

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FRANK BIANCO and DEBORAH BIANCO,

Plaintiffs,

-v-

NU U OF LINCOLN PARK d/b/a NU U MED SPA)  
A Nevada Limited Liability Company

Defendant.

No. 11-cv-05865

Honorable William T. Hart

Magistrate Judge Honorable Sidney

I. Schenkier

**AFFIDAVIT OF FRANK BIANCO**

1. I am a Plaintiff in the above-captioned matter along with my wife Deborah Bianco. We are the landlords of the commercial lease at issue in this case.
2. Defendant Nu U of Lincoln Park ("Nu U"), a Nevada limited liability company, is the tenant in the commercial lease at issue in this case.
3. I entered into an Assignment and Modification to a Lease Agreement ("Agreement") on September 28, 2007, for the premises at 908 W. Armitage Ave. Chicago, IL 60614 ("Leased Premises.") A true and accurate copy of the Agreement is attached hereto as Exhibit B-1. Paragraph F of the Agreement states that Plaintiffs consented to the assignment of the Lease from "Purelight d/b/a Purelight Med Spa" to Defendant Nu U.
4. Pursuant to Paragraph 6 of the Agreement, Nu U agreed to extend the term of the assigned Lease for an additional five years, until May 31, 2014.
5. In 2010, Nu U started failing to make rent payments on time and submitted several checks which were returned for non-sufficient funds. Throughout the early months of 2011, Nu U occasionally issued checks or wired money to me in an attempt to get current on its

outstanding rent balance. However, the amount of outstanding back rent that Nu U owed continued to accrue.

6. Nu U failed to pay the outstanding rent balance for February 2011 of \$1,011.44.

7. Nu U failed to pay the outstanding rent balance for May 2011 which had accumulated to the amount of \$9,566.88.

8. On June 22, 2011, I posted a five-day notice on the Leased Premises in accordance with the Illinois Forcible Entry and Detainer Act.

9. In response to the five-day notice, Nu U requested an in-person meeting with me to discuss a plan to repay the outstanding rent balance that had it had accrued. On or about July 20, 2011, I met in person with Nu U to discuss the outstanding rent balance. Nu U requested that I hold off on legal action until the end of July and insisted that they would pay the outstanding balance by the end of July. I agreed to postpone any legal action until August 1, 2011.

10. Subsequent to the meeting, I received a check from Nu U on July 5, 2011 in the amount of \$7,000. The July 5, 2011 check was returned for non-sufficient funds.

11. On July 11, 2011, Nu U sent a \$14,000 check for the outstanding rent payments. The July 11, 2011 check for \$14,000 was returned for non-sufficient funds.

12. Nu U failed to remedy its breach of the lease Agreement by paying its outstanding rent obligations for the previous months as discussed at the July 20 meeting. Nu U has failed to pay the full rent for the months of June 2011, July 2011 and August 2011, September 2011, October 2011, as well as a portion of the rent for February 2011 and May 2011. Nu U has not attempted to make any additional payments since the July 11, 2011 attempted payment. Nu U has continuously failed to make the rent payments due under the Agreement.

13. On October 7, 2011, I sent a detailed computation to Norm Valine and John Keighley (two principals of Nu U) of the unpaid rent, interest, late fees, and utility payments Nu U owed under the agreement. The total amount owed as of October 7, 2011 was \$86,041.69. See Exhibit B-2.

14. On October 13, 2011, this Court granted an Order of Possession so that I could retake the premises and attempt to find a new tenant to lease the unoccupied unit. See Exhibit B-3.

15. We have enlisted the help of a real estate broker to lease the first-floor unit previously rented by Nu U. The real estate broker has shown the property approximately ten times in the previous four months but has failed to find a tenant willing to lease the premises. The first-floor unit remains unoccupied.

16. Nu U leased the first-floor unit for approximately \$11,000.00 per month (though this amount increased each year of the Agreement). Because of the current market at our location in Chicago and the economic crisis, we have had to decrease the asking rent by 25%, to \$8,500.00 per month.

17. The total future payments due through the term of the Lease ending May 31, 2014, including real estate taxes and utilities, total \$404,196.64. This figure consists of future rent, utilities, and interest payments from November 2011 (as we retook possession of the premises in October 2011) through the end of the Lease.

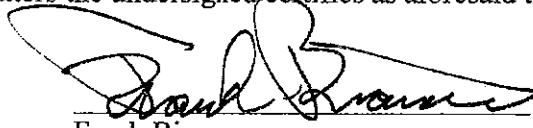
18. Paragraph 39 of the Lease entitles us to an award of all costs and attorneys fees expended as a result of Nu U's breaches of the Agreement. I have paid a total of \$5,187.99 for legal fees and costs through November 30, 2011. See Exhibit B-4.

19. Nu U has neither made any unscheduled payments to cure their breach, nor offered to participate in an alternative payment plan that would amount to a cure.

