



SCA Trumpets Lease Agreement: September 13, 2002

Negotiated by Del Webb Community Management Company

July 12, 2006 SCA Business Development Club Presentation

by Ron Morse & Bob Frank

Section	Topic	Lead	Key Provisions
Trumpets Lease Concepts & Components	Background & References	Frank	<u>This Seminar Purpose:</u> To review the 2002 Trumpets Lease Agreement Terms & Conditions as a case study of what a small business (either for-profit or non-profit) needs to be aware of on a multi-year, "operating lease" for property and equipment.
Trumpets Lease Intro & Cover Sheet	Overview of Lease	Frank	<p><u>Goal:</u> To understand the foundation and scope of the September 12, 2002 Trumpets Operating Lease Agreement with S & D Café V, LLC. (S&D owners are Victor Scotto and Michael Demitrius and represented by attorney Michael Muskin)</p> <p><u>Signed by:</u> Steve O'Connor, President SCA BoD; Favil West, Sec/Treasurer of SCA BoD; Victor Scotto, S&D Café V, LLC; Michael Demitrius, S&D Café, LLC.</p> <p><u>Witnessed by:</u> William B. Diveley, Executive Director, Sun City Anthem Community Association and attorney, Michael Muskin.</p>
Article I	Fundamental Lease Provisions	Morse	<p><u>Landlord:</u> SCA Community Association</p> <p><u>Tenant:</u> S&D Café V, LLC</p> <p><u>Contract Term:</u> Initial = 5 years from Sept. 13, 2002</p>

Extended = (2 each, 5-year option periods with same terms)

Minimum Rent: \$10,000 per month--payable monthly on the 1st

Additional Rent: Includes any additional rents (including revenue sharing) covered in the agreement. Late payments accrue 10% interest per annum or maximum lawful rate, whichever is less.

Tenant Security Deposit: \$50,000.00

Permitted Use:

“The Premises shall be used to provide all aspects of a first-class restaurant and to provide other food and beverage operations within the Anthem Center (and from time to time on such other property owned by Landlord as the parties may agree in writing), including, without limitation, food and beverage preparation, management, catering services (including catering for business meetings, homeowner meetings, weddings, private parties, banquets and special events) and incidental purposes relating thereto, all as set forth herein. In addition, during the Term and except as otherwise provided herein, Tenant will have the exclusive right to: (i) serve and sell alcoholic beverages at the Anthem Center; (ii) serve and sell food and beverages at the pool area located at the Anthem Center, (iii) at the discretion of Landlord, set up and operate a morning refreshment center within the Anthem Center; and (iv) agree with Landlord with respect to the conduct of additional food and beverage services on or about the Anthem Center (provided, however, neither Landlord nor Tenant shall have any obligation to agree or negotiate with respect to such services). Notwithstanding the foregoing, food and non-alcoholic beverages may be served by the Landlord’s chartered organizations at events held by such organizations, provided such events are limited to one event per year per organization and further

			<p><i>provided such items are not offered for sale.”</i></p> <p><u>Trade Name:</u> “Trumpets” name is owned by Landlord and its use is restricted to this lease unless given written permission by Landlord for other purposes.</p> <p><u>Common Areas:</u> <i>“For the purpose of this agreement shall mean the main entrance, the south entrance, and the main lobby and galleries leading to Trumpets and the Ballroom from these entries. It includes the public restrooms located off the main entrance, the lounge area, but does not include the library (provided, however, Tenant may have certain limited use of the library as a staging area for its catered events upon prior written approval of Landlord), and of the meeting rooms, the pool shooting area, or any of the gallery leading from Trumpets to any other areas of the building. All parking areas that are now or hereafter become available to the Landlord are included. It does not include use of Tennis Courts, Bocce courts, inside or outside swimming pool or children’s play are (provided, however, Tenant may have certain rights to provide food and beverage service to the pool area as specified herein).”</i></p> <p><u>Effective Date:</u> as defined in para. 1.01 (September 13, 2002)</p> <p><u>Expiration Date:</u> as defined in para. 3.01 (5 years after commencement unless extended by tenant, at tenant’s option, except if tenant is in default. Tenant must notify Landlord of intent to extend within 90 days of expiration of the lease period and not to exceed 180 days before expiration.</p> <p><u>Executive Director:</u> Executive director or chief executive officer hired by Landlord.</p>
Article II	Demise	Frank	<u>Demise</u> = “A conveyance of an interest in property for a set period of time” in this case it

