could not be reasonably remedied within the thirty (30) day period aforesaid, or (ii) the nature of the act or omission or the requirements of local law require Mortgagee to appoint a receiver or to foreclose on or commence legal proceedings to recover possession of the Property in order to effect such remedy and such legal proceedings and consequent remedy cannot reasonably be achieved within said thirty (30) days, then Mortgagee shall have such further time as is reasonable under the circumstances to effect such remedy provided that Mortgagee shall notify Tenant, within ten (10) days after receipt of Tenant's notice, of Mortgagee's intention to effect such remedy and provided further that Mortgagee institutes immediate legal proceedings to appoint a receiver for the Property or to foreclose on or recover possession of the Property within said thirty (30) day period and thereafter prosecutes said proceedings and remedy with due diligence and continuity to completion. Notwithstanding the foregoing, Mortgagee shall have no rights under this Section 2 if Mortgagee is an entity that controls, is controlled by, or is under common control with Landlord.

3. Non-Disturbance and Attornment. So long as Tenant is not in default under the Lease (beyond any period given Tenant to cure such default) as would entitle Landlord to terminate the Lease or would cause, without any further action of Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant thereunder, Mortgagee will not disturb the peaceful and quiet possession or right of possession of the Premises by Tenant nor shall the Lease or its appurtenances be extinguished by reason of any Foreclosure (as hereinafter defined) or otherwise, nor join Tenant as a party in any action or proceeding brought pursuant to the Mortgage. In the event that Mortgagee or its successors or assigns, as defined in Paragraph 7 hereof ("**Successor Landlord**") acquires the interest of Landlord or comes into the possession of or acquires title to the Premises (the "**Succession**") by reason of the foreclosure (judicial or non-judicial) or enforcement of the Mortgage (including a private power of sale) or the Note or obligations secured thereby or by a conveyance in lieu thereof or other conveyance or as a result of any other means (any or all of the foregoing hereinafter referred to as a "**Foreclosure**"), then the Lease and all appurtenances thereto shall remain in full force and effect and Tenant shall be bound to Successor Landlord under all of the provisions of the Lease for the balance of the term thereof (including any extensions or renewals thereof which may be effected in accordance with any options contained in the Lease) with the same force and effect as if Successor Landlord was Landlord under the Lease, and Tenant shall attorn to Successor Landlord as its landlord, such attornment to be effective and self operative, without the execution of any further instruments on the part of either of the parties hereto, immediately upon the Succession; and further, in such event, Successor Landlord shall be bound to Tenant under all of the provisions of the Lease, and Tenant shall, from and after such Succession, have the same remedies against Successor Landlord for the breach of any agreement contained in the Lease that Tenant might have had under the Lease against Landlord thereunder, provided, however, that if Successor Landlord is not an entity that controls, is controlled by, or is under common control with Landlord, then Successor Landlord shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord), subject to Successor's Landlord's obligation to correct any conditions that exist as of the date of attornment and violate Successor Landlord's obligations as landlord under the Lease; or

(b) subject to any offsets (except those expressly permitted under the Lease) or defenses which Tenant might have against any prior landlord (including Landlord) unless Tenant shall have given notice (pursuant to Paragraph 2 hereof) of the state of facts or circumstances under which such offset or

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defense arose to the party who was the then holder of the Mortgage (whether or not such holder elected to cure or remedy such condition); or

(c) bound by any rent or additional rent which Tenant might have paid to any prior landlord (including Landlord) more than thirty (30) days in advance of the due date under the Lease; or

(d) bound by any security deposit which Tenant may have paid to any prior landlord (including Landlord), unless such deposit is available to the party who was the holder of the Mortgage at the time of a Foreclosure.

Tenant shall be under no obligation to pay rent to Mortgagee or Successor Landlord until Tenant receives written notice from Mortgagee or Successor Landlord stating that Mortgagee or Successor Landlord is entitled to receive the rents under the Lease directly from Tenant. Landlord, by its execution hereof, hereby authorizes Tenant to accept such direction from Mortgagee or Successor Landlord and to pay the rents directly to Mortgagee or Successor Landlord and waives all claims against Tenant for any sums so paid at Mortgagee's or Successor Landlord's direction. Tenant may conclusively rely upon any written notice Tenant receives from Mortgagee or Successor Landlord notwithstanding any claims by Landlord contesting the validity of any term or condition of such notice, including any default claimed by Mortgagee or Successor Landlord, and Tenant shall have no duty to inquire into the validity or appropriateness of any such notice.