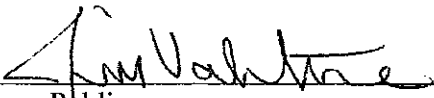
20. Nu U remains in breach of the Agreement. I have performed all conditions, covenants, and promises in accordance with the terms and conditions of the Agreement.

FURTHER, AFFIANT SAYETH NOT.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies and swears under oath that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

  
Frank Bianco

SUBSCRIBED and SWORN TO before me  
This 8<sup>th</sup> day of Dec, 2011.

  
Notary Public



# **EXHIBIT B-1**

## ASSIGNMENT OF AND MODIFICATION TO LEASE AGREEMENT

THIS ASSIGNMENT OF AND MODIFICATION TO LEASE AGREEMENT (the "**Agreement**") is made and entered into as of September 28, 2007 by and among FRANK BIANCO AND DEBORAH BIANCO (collectively "**Landlord**"), PURELIGHT, INC., d/b/a PURELIGHT MED SPA, a California corporation ("**Assignor**"), and NU U OF LINCOLN PARK, LLC, a Nevada limited liability company ("**Assignee**").

### RECITALS:

A. Landlord and Assignor entered into a certain Commercial Lease Agreement dated June 1, 2004 (the "**Lease**") pursuant to which Landlord leased to Assignor and Assignor rented from Landlord certain premises comprising approximately 1,850 square feet (the "**Premises**") in the building commonly known as 908 West Armitage Avenue, Chicago, Illinois 60614 (the "**Building**").

B. Chuck Eggert and Jeffrey Freeland (collectively the "**Guarantors**") jointly and severally executed and delivered to Landlord a Guaranty of the Lease (collectively the "**Guaranty**") dated May 5, 2004, which Guaranty is attached to the Lease.

C. The Lease has not been previously assigned by Landlord.

D. Assignor desires to assign, convey and transfer all of its right, title and interest in, to and under the Lease to Assignee.

E. Assignee desires to (i) accept from Assignor the assignment of Assignor's interest under the Lease, (ii) unless otherwise provided for herein, assume all of the obligations of Assignor under the Lease as a direct contractual obligation to Landlord, and (iii) modify certain provisions of the Lease, as more particularly described below.

F. Landlord is willing to consent to (i) the assignment of the Lease from Assignor to Assignee, and (ii) the modifications to the Lease as described below, subject to the terms and conditions contained in this Agreement.

G. All capitalized terms utilized herein and not otherwise defined shall have the meaning subscribed to them in the Lease.

**NOW, THEREFORE**, incorporating the foregoing recitals of fact and for good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Landlord, Assignor and Assignee covenant and agree as follows:

1. Assignor hereby assigns, conveys and transfers to Assignee all of Assignor's right, title and interest in, to and under the Lease, and Assignee hereby accepts said assignment and agrees to fully and finally perform, discharge and satisfy, as a direct obligation to Landlord, each and every term, covenant and condition to be performed, discharged, and satisfied by Assignor under the Lease and this Agreement, except as otherwise provided for herein. Assignor acknowledges and agrees that its right to possession of the Premises is terminated by virtue of the assignment of its interest under the Lease as described herein. Specifically, and as provided for herein, Assignee shall have no obligation to cause the Premises to be built and maintained in compliance with any and all codes, and shall have no obligation to correct or cause to be corrected any code violations which may exist in the Premises at any time, in the event the Premises are found not to be in compliance with said codes, unless such violations are or were a result of Assignee's alterations to the Premises made subsequent to February 9, 2007, and were caused by Assignee, its agents or employees.

2. In reliance on the representations and warranties of both Assignor and Assignee as set forth in this Agreement, Landlord hereby consents to the assignment of the Lease as described above; provided, however, that Assignor and Guarantors shall be and remain fully and primarily liable under the terms of the Lease and the Guaranty, respectively, for the full and final performance, discharge and satisfaction of their obligations to cause the Premises to be built and maintained in compliance with (i) paragraph 14 of the Lease, and (ii) all applicable codes. However, such consent by Landlord shall not render unnecessary the consent of Landlord to any subsequent assignment(s) of the Lease. Landlord hereby represents that they have the full authority to enter into this Agreement.

3. Within forty-five (45) days after the date of this Agreement, Assignor or Assignee will pay or cause to be paid to Landlord the sum of Twenty Thousand and 00/100 Dollars (\$20,000.00), in consideration for which Landlord will, upon the execution of this Agreement, release and dismiss with prejudice any and all claims that Landlord has against Assignor under the Lease by executing a release substantially in accordance with the form of release attached hereto as Exhibit A, except that Landlord shall retain all of its claims against Assignor and Guarantors relating solely to the alleged failure of Assignor to construct and maintain the Premises in compliance with (i) paragraph 14 of the Lease, and (ii) all applicable statutes, laws, ordinances, codes and regulations, as alleged in count I of the Corrected Second Amended Complaint filed by Landlord in the United States District Court for the Northern District of Illinois, Eastern Division, Case No. 07 C 1924, known as *FRANK BIANCO AND DEBORAH BIANCO, Plaintiffs, v. PURELIGHT, INC., d/b/a PURELIGHT MED SPA, a California corporation, CHUCK EGGERT and JEFF FREELAND, Defendants*.