			<p>includes restaurant and associated premises, associated fixtures, and equipment as detailed in "Exhibit "B".</p> <p><u>Reservation to Landlord</u>; Includes such things as exterior walls, roof, pipes, wires, etc.</p> <p><u>Acceptance of Premises</u>: Possession by tenant equals acceptance of premises.</p> <p><u>Landlord & Tenant Representations</u>: Premises & equipment are ready for use, and tenant confirms acceptance of premises & equipment AS IS, WITH ALL FAULTS.</p>
Article III	Term	Morse	<p><u>Facility Delivery Date</u>: Oct. 1, 2002—<u>end of term is midnight, September 30, 2007</u></p> <p><u>Tenant Term Rights</u>: If not in default at the time, <u>tenant has right to extend term after 5 years</u>. There are 2 option periods of 5 years each--<u>under the same conditions as the original agreement</u>. Tenant notice to extend lease to be given <i>not less than 90 days</i> before, and <i>not more than 180 days</i> before the expiration date.</p> <p><u>Landlord May Terminate By Written Notice If</u>: (1) Tenant business licenses not obtained or revoked, (2) security deposit not paid, or (3) lease not approved by Landlord's Board of Directors.</p>
Article IV	Rent	Frank	<p><u>Rent Payment</u>: <i>"Tenant hereby covenants and agrees to pay rent to Landlord as, when, and in the amounts stated as Minimum Rent in Section 1.01 (i), together with any Additional Rent owing by Tenant to Landlord or to any other party, which except as specifically stated herein shall be due and payable, in advance without demand, on the first day of each month throughout the Term (collectively, the "Rent"). The</i></p>

payment of Rent shall begin on the Commencement Date and shall be prorated for any partial month or period. Rent and all other sums payable by Tenant under this Lease shall be paid when due in lawful currency of the United States of America, without offset or deduction whatsoever except as specifically provided herein. All Rent shall be paid by Tenant to Landlord at the Landlord's Address set forth in Section 1.01(m) or at such other place as Landlord may from time to time designate by written notice to Tenant. Tenant shall pay Rent as and when due hereunder, irrespective of whether said sums or charges be designated as Rent. If any such amount or charge is not paid when due hereunder, it shall nevertheless be collectible with the next installment of Minimum Rent, or other Rent next falling due pursuant to this Lease. However, nothing contained herein shall be deemed to suspend or delay the time for payment of any amount which becomes due and payable hereunder, or to limit any remedy to which Landlord may be entitled as a result of Tenant's failure to pay Rent in a timely fashion."

Revenue Sharing:

"To the extent that Tenant's Gross Proceeds exceed Two Million Dollars (\$2,000,000) (the "Gross Proceeds Target") for any given Year during the Term (with the first such Year beginning on the Commencement Date and continuing on the anniversary of the Commencement Date thereafter), Tenant shall pay to Landlord as Additional Rent seven percent (7%) of the amount by which Gross Proceeds from Tenant's use and operation of the Premises for Tenant's Permitted Use exceeds the Gross Proceeds Target (the "Revenue Sharing Payment"). In addition to the foregoing, to the extent that Tenant's Gross Proceeds exceed Five Million Dollars (\$5,000,000) (the "Additional Gross Proceeds Target") for any given Year during the Term (with the first such Year beginning on the Commencement Date and continuing on the anniversary of the Commencement Date thereafter), Tenant shall pay to Landlord as Additional Rent (such additional payment also being