4. Agreement to Release Proceeds or Awards.

(a) Destruction. The parties agree that notwithstanding anything to the contrary contained in the Lease or in the Loan Documents, as long as no default has occurred and is continuing after the giving of any required notice and the expiration of any applicable cure period under the Loan Documents, (i) insurance proceeds of \$100,000 or less for any single casualty loss shall be paid directly to Tenant for use to restore the Premises, and (ii) insurance proceeds for any single casualty loss resulting in proceeds in excess of \$100,000 shall be held by Mortgagee, and disbursed to Tenant from time to time in connection with restoration of the Property upon the establishment of a customary arrangement reasonably satisfactory to Mortgagee for delivery of contractor's statements and partial or full (as applicable) lien waivers for such restoration, and after such restoration is complete, any excess proceeds shall be paid to Tenant.

(b) Eminent Domain. In the event of a public taking or act of eminent domain of less than all of the Premises, Mortgagee shall release its interest in any condemnation award applicable to the Premises to Tenant pursuant to the terms of the Lease. In the event of a public taking or act of eminent domain of the entire or substantially all of the Premises, Mortgagee shall release its interest in any condemnation award applicable to the Premises if and to the extent the Note is paid in full.

5. Notices. In order to be effective, any notice to be given under this Agreement must be in writing and either (1) served personally at the following applicable notice address, provided that proof of delivery thereof can be produced; or (2) sent by registered or certified U.S. mail, Federal Express or a similar reputable express courier at the following applicable notice address, provided that proof of delivery thereof can be produced.

To Mortgagee: Albany Bank and Trust Company, N.A.
4100 W. Lawrence Avenue
Chicago, Illinois 60630
Attention: John Schellinger

To Tenant: Luma Limited
3685 Woodhead Drive
Northbrook, Illinois 60022
Attention: President

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and

Luma Limited
3685 Woodhead Drive
Northbrook, Illinois 60022
Attention: Comptroller

and

Neal, Gerber & Eisenberg LLP
2 North LaSalle Street
Suite 1700
Chicago, Illinois 60602
Attention: Ellen B. Friedler

To Landlord: 4350 N Lincoln LLC
1460 West Chicago Avenue
Suite 300
Chicago, Illinois 60642
Attention: Howard Natinsky

No notice delivered to the Premises shall be effective. Any party may change the address by written notice to the other parties by clearly stating such party's intent to change the address for all purposes of this Agreement, which new address shall be effective thirty (30) days after receipt. Notice shall be deemed given when received or when receipt is refused.

6. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective personal representatives, successors and assigns it being understood that the obligations herein of Mortgagee shall extend to it in its capacity as mortgagee under the Mortgage and to its successors and assigns, including anyone who shall have succeeded to its interest or to Landlord's interest in the Premises or acquired possession thereof by Foreclosure or otherwise.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

MORTGAGEE

ALBANY BANK AND TRUST COMPANY N.A.

By: 
JOHN C. SCHELLINGER
VICE PRESIDENT

Its: _____

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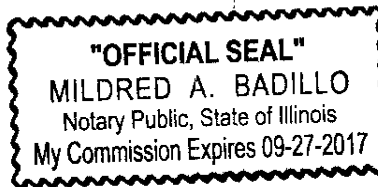
STATE OF ILLINOIS)
COUNTY OF COOK) ss:

On November 15, 2013, before me, _____, Notary Public, personally appeared JOHN C. SUTHERLAND, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Illinois that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Mildred A. Badillo (SEAL)
Notary Public Signature



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TENANT

LUMA LIMITED,
an Illinois corporation

By: *Matt...*

Its: *Sney.*

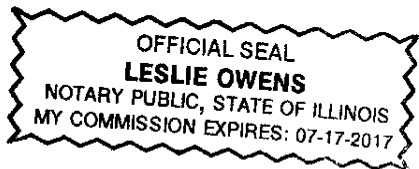
STATE OF ILLINOIS)
) ss:
COUNTY OF Cook)

On November 15, 2013, before me, Leslie Owens, Notary Public, personally appeared Marc Melnick, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Illinois that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Leslie Owens (SEAL)
Notary Public Signature



Cook County Clerk's Office

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LANDLORD

4350 N LINCOLN LLC,
an Illinois limited liability company

By: *Marc Malnati*

Its: *Marc*

By: *Howard Notinik*

Its: MANAGER

STATE OF ILLINOIS

COUNTY OF Cook } ^{SS}

On November 15, 2013, before me, Leslie Owens, Notary Public, personally appeared Marc Malnati and Howard Notinik, proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Illinois that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Leslie Owens (SEAL)
Notary Public Signature



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EXHIBIT A
to Non-Disturbance and Attornment Agreement

Legal Description

Lots 1, 2, 3, 4 and 5 in Grant Park Addition, said Addition being a subdivision of Lot 1 in Block 1 of Ogden's Subdivision of the southwest $\frac{1}{4}$ of Section 18, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 14-18-304-001, 14-18-304-002, 14-18-304-003, 14-18-304-004, 14-18-304-005

COMMONLY KNOWN AS: 4332, 4340, 4342, 4346 AND 4350 N. Lincoln Avenue, Chicago, IL 60618

Property of Cook County Clerk's Office