4. As a condition to the execution of this Agreement, Landlord will, upon the execution of this Agreement, release and dismiss with prejudice any and all claims that Landlord has or may have against Assignee, Nu U of Chicago, LLC, a Nevada limited liability company, Norman Valine ("Valine") and Eric Moore ("Moore") by executing a release substantially in accordance with the

form of release attached hereto as Exhibit A; and in consideration therefor, Assignor and Assignee will (i) release and dismiss with prejudice any and all claims that Assignor and Assignee may have against Landlord, including but not limited to breach of the Lease, defamation and tortious interference with contract, by executing a release substantially in accordance with the form of release attached hereto as Exhibit A, and (ii) cause Valine and Moore to release and dismiss with prejudice any and all claims that they may have against Landlord, including but not limited to breach of the Lease, defamation and tortious interference with contract, by executing a release substantially in accordance with the form of release attached hereto as Exhibit A.

5. Landlord shall have the right to enforce the obligations of Assignor and/or Guarantors to cause the Premises to be built and maintained in compliance with paragraph 14 of the Lease and all applicable codes, and Landlord will exercise such rights only after obtaining a judgment against Assignor and Guarantors or entering into a settlement of those claims with Assignor and Guarantors. However, Assignee acknowledges and agrees that Landlord will have no obligation to correct or cause any code violations to be corrected prior to the time Landlord has resolved its code related claims against Guarantors, unless Landlord is required to do so pursuant to an order issued by any governmental authority having proper jurisdiction over the Premises requiring the correction of such building code violations. In such event, Landlord shall use reasonable diligence to comply with any and all said orders of any governmental authority relating to code violations which Landlord is required to correct pursuant to this paragraph 5, and Landlord shall indemnify and hold Assignee harmless from and against any and all fines, penalties, costs and expenses, including reasonable attorneys' fees, as a result of any action and/or proceeding brought against Assignee by any governmental authority. In any event, any correction or curing of code violations will be performed at Landlord's sole expense (i) in a manner designed to minimize any unreasonable disruption of Assignee's business, and (ii) if possible, following the end of the extended term of the Lease. Assignor and Assignee covenant and agree not to allege nor file any claims against Landlord for disruption resulting from code corrections so long as such corrections are done in the manner set forth in this paragraph. It is expressly understood and acknowledged that Assignee shall have no obligation to correct or cure the condition of the Premises so that the Premises are in compliance with all existing codes (unless such noncompliance is a result of Assignee's alterations to the Premises made subsequent to February 9, 2007 and was caused by Assignee, its agents or employees), and Assignee shall have no obligation to maintain the Premises in such compliant condition.

6. Paragraph 2 of the Lease is amended to provide that the term of the Lease is further extended for five (5) additional years, and the expiration date of the Lease will be May 31, 2014.

7. Paragraph 7 of the Lease is amended to provide that from and after October 1, 2007, Assignee will pay Base Rent to Landlord in the following amounts:



<u>Period</u>	<u>Monthly Base Rent</u>
10/1/07 - 5/31/08	\$10,000.00
6/1/08 - 5/31/09	\$10,300.00
6/1/09 - 5/31/10	\$10,609.00
6/1/10 - 5/31/11	\$10,927.27
6/1/11 - 5/31/12	\$11,255.09
6/1/12 - 5/31/13	\$11,592.74
6/1/13 - 5/31/14	\$11,940.52

8. Paragraph 8 of the Lease is amended by modifying the third sentence to provide that any sums not paid to Landlord within five (5) days after the date when due shall bear interest at the rate of twelve percent (12%) per annum from the due date until paid.

9. Paragraph 9 of the Lease is amended to provide that the Security Deposit in the amount of Twelve Thousand and 00/100 Dollars (\$12,000.00) being held by Landlord is hereby transferred to the account of Assignee, and Assignor hereby consents to such transfer as part of this Agreement and waives any claims or rights, whether past, present or future, to all or any part of such Security Deposit. The Security Deposit shall be held by Landlord in accordance with the terms of the Lease and this Agreement and will not be applied to the cost of correcting any building code violations pertaining to the Building. In addition, the penultimate sentence shall be modified to provide that so long as Landlord has determined that all of Assignee's obligations under the Lease and this Agreement have been fulfilled, Landlord will, within thirty (30) days after the end of the extended term of the Lease, return to Assignee the portion of the Security Deposit which was not applied to satisfy any of Assignee's obligations.

10. Paragraph 13 of the Lease is amended to provide that if and to the extent the Premises become "Untenantable" (as defined below) due to an interruption of service which is within Landlord's reasonable control and the Premises remain Untenantable for at least five (5) consecutive days, then Base Rent and all other charges will abate commencing on the sixth (6<sup>th</sup>) day after such interruption of service occurred and continue to abate until the interrupted service is restored. For purposes of this paragraph, "Untenantable" means that the Premises or an affected portion thereof cannot be occupied by Assignee in the normal course of its business.