considered a "Revenue Sharing Payment") an additional one percent (1 %) of the amount by which Gross Proceeds from Tenant's use and operation of the Premises for Tenant's Permitted Use exceeds the Additional Gross Proceeds Target, such additional payment being made to compensate Landlord for its additional operating costs incurred with respect to the excess use of the Premises. As used herein "Gross Proceeds" shall include all revenues as and when received in cash or readily available funds from Tenant's operations at the Premises from whatever source derived, but shall exclude tax refunds, returned deposits, and other sources of revenue not directly related to Tenant's operation of the Premises for food and beverage sales and catering services. Tenant agrees to promptly furnish or cause to be furnished to Landlord, within thirty (30) days after each anniversary of the Commencement Date, a financial statement of Tenant calculating the Gross Proceeds as herein defined for the preceding year, in a form reasonably acceptable to Landlord. The Revenue Sharing Payment shall be due within thirty (30) days after each anniversary of the Commencement Date. Tenant shall keep full, clear, and accurate records respecting Gross Proceeds received during each Year, and shall provide Landlord with a copy of its monthly Combined Sales and Use Tax Return submitted to the State of Nevada. Tenant shall give Landlord reasonable rights of access to such records for the purpose of verifying the accuracy of any payments made by Tenant hereunder. Landlord shall have the right to independently review the accuracy of any financial records through the examination of an independent auditor, the expense for which to be borne by Landlord (except as otherwise provided below). Any error in payment revealed by such audit or review shall be corrected by appropriate payments by Tenant within ten (10) days after Notice (as specified in Section 20.01) of the error is received, together with interest thereupon from the time such payment should have been made, at the Default Rate. In the event any audit reveals a discrepancy greater than four percent (4%), the cost of the audit shall be paid by the Tenant. No review or audit pursuant to this Section

4.01(b) shall be of a nature to disrupt operations of Tenant.”

Minimum Rent Escalation: “The Minimum Rent shall adjust at the commencement of each Extended Term to an amount equal to: (i) Twelve Thousand Dollars (\$12,000) per month for each month of the first Extended Term; and (ii) Fourteen Thousand Dollars (\$14,000) per month for each month of the second Extended Term. Notwithstanding the foregoing, to the extent that the total amount of utility and other charges paid by Landlord pursuant to Section 4.03(a) and 4.04 in the last year of the Initial Term exceed such costs paid by Landlord in the first year of the Initial Term by more than twenty percent (20%), the Minimum Rent at the commencement of the first Extended Term shall adjust to an amount equal to: (A) the amount set forth in Section 4.01(c)(i); plus (B) an amount equal to the product of the percent by which Landlord's costs referenced above exceed twenty percent (20%) multiplied by the amount of the Minimum Rent for the Initial Term. Notwithstanding the foregoing, to the extent that the total amount of the utility and other charges paid by Landlord pursuant to Section 4.03(a) and 4.04 in the last year of the first Extended Term exceed such costs paid by Landlord in the first year of the first Extended Term by more than twenty percent (20%), the Minimum Rent at the commencement of the second Extended Term shall adjust to an amount equal to: (A) the amount set forth in Section 4.01(c)(ii); plus (B) an amount equal to the product of the percent by which Landlord's costs referenced above exceed twenty percent (20%) multiplied by the amount of the Minimum Rent for the first Extended Term. Notwithstanding anything to the contrary herein, the amount of the Minimum Rent shall at no time decrease and shall, at a minimum, increase in accordance with Sections 4.01(c)(i) and (ii), as the case may be, should the Term be extended pursuant to Section 3.02.”

Delinquent Payments. “If Tenant shall fail to pay any Rent or Additional Rent within

ten (10) days after such Rent or Additional Rent becomes due, such unpaid amounts shall bear interest at the Default Rate from the date due to the date of payment, which interest shall be paid by Tenant as Additional Rent. In addition to such interest, Tenant acknowledges that the late payment of any Rent or Additional Rent will cause Landlord to incur certain costs and expenses not contemplated under this Lease, the exact amount of which would be extremely difficult or impracticable to determine. Such costs and expenses will include, without limitation, administrative and collection costs, processing and accounting expenses, and other costs and expenses necessary and incidental thereto. Therefore, if Landlord has not received a Rent or Additional Rent payment from Tenant within ten (10) days of its due date, Tenant shall immediately pay to Landlord a late charge equal to ten percent (10%) of the amount of such past-due Rent or Additional Rent. Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and will fairly compensate Landlord for the losses it will incur as a result of Tenant's late payment. The interest and the late charge provided for herein shall be cumulative with and not in substitution for any rights or remedies which may be available to Landlord pursuant to this Lease or applicable law. Any payments made by Tenant shall be applied first against any late charges accrued, then to interest on unpaid amounts, then to any past unpaid lease payments and finally to the next lease payment due and payable."