11. Paragraph 14 of the Lease is amended to provide that Assignee has no obligation to make any alterations to the Premises, correct or cure the alleged building code violations either now existing or hereafter existing (unless such violations are or were a result of Assignee's alterations to the Premises made subsequent to February 9, 2007, and were caused by Assignee, its agents or employees), or to maintain the Premises in a condition wherein the Premises are in compliance with any and all relevant municipal codes, and no alterations, physical additions or improvements in or to the Premises may be made without Landlord's prior written consent, which consent will not be

unreasonably withheld. However, Landlord may withhold its consent to any alteration or addition that could affect the Building's structure or its HVAC, plumbing, electrical or mechanical systems. In the event Assignee desires to make any alterations, additions or improvements to the Premises, all such alterations, additions and improvements installed in the Premises must be (i) performed at Assignee's expense and only in accordance with plans and specifications which have been previously submitted to and approved in writing by Landlord, and (ii) constructed, maintained and used by Assignee at its own risk and expense in accordance with all laws. Landlord's approval of the plans and specifications is not a representation by Landlord that such alterations, additions, or improvements comply with any laws. Assignee further agrees that it will remove or cause its contractor(s) to remove all waste and debris from the Premises upon the completion of any alterations, additions or improvements.

12. Paragraph 16 of the Lease is amended to provide that Landlord will provide heat to the Premises during weekend days.

13. Paragraph 17 of the Lease is amended to provide that Assignee will dispose of all garbage and medical waste in strict accordance with all applicable statutes, laws, ordinances, codes, rules and regulations. In the event Assignee fails to comply with the requirements of the foregoing sentence, Landlord shall give written notice of such failure to Assignee reasonably delineating the nature of the waste and garbage which was discarded in violation of the Lease, including the approximate time and date of said incident, and Assignee shall have ten (10) business days after the date of Landlord's notice to cure such failure before such failure is deemed to be an event of default under the Lease. All notices by Landlord to Assignee of the alleged improper discarding of garbage and/or medical waste shall be given within five (5) days after Landlord learns of the alleged incident, or it shall be conclusively presumed that the alleged incident has been satisfactorily cured, and no consequence therefrom shall attach. Landlord agrees not to take any other action, including but not limited to the filing of any complaints and/or reports, with any governmental authorities regarding the alleged violation of this paragraph 13, until the procedure set forth herein has been fully exhausted. Landlord further acknowledges that all matters between Landlord, Assignor and Assignee, and any and all related entities and persons, with respect to the disposal of garbage and medical waste have been satisfactorily resolved as of the date of this Agreement, and that Landlord will fully cooperate with Assignor, Assignee or any related entities and/or persons in having all pending governmental charges and investigations dismissed or satisfactorily resolved with regard to any conduct predating or of even date with this Agreement.

14. Paragraph 18 of the Lease is amended to provide that Assignee's use of the Premises may also include the sale of any products related to salon spa services.

15. Paragraph 20 of the Lease is amended to provide that in the event Assignee desires to install any new signage in the Premises or on the Building, such signage must be approved in advance and in writing by both Landlord and The Chicago Landmark Committee. Assignee will be

solely responsible for seeking the approval of The Chicago Landmark Committee with respect to any proposed signage. All signs must be professionally designed and prepared and must conform to all applicable statutes, laws, ordinances, codes, rules, regulations and/or requirements of all applicable governmental and quasi-governmental authorities. Landlord hereby recognizes that the current signage needs to be changed to reflect Assignee's name and logo. Landlord will promptly review and reasonably approve any proposed signage proffered by Assignee, provided that the new signage shall comply at all times with all existing laws, and any and all required governmental approvals shall be obtained by Assignee at its sole cost.

16. Paragraph 25 of the Lease is amended as follows:

a. Landlord will not unreasonably withhold, condition or delay its consent to a proposed assignment or sublease by Assignee. However, Assignee agrees that Landlord shall not be deemed to have unreasonably withheld its consent if, in Landlord's reasonable judgment, (a) the proposed assignee or subtenant is of a character or engaged in a business which is not in keeping with the standards of Landlord for the Building, (b) the purposes for which the proposed assignee or subtenant intends to use the Premises materially differs from the permitted use of the Premises as set forth in paragraph 18 of the Lease, (c) the proposed assignee or subtenant is not sufficiently creditworthy, (d) such sublease or assignment would violate any covenant or agreement of Landlord involving the Building, including, without limitation, any other existing lease in the Building, (e) the proposed use or occupancy of the Premises by the proposed assignee or subtenant would violate any applicable law, impose any obligation upon Landlord under any applicable law or increase Landlord's obligations under or the cost of compliance with any laws, (f) the Premises or the remaining balance of the Premises, if any, is not regular in shape with appropriate means of ingress and egress and suitable for normal renting purposes, (g) the proposed use or occupancy of the Premises by the proposed assignee or subtenant would significantly increase the pedestrian traffic in and out of the Building, (h) the proposed assignee or subtenant is a governmental unit (or subdivision or agency thereof) or a present occupant of or negotiating for space in the Building, (i) there is then in existence any sublease of all or any part of the Premises, or (j) Assignee is in default under the Lease.

b. If Assignee desires to assign the Lease or enter into any sublease of the Premises, Assignee shall deliver notice of such intent to Landlord at least thirty (30) days prior to the effective date of the proposed assignment or commencement date of the term of the proposed sublease, together with a copy of the proposed assignment or sublease and any other information which Landlord reasonably requires. If not previously delivered, a copy of the proposed assignment or sublease shall be delivered to Landlord at least ten (10) days prior to the effective date of the assignment or the commencement date of the sublease, as the case may be, and shall be subject to Landlord's approval, which shall not be unreasonably withheld, conditioned or delayed. Assignee shall reimburse Landlord on demand for all reasonable out-of-pocket expenses, including reasonable attorneys' fees not to exceed \$1,000.00, and fees of architects, engineers and other professionals if

required, incurred by Landlord in connection with the proposed assignment or sublease, whether or not Landlord consents to such assignment or sublease. Any assignee of the Lease shall assume the obligations of Assignee under the Lease by entering into an agreement reasonably satisfactory to Landlord. Any sublease shall be expressly subject to the terms and conditions of the Lease, and at Landlord's request, the subtenant shall execute an agreement reasonably satisfactory to Landlord to attorn to Landlord. Assignee shall pay to Landlord on the first day of each month during the term of any sublease, fifty percent (50%) of the excess of all rent and other consideration due from the subtenant for any month over the Monthly Base Rent due under the Lease for such month to the subleased space after deducting the costs of any tenant improvements, tenant concessions, marketing expenses and/or brokerage commissions incurred by Assignee. Similarly, Assignee shall pay to Landlord fifty percent (50%) of all consideration due to Assignee on account of each assignment when due from the assignee after deducting the costs of any tenant improvements, tenant concessions, marketing expenses and/or brokerage commissions incurred by Assignee. In the event of any sublease or assignment, Assignee shall not be released or discharged from any liability, whether past, present or future, under the Lease, including any extended term of the Lease.

c. Notwithstanding anything to the contrary set forth above, Assignee shall not be obligated to obtain Landlord's consent in the event of a transfer of less than fifty percent (50%) of the membership interests in Assignee.

17. Paragraph 32 of the Lease is amended as follows:

a. The word "gross" in the last line of the first subparagraph is hereby deleted.

b. During the term and extended term of the Lease, Landlord will cause the Building to be insured with property damage insurance coverage in commercially reasonable amounts from time to time, and Landlord will maintain commercial general liability insurance in such amounts and coverages customarily carried by owners of similar type retail buildings in the Lincoln Park neighborhood of Chicago, Illinois.

c. Except to the extent such loss is covered by Landlord's or Assignee's applicable insurance or would have been covered by the insurance which Landlord or Assignee is required to maintain under the Lease, Landlord shall defend, indemnify and hold Assignee, its members, managers and employees harmless from and against any and all obligations liabilities, costs, damages, claims and expenses of any nature arising from injury to persons or damage to property on or about the Premises or the Building arising out of or in connection with (i) Landlord's failure to perform its obligations under the Lease, or (ii) the negligence or willful misconduct of Landlord, its agents, contractors, servants, employees or invitees during the term or extended term, except to the extent such loss was caused by the negligence of Assignee, its employees or any affiliate of Assignee.

18. Paragraph 36 of the Lease is amended by modifying subsection (iii) to provide that in the event of a holdover by Assignee, Assignee shall pay to Landlord, in addition to all other sums which are to be paid by Assignee under the Lease, whether or not as additional rent, 150% of the rental being paid monthly to Landlord under the Lease immediately prior to such termination.

19. Paragraph 37 of the Lease is amended as follows:

a. Subparagraph 37(e) is modified by deleting "twenty (20) days" in the last line and substituting "thirty (30) days" in its place.

b. Subparagraph 37(g) is modified by deleting "thirty (30) days" in the fifth line and substituting "sixty (60) days" in its place.

20. Paragraph 38 of the Lease is amended as follows:

a. Subparagraph 38(b) is modified by deleting the words "or without" in the fourth line.

b. Subparagraph 38(d)(ii) is modified to provide that Landlord will use commercially reasonable efforts to mitigate damages arising from a default or breach of the Lease by Assignee.

c. Subparagraph 38(e) is modified by deleting the words "or without" in the first line.

21. Paragraph 41 of the Lease is amended by modifying subparagraph 41(b) to provide that any notices or demands required to be given to the tenant under the Lease shall be sent to Assignee at the Premises.