Taxes: Landlord pays all real and property taxes placed on premises and equipment. Tenant is solely responsible for all tenant-related activities, personnel and operations.

Utilities and Other Charges: Landlord is solely responsible.

Security Deposit:

			<p><i>“In the event that Tenant is in default hereunder, Landlord may use, apply, or retain the whole or any part of the Security Deposit for the payment of Rent, including, without limitation, any sum expended by Landlord on Tenant's behalf in accordance with the provisions of this Lease or any sum which Landlord may expend or be required to expend by reason of Tenant's default, including, without limitation, damages or repairs to the Premises or the Equipment (including replacement of any Equipment damaged during the Term) or any damages or deficiency Landlord incurs in re-letting the Premises. The use, application or retention of the Security Deposit or any portion thereof by Landlord shall not prevent Landlord from exercising any other right or remedy provided for hereunder or at law and shall not be construed as liquidated damages nor operate as a limitation on any recovery to which Landlord may otherwise be entitled. In the event that the Security Deposit held by Landlord is reduced by such use or application, within ten (10) days after written notice from Landlord, Tenant shall deposit with Landlord an amount sufficient to restore the full amount of the Security Deposit as of the time such application was made. Should Tenant fully and faithfully comply with all the provisions of this Lease, the Security Deposit or any balance thereof, without any interest thereon, shall be reimbursed to Tenant within sixty (60) days after the expiration of the Term when the Premises and Equipment have been properly vacated and inspected, the keys have been returned, and no further issues or liabilities remain under this Lease. (some words not included)</i></p>
Article V & VI	Delivery-- Environmental Matters & Use & Operation	Morse	<p><u>Article V:</u> Landlord/Tenant have appropriate responsibilities for compliance with federal, state environmental regulations</p> <p><u>Article VI:</u> <u>Use:</u> <i>“It is the intent of the parties that the Permitted Use shall be reasonably</i></p>

comparable in terms of service food quality and atmosphere to the operations existing on the Premises as of the Effective Date.”

Operating Hours. *“Tenant shall have the right to operate during such hours that Tenant desires in its sole discretion; provided, however, that Tenant will, at a minimum, be open for normal lunch and dinner service throughout the Term and will generally be open between the hours of 11:00 AM to 10:00 PM.”*

Menus and Resident Feedback: Tenant to submit menus for review and consult on resident feedback—but **Tenant not obligated to do anything** (Dec. 2003 User Survey by Liaison Committee).

Trade Name: *“Tenant shall operate under the Trade Name set forth in Section 1.01(k). Tenant shall have the right to change its Trade Name for operations only upon receiving prior written consent from Landlord, which consent may be given in Landlord's sole and absolute discretion.”*

Rules and Regulations: Tenant agrees to comply with Landlord rules and regulations as may be updated, modified or changed from time-to-time.

Prohibited Uses: Includes such things as adult entertainment, gaming, immoral, improper and illegal activities, nuisance acts, activities that unreasonably injure or annoy or interferes with the rights of Landlord or other members or patrons of Anthem Center, activities generating unpleasant odors and objectionable noise, etc., etc. ***“Because of the difficulty or impossibility of determining Landlord's damages which would result from Tenant's violation of such provisions, including, but not limited to, diminished saleability, mortgageability and economic value of the Premises, Landlord shall be entitled, at its election, to recover from Tenant its damages***

			<p><i>suffered for Tenant's failure to fully comply with this Section 6.05. In addition to all other remedies, Landlord shall have the right to obtain specific performance by Tenant upon Tenant's failure to comply with the provisions of this Section 6.05."</i></p> <p><u>Increased Insurance Costs:</u> <i>"Landlord acknowledges that its current insurance contemplates the operation of a restaurant and kitchen on the Premises and the premiums payable on such policies contemplates the continued operation of a restaurant and kitchen on the Premises. If Landlord consents to such use and occupancy by Tenant, Tenant shall pay on demand, as Additional Rent, the additional insurance premiums resulting from such use and occupancy."</i></p> <p><u>Compliance With Laws; Licenses:</u> Includes what appear to be standard terms.</p> <p><u>Advertising:</u> Tenant provided monthly one free page in Spirit Magazine.</p> <p><u>Inventories:</u> Includes common terms.</p> <p><u>Employees:</u> Tenant shall employ and identify to Landlord a qualified, experienced on-site manager to oversee the Permitted Use of the Premises.</p>
Article VII, VIII & IX	Repair & Maintenance; Liens; Alterations	Frank	<p><u>Article VII:</u></p> <p><u>Repair and Maintenance:</u> Includes traditional terms and conditions except as follows: <i>"In furtherance of Landlord's right, title, and interest in and to the Equipment, Tenant agrees that it will not: (a) assign, mortgage, encumber this Lease, or sublet the Premises or permit their use by others; (b) pledge, loan, create a security interest in, sublet, or part with possession of the Equipment; (c) in any other manner attempt to dispose of the Equipment or permit the use of the Equipment by</i></p>

			<p>any other person; or (d) suffer any liens or legal process to be incurred or levied thereupon. Notwithstanding anything to the contrary herein, Tenant may not, without the prior written consent of Landlord, enter into any security or other financing agreements that requires Tenant to pledge, assign or hypothecate any of its interest in this Lease, the Equipment or the Premises as collateral or security. ”</p> <p><u>Alterations:</u> Includes common terms concerning any tenant and/or landlord alternations.</p>
Article X	Common Areas; Catering Operations	Morse	<p><u>Use of Common Areas:</u> “As defined and limited in Section 1.02, Tenant and its customers, visitors and invitees shall have the right, in common with the other tenants in the Anthem Center, to use the Common Areas during the Term for parking and ingress and egress from the Premises, which right shall not be revocable, in whole or in part. Tenant shall not be entitled to use any of the meeting or conference rooms in the Anthem Center except upon the reservation thereof with Landlord and payment of deposits and fees as regularly charged by Landlord to the general public as specified in Section 10.04. Except as set forth in Section 10.04, Tenant shall not conduct catering operations in the Common Areas including, without limitation, the lobby areas within the Anthem Center; provided, however, Tenant shall have the right, upon the prior consent of the Executive Director, which consent shall not be unreasonably withheld, to conduct such catering operations on the courtyard and lawn areas at the Anthem Center. “</p> <p><u>Ballroom Use:</u> “In connection with its catering services for the Anthem Center and subject to Landlord's general room use policy as the same may be adopted, changed or modified by Landlord from time to time hereafter (the "Policies and Procedures"), a copy of which are attached hereto as Exhibit "D" and herein incorporated by reference, Tenant shall have certain rights throughout the Term to</p>

use the ballrooms located at the Anthem Center, including, without limitation, Hanneman Hall and the adjacent areas to the south of Hanneman Hall, for weekend and evening banquet and catering operations on the terms and conditions set forth herein. If Tenant desires to schedule an event for the ballroom, Tenant shall contact or notify Landlord to reserve the ballroom on a given date. Tenant may book such events up to two (2) years in advance and upon confirmation of such reservation by Landlord, such event cannot be changed without the written consent of Tenant. Landlord may only reserve the ballroom for four (4) Saturday evening (after 4:00 p.m.) events per year which events will be scheduled at least six (6) months in advance. Notwithstanding the foregoing, Landlord shall have the right to reserve the ballroom for the exclusive use of Landlord on Memorial Day, July 4th, and December 31 of each year throughout the Term and on the first (1st) Saturday in May of each year of the Term in addition to the four (4) Saturday evening events Landlord is entitled to reserve. Tenant acknowledges and will honor one charitable event each year hosted by Landlord. Tenant agrees to provide full catering services at such events on a contracted basis. In addition to the foregoing, Landlord may schedule community events in the ballroom no more than twelve (12) months in advance, and Landlord may schedule Landlord Board of Director meetings, standing committee meetings, and charter club meetings up to one (1) year in advance. Tenant acknowledges that Landlord has a lease with a religious organization for use of the ballroom every Sunday from 9:00 a.m. to 11 :00 a.m., and Tenant agrees to honor such use of the ballroom. Notwithstanding anything to the contrary contained herein, the Executive Director shall resolve all scheduling conflicts between Landlord and Tenant in a reasonable manner, and the decision of the Executive Director shall be binding on Landlord and Tenant for all purposes.”