22. In the event Landlord or Assignee is required to bring an action arising out of the covenants, terms, conditions or provisions of the Lease or this Agreement, or if Landlord undertakes an action for summary proceedings to recover possession of the Premises, the prevailing party will be reimbursed by the other party for such reasonable costs and attorneys' fees as the prevailing party may incur in connection with such action.

23. This Agreement may be executed in several counterparts, each of which can be fully effective as an original all of which together shall constitute one and the same instrument.

24. The parties hereto have undertaken a complete and independent evaluation of the risks inherent in the execution of this Agreement, the acceptance of the assignment of the Lease set forth in this Agreement, the physical condition of the Premises, and the operation of the Premises for the use permitted under the Lease. Based solely upon said independent evaluation, the parties hereto have elected to enter into this Agreement and accept and agree to all of the terms and conditions set forth herein.

25. By entering into this Agreement, the parties acknowledge and agree that they are not relying upon, nor are they entitled to rely upon, any statement, fact, promise or representation (whether express or implied, written or oral) not specifically set forth in the Lease or this Agreement.

26. Landlord, Assignor and Assignee represent and warrant to each other that they have read and understand this Agreement with the releases and indemnification provisions, that they have had the legal effect of this Agreement explained by competent legal counsel of that party's own choice, and that they are executing this Agreement of their own free will.

27. This Agreement is governed by the laws of the State of Illinois, and any lawsuit filed in connection with the Lease or this Agreement must be filed in Cook County, Illinois.

IN WITNESS WHEREOF, the parties have executed this Assignment of and Modification to Lease Agreement as of the date first stated above.


LANDLORD:

  
Frank Bianco

  
Deborah Bianco

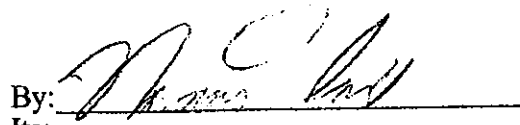
ASSIGNOR:

PURELIGHT, INC., d/b/a PURELIGHT  
MED SPA, a California corporation

By:   
Its: \_\_\_\_\_

ASSIGNEE:

NU U OF LINCOLN PARK, LLC,  
a Nevada limited liability company

By:   
Its: \_\_\_\_\_

**EXHIBIT A**

**Mutual Releases**

## MUTUAL RELEASE

This Mutual Release, entered into by Frank Bianco, Deborah Bianco, Purelight, Inc., d/b/a Purelight Med Spa, a California corporation ("Purelight"), Norman Valine, Eric Moore, Nu U of Chicago, LLC, a Nevada limited liability company and Nu U of Lincoln Park, LLC, a Nevada limited liability company ("Nu U Lincoln Park") is intended by the undersigned to extinguish all obligations and liability to the other as hereinafter set forth other than the Biancos claims against Purelight, Chuck Eggert and Jeff Freeland regarding building code violations and defective construction of the alterations Purelight made to the premises it leases from the Biancos (the "Leased Premises"), as alleged in Count I of the Corrected Second Amended Complaint filed by the Biancos in the United States District Court for the Northern District of Illinois, Eastern Division, Case No. 07 C 1924, known as *FRANK BIANCO AND DEBORAH BIANCO, Plaintiffs, v. PURELIGHT, INC., d/b/a PURELIGHT MED SPA, a California corporation, CHUCK EGGERT and JEFF FREELAND, Defendants* (hereinafter the "Lawsuit").

However, with exception of the Biancos's claims regarding defective construction of the alterations by Purelight to the Leased Premises, this Release is intended by the undersigned to extinguish all liability and claims arising between the parties hereto and in any manner related to disputes which have arisen between the undersigned in regard to the claims, counter-claims or third-party claims made, which they have sought to make, or could make in the Lawsuit. The undersigned execute this Mutual Release to settle all disputes relating to the facts alleged in the Complaint, Counter-Claims or Third Party Complaints in the Lawsuit by them or which could have been raised by them with finality, except for the dispute between the Biancos and Purelight, Chuck Eggert and Jeff Freeland regarding building code violations and defective construction of



Purelight's alterations to the Leased Premises as alleged in Count I of the Corrected Second Amended Complaint in the Lawsuit ( the "Purelight Claim").

In consideration of (a) the payment of a total of \$20,000 by Purelight and/or Nu U Lincoln Park to the Biancos; (b) the other obligations and agreements exchanged by the parties pursuant to their Settlement Agreement and the Exhibits theretoto which this Mutual Release is an Exhibit; (c) and mutual relinquishment of each of the parties' legal rights for themselves and/or itself and each of the undersigned's agents, attorneys, successors and assigns, the undersigned, with regard to all claims other than the Purelight Claim, expressly release each other, and their agents, attorneys, successors and assigns from any and all claims, demands, actions and cause of action, proceedings, suits at law or in equity, which they now have or may hereinafter have in connection with, occurring out of or in any way concerned with or predicated upon any matter, occurrence, transaction or thing heretofore or presently existing or occurring, including but without in any way derogating from the generality of the foregoing: any and all claims, demands, actions or causes of action, proceedings and suits at law or in equity arising out of the facts and claims alleged in the Lawsuit including but not limited to the Complaint, Counter-Claim and proposed Third-Party Complaint.