“Room Rental Fees. For each catered event in the ballroom reserved by Tenant, Tenant shall pay Landlord the greater of: (i) One Hundred Dollars (\$100.00); or (ii) a

			<p>fee of One Dollar (\$1.00) per guest scheduled to attend such event (regardless of the actual number of guests that attend) ("Room Rental Fees"). The Room Rental Fee may be increased by no more than ten percent (10%) per year on each anniversary of the Lease upon prior written notice to Tenant by Landlord. This charge shall be paid with the next installment of Rent due hereunder and shall be itemized by Tenant, subject to reasonable verification by Landlord. Landlord shall make its maintenance staff available to perform all event set-up and breakdown according to specifications provided by Tenant at least three (3) business days prior to such event. A reasonable damage deposit shall be required to be paid by Tenant in advance for any event where over one hundred (100) guests are scheduled to attend and will be used by Landlord for any extraordinary clean-up or damage expenses in the reasonable discretion of Landlord . Any unused deposit shall be returned to Tenant within thirty (30) days of the event along with an itemized list of charges against the security deposit. Tenant shall request that Landlord make its security patrol available, at the cost of One Dollar (\$1.00) per guest scheduled to attend such event, payable with the next installment of Rent due hereunder, subject to reasonable verification by Landlord, for any event where over one hundred (100) guests are scheduled to attend.”</p> <p>“<u>Prior Engagements</u>. Tenant agrees to honor all reservations of the Ballroom scheduled prior to the Commencement Date; provided, however, that Landlord shall provide Tenant with a list of such reservations and any advance deposits for such reservations shall be turned over to Tenant on the later of: (i) the Commencement Date; or (ii) ten (10) days prior to such event.”</p>
Article XI, XII & XIII	Insurance, Damage & Destruction, &	Frank	<p>Article XI: Insurance: Terms appear to follow fairly standard industry practices except for the area of Indemnification.</p>

	Condemnation	<p><u>Indemnification:</u> <i>“Tenant covenants to indemnify and save Landlord harmless (except for loss or damage resulting from the negligence or intentional acts or omissions of Landlord, its agents, employees or contractors or Landlord's failure to discharge its obligations pursuant to the Lease) from and against any and all claims, actions, damages, liability and expense, including reasonable attorneys' fees, in connection with loss of life, personal injury, or damage to property arising from or out of any occurrence in or upon the Premises, or, if caused by the negligence or intentional misconduct of Tenant or Tenant's agents, employees or contractors, in or upon the Anthem Center. Tenant covenants that Landlord shall not be liable for any damage or liability of any kind or for any injury to or death of any person whomsoever or damage to any property of Tenant or of any other person from any cause whatsoever, which arises out of, is connected with, or is incidental to the construction, use, occupancy or enjoyment of the Premises or improvements by Tenant or any person holding under Tenant; however, Tenant shall not be liable for damage or injury arising out of the gross negligence or willful misconduct of Landlord or its agents, servants, contractors, licensees or employees. In case any action or proceeding be brought against Landlord by reason of any such claim (other than a claim arising out of Landlord's intentional act or negligence) referred to in 1his Section 11.05 Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel selected by Tenant and approved in writing by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. The indemnification provided for in 1his Section 11.05 shall survive any termination of this Lease or expiration of the Term.”</i></p> <p><u>Article XII:</u> <u>Damage & Destruction:</u> Appears to contain fairly common provisions. <u>Article XIII:</u></p>
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			<u>Condemnation:</u> Appears to contain fairly common provisions.
Article XIV & XV	Transfers By Tenant & Default by Tenant	Morse	<p><u>Article XIV:</u> <u>Transfers By Tenant:</u> <i>“Landlord's Consent Required. Tenant shall not sublet the Premises or any part thereof nor shall Tenant sell, assign, encumber or in any manner transfer this Lease or any interest therein without the prior written consent of Landlord, which consent may be withheld, conditioned or delayed in Landlord's sole and absolute discretion.”</i></p> <p><u>Article XV:</u> <u>Default By Tenant:</u></p> <p><i>“(a) Tenant's failure to pay any installment of Rent, Additional Rent or other amount or charge due hereunder within ten (10) days of when due;</i></p> <p><i>(b) Tenant remaining in default or failing to perform any of the other covenants or obligations of Tenant hereunder or under any other agreement of Tenant with Landlord after the expiration of five (5) days following notice of such violation or failure;</i></p> <p><i>(c) The dissolution or the commencement of any action or proceeding for the dissolution or liquidation of Tenant, whether instituted by or against Tenant, or the taking of possession of the property of Tenant by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of the Tenant, or, if Tenant is an individual, the death or incapacity of Tenant;</i></p> <p><i>(d) Failure of Tenant to maintain a level of quality and service that in Landlord's reasonable discretion is not consistent with a first class restaurant and</i></p>

catering operation after the expiration of thirty (30) days notice of same and the failure of Tenant to make reasonable attempts to remedy same;

(e) Tenant having admitted in writing its inability to pay its debts when they come due, or making a general assignment for the benefit of creditors, or commencing any case, proceeding or other action seeking to have an order for relief entered on its behalf as debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, or the taking by Tenant of any corporation or partnership action to authorize or in contemplation of any of the actions set forth above in this paragraph (d);

(f) Tenant or its agent having falsified any report required to be furnished to Landlord hereunder; and

(g) Tenant losing any License or permit it is required to obtain under Section 303(a), including its liquor license, or any action to revoke such License or permit having been instituted by the issuing authority and Tenant not having good cause to contest such revocation. “

Landlord's Remedies:

“Upon occurrence of any Event of Default, Landlord, or Landlord's agents, servants or representatives may, at Landlord's option, in addition to any other remedy or right hereunder or by law or in equity:

(a) Continue this Lease in full force and effect, and the Lease will continue in

effect as long as Landlord does not terminate this Lease, and Landlord shall have the right to collect Rent when due. During the period Tenant is in default, Landlord can enter the Premises and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises, including, without limitation, brokers' commissions, expenses of remodeling the Premises required by the reletting, and like costs. Reletting can be for a period shorter or longer than the remaining Term of this Lease. Tenant shall pay to Landlord all Rent due under this Lease on the dates the Rent is due, less the Rent Landlord receives from any reletting. No act by Landlord allowed by this Section 15.02(a) shall terminate this Lease unless Landlord notifies Tenant that Landlord elects to terminate this Lease. If Landlord elects to relet the Premises as provided in this paragraph, Rent that Landlord receives from reletting shall be applied to the payment of:

(1) First, any indebtedness from Tenant to Landlord other than Rent due from Tenant;

(2) Second, all costs, including for maintenance incurred by Landlord in reletting; and

(3) Third, all Rent due and unpaid under this Lease.

After deducting the payments referred to in this paragraph, any sum remaining from the Rent Landlord receives from reletting shall be held by Landlord and applied in payment of future Rent as Rent becomes due under this Lease. In no event shall Tenant be entitled to any excess Rent received by Landlord. If, on the date Rent is due under this Lease, the Rent received from reletting is less than the Rent due on that date, Tenant shall pay to Landlord, in addition to the remaining Rent due, all costs, including for maintenance, incurred by Landlord in reletting that remain after applying the Rent received from the reletting as provided in this Paragraph 13.2(a).

(b) Terminate this Lease at any time. No act by Landlord other than giving

notice to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of this Lease. On termination, Landlord has the right to recover from Tenant:

(1) The worth, at the time of the award, of all unpaid Rent that had been earned at the

(2) The worth, at the time of the award, of the amount by which all unpaid Rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

(3) The worth, at the time of the award, of the amount by which all unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and

(4) Any other amount, including, without limitation, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default. "The worth, at the time of the award," as used in subsections 1, and 2 of this Paragraph 15.02(b), is to be computed by allowing interest at the rate of twelve percent (12%) per annum. "The worth, at the time of the award," as referred to in subsection 3 of this Paragraph 15 .02(b), is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1 %).

(c) In determining the Rent which would be payable by Tenant hereunder subsequent to default, Landlord may, at Landlord's option, consider that the Rent for each year of the unexpired Term shall be equal to the average minimum and Additional Rents paid by Tenant on the Commencement Date to the time of default, or during the preceding three (3) full calendar years, whichever period is shorter.