This Mutual Release does not act to release the Purelight Claim as defined above and as alleged in Count I of the Corrected Second Amended Complaint in the Lawsuit.

The undersigned all knowingly enter into this Release, and have had the opportunity to and have been advised by their own legal counsel before entering into this Release.

This Release is governed by the Laws of the State of Illinois.

It is understood that the aforementioned consideration is not an admission of liability by any of the undersigned or their agents, but is made in a compromise of disputed claims, and that liability as to any claim made against them is expressly denied by the undersigned.

This Mutual Release contains the entire agreement between the parties and the terms of this Mutual Release are contractual and not mere recital. The undersigned have CAREFULLY READ this Mutual Release, fully understand it, and sign this as the free and voluntary act of the undersigned.

ACCEPTED AND APPROVED:

\_\_\_\_\_  
Frank Bianco

\_\_\_\_\_  
Deborah Bianco

\_\_\_\_\_  
Norman Valine

\_\_\_\_\_  
Eric Moore

PURELIGHT, INC., d/b/a PURELIGHT MED SPA

By: \_\_\_\_\_

NU U OF CHICAGO, LLC

By: \_\_\_\_\_

NU U OF LINCOLN PARK, LLC

By: \_\_\_\_\_

# **EXHIBIT B-2**

**From:** Frank Bianco [mailto:stpats17@rcn.com]

**Sent:** Friday, October 07, 2011 4:49 PM

**To:** 'Norm Valine'; 'John Keighley'

**Subject:** October Update on Past Due Rent & Penalties for Nu U of Lincoln Park, (DBA Axiology, LLC)

Hello John & Norm,

Your base rent as of June 1<sup>st</sup>, 2011 is \$11,225.09 + (\$473.92 the (5<sup>th</sup> of 12 payments on last year's tax increase). An additional amount of \$473.92 is the (5<sup>th</sup> of twelve monthly installment on the 2011 real estate tax increase.

The Rent & Taxes Due June 1<sup>st</sup>, 2011 = \$12,202.93 + Utilities of \$290.90 makes a total of \$12,493.83.

Since no payment was received by June 5<sup>th</sup> add the 5% late penalty of \$623.19 + \$12,493.83= \$13,117.02.

In addition 12% interest is also due for 30 days on the past due balance, at \$38.21 interest per day as of the 5<sup>th</sup> of June, 2011 thru the 5<sup>th</sup> of August, 2011 = \$1,165.43

The Total Due for June 2011 Rent & Penalties, as of June 1st, 2011 = \$14,282.45.

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Your base rent as of July 1<sup>st</sup>, 2011 is \$11,225.09 + (\$473.92 the (6<sup>th</sup> of 12 payments on last year's tax increase). An additional amount of \$473.92 is the (6<sup>th</sup> of twelve monthly installment on the 2011 real estate tax increase.

The Rent & Taxes Due July 1<sup>st</sup>, 2011 = \$12,172.93 + Utilities of \$220.19 makes a TOTAL DUE OF \$12,393.12

Since no payment was received by July 5<sup>th</sup> add the 5% late penalty of \$619.66 + \$12,393.12 = \$13012.78.

In addition 12% interest is also due for 28 days on the total past due balance of \$27,295.23 at \$86.61 interest per day as of the 5<sup>th</sup> of July, 2011 thru the 1st of August, 2011 = \$2,425.15.

The Total Due for June & July 2011 Rent & Penalties, as of August 1st, 2011 = \$29,720.38.

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Your base rent as of August 1<sup>st</sup>, 2011 is \$11,225.09 + (\$473.92 the (7<sup>th</sup> of 12 payments on last year's tax increase). An additional amount of \$473.92 is the (7<sup>th</sup> of twelve monthly installment on the 2011 real estate tax increase.

The Rent & Taxes Due August 1<sup>st</sup>, 2011 = \$12,172.93 + Utilities of \$250.28 makes a TOTAL DUE OF \$12,423.21.

Since no payment was received by August 5<sup>th</sup> add the 5% late penalty of \$621.16 + \$13044.37 = \$13,665.53 .

In addition 12% interest is also due for 31 days on the total past due balance of \$43,385.91 at \$124.35 interest per day as

of the 1<sup>st</sup> of August, 2011 thru the 1<sup>st</sup> of September, 2011 = \$3,854.79.

The Total Due for June, July & August 2011 Rent & Penalties, as of Sept. 1st, 2011 = \$47,240.70.

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Your base rent as of September 1<sup>st</sup>, 2011 is \$11,225.09 + (\$473.92 the (8<sup>th</sup> of 12 payments on last year's tax increase). An additional amount of \$473.92 is the (8<sup>th</sup> of twelve monthly installment on the 2011 real estate tax increase.

The Rent & Taxes Due September 1<sup>st</sup>, 2011 = \$12,172.93 + Utilities of \$226.30 makes a TOTAL DUE OF \$12,399.23.