(d) In addition to any other remedies of Landlord hereunder, Tenant hereby assigns to Landlord all of its right and interest in and to any and all contracts,

agreements, permits, and authorizations pertaining to the Alterations; provided, however, that Landlord shall not exercise any rights there under, and shall permit Tenant to obtain the benefit thereof for such period of time that Tenant is not in default of its obligations hereunder. In no event shall Landlord's taking assignment(s) of such agreements, permits, contracts, and authorizations be deemed an assumption by Landlord of any of the obligations there under by Landlord, which shall instead remain the sole obligation of Tenant.”

Cumulative Remedies: “Pursuing any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or of any other remedies provided by law, nor shall pursuit or waiver of any remedy herein provided constitute a forfeiture or waiver of any remedy herein provided or of Rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions or covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed to constitute a waiver of such default. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws. Without limiting the generality of the foregoing, should Landlord retake possession of the Premises after a default by Tenant for purposes of reletting same (though Landlord shall not be obligated to do so) for the account of Tenant (with Tenant being liable to Landlord for any deficiency), Landlord shall nevertheless and continuously thereafter have the right to terminate this Ground Lease.”

Landlord's Cure Rights: “Landlord, at any time after Tenant commits a default, shall have the right to cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum or performs any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to

			<i>Landlord at the time the sum is paid, and if paid at a later date, the outstanding principal amount thereof shall bear interest at the highest rate permitted by law, and if there should be no legal limit at the rate often percent (10%) per annum excess of the Interest shall accrue from the date the sum is paid by Landlord until Landlord is reimbursed in full by Tenant. Any such sum, together with interest thereon, shall constitute Additional Rent.”</i>
Article XVI & XVII	Default by Landlord & Subordination & Attornment	Frank	<p><u>Article XVI: Default by Landlord:</u> Common provisions are included.</p> <p><u>Article XVII: Subordination & Attornment:</u> Property not subject to mortgage.</p>
Article XVIII & XIX	Quiet Enjoyment & End of Term—Title to Property	Frank	<p><u>Article XVIII:</u> <u>Quiet Enjoyment:</u> <i>“Landlord agrees that Tenant, upon paying the Rent and performing the covenants and conditions of this Lease, may quietly have, hold and enjoy the Premises during the Term without unreasonable hindrance or interruption by Landlord or any other person claiming by, through or under Landlord, subject, however, to the provisions of this Lease and any Mortgages, ground or underlying leases, agreements and encumbrances to which this Lease is subordinate; Landlord represents and warrants to Tenant that such Mortgages, ground or underlying leases, agreements, and encumbrances, as any of the foregoing may be amended from time to time, shall not increase Tenant's obligations nor decrease Tenant's rights under this Lease.”</i></p> <p><u>Article XIX:</u> <u>End of Term:</u> Common terms and conditions.</p>

Article XX	Miscellaneous Provisions	Morse	<p>Article XX: Miscellaneous Provisions: Notices, consents, approvals, demands, requests or documents in writing. Post-lease memorandum of lease or other documents must be signed, acknowledged and recorded.</p> <p>No oral or written agreements or representations hereto between parties affecting this lease. No amendment or addition to this lease shall be binding upon the parties unless in writing, signed and mutually delivered between them. Attorneys' fees paid by unsuccessful party in litigation.</p> <p>Confidential information (oral or written) may be released only to such employees, partners, consultants, attorneys and lenders who have a reasonable need for such information.</p>
Summary & Conclusions		Frank	Review of the above and identify conclusions for the evening.
Homework Assignment for Next Seminar: Monday, July 24, 2006@7 PM	Individual Analyses of Agreement & Open Discussions	Morse	<p>Goal: The bring community business expertise to evaluation of lease.</p> <p>BDC Member Responsibility for July 24: Obtain your personal copy of the Trumpets Lease Agreement from SCA Office. Review document and apply your expertise to areas of interest. Develop your own suggested changes to exiting lease. Request copy of Trumpets 2003 quality questionnaire from BDC if interested, Prepare discussion points for July 24 BDC open discussion meeting.</p>