Since no payment was received by September 5<sup>th</sup> add the 5% late penalty of \$619.96 + \$12,399.23 = \$13,019.19.

In addition 12% interest is also due for 30 days on the total past due balance of \$60,259.89 at \$178.47 interest per day as of the 1<sup>st</sup> of September, 2011 thru the 1<sup>st</sup> of October, 2011 = \$5,354.02.

The Total Due for June, July, August & September 2011 Rent & Penalties, as of October 1<sup>st</sup>, 2011 = \$65,613.91.

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Your base rent as of October 1<sup>st</sup>, 2011 is \$11,225.09 + (\$473.92 the (9<sup>th</sup> of 12 payments on last year's tax increase). An additional amount of \$473.92 is the (9<sup>th</sup> of twelve monthly installment on the 2011 real estate tax increase.

The Rent & Taxes Due October 1<sup>st</sup>, 2011 = \$12,172.93 + Utilities & ADT of \$595.53 makes a TOTAL DUE OF \$12,768.46.

Since no payment was received by October 5<sup>th</sup>, add the 5% late penalty of \$638.42 + \$12,768.46 = \$13,406.88.

In addition 12% interest is also due for 30 days on the total past due balance of \$79,020.79 at \$226.48 interest per day as of the 1<sup>st</sup> of October, 2011 thru the 31<sup>st</sup> of October, 2011 = \$7020.90.

The Total Due for June, July, August, September & October, 2011 Rent & Penalties, as of October 31<sup>st</sup>, 2011 = \$86,041.69.

# **EXHIBIT B-3**



all

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FRANK BIANCO and DEBORAH BIANCO,	)	
	)	
Plaintiffs,	)	
	)	
-v-	)	No. 11-cv-05865
	)	Hon. William T. Hart
	)	Designated Magistrate Judge Sidney
NU U OF LINCOLN PARK d/b/a NU U MED SPA)	)	I. Schenkier
A Nevada Limited Liability Company	)	
	)	
	)	
Defendant.	)	

ORDER OF POSSESSION

This cause coming to be heard on Plaintiffs' Motion for Entry of Judgment and Order of Possession, the issues thereof having been heard and determined by the Court and the Court having found that the Plaintiffs FRANK AND DEBORAH BIANCO are entitled to the possession of the premises described herein.

IT IS THEREFORE ORDERED AND ADJUDGED:

1. That the Plaintiffs have and recover of and from the Defendant, NU U OF LINCOLN PARK d/b/a NU U MED SPA, the possession of the following described premises:

908 W. Armitage Ave.  
1<sup>st</sup> Floor  
Chicago, IL 60614

~~2. That the Plaintiffs have and recover of and from the Defendant, NU U OF LINCOLN PARK d/b/a NU U MED SPA the sum of \_\_\_\_\_ in damages/costs.~~

ENTER:

Hart  
Judge

DATE:

10/13/2011

Vincent L. DiTommaso  
Peter S. Lubin  
DiTommaso ♦ Lubin, P.C.  
17W 220 22<sup>nd</sup> Street - Suite 200  
Oakbrook Terrace, Illinois 60181  
(630) 333-0000

## United States District Court, Northern District of Illinois

092

Name of Assigned Judge or Magistrate Judge	William T. Hart	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	11 C 5865	DATE	10/13/2011
CASE TITLE	Frank Bianco, et al. v. Nu U of Lincoln Park		

## DOCKET ENTRY TEXT

Motion hearing held. Plaintiffs' motion [7] is granted as to an order of possession and is denied as to damages.. Status hearing set for 12/15/2011 at 11:00 a.m. Enter Order of Possession.

■ [ For further detail see separate order(s).]

Docketing to mail notices.

00:05

U.S. DISTRICT COURT CLERK	Courtroom Deputy Initials:	CW
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2011 OCT 13 PM 4:33

FILED-ED

# **EXHIBIT B-4**

**DiTommaso Lubin**

17W 220 22nd Street  
Suite 200  
Oakbrook Terrace, IL 60181,

Invoice submitted to:

Frank Bianco  
908 W. Armitage  
Chicago, IL 60614

September 07, 2011

In Reference To: Bianco v. Nu U of Lincoln Park

Invoice #16276

Professional Services

			<u>Hours</u>	<u>Amount</u>
8/15/2011	RB	Reviewed documents sent by client and began drafting Complaint.	2.00	320.00
8/17/2011	RB	Researched jurisdictional issues regarding Defendant's entity and status. Determined personal liability requirements for owners and members of LLCs. Reviewed and compiled documents received from client.	1.00	160.00
8/18/2011	RB	Drafted Complaint and emailed to client to review.	2.00	320.00
8/19/2011	SO	Prepared three (3) Appearances.	0.30	33.00
8/22/2011	RB	Received comments and revisions on Complaint from client. Revised complaint accordingly.	3.00	480.00
8/23/2011	PSL	Reviewed and revised complaint and email to client and RB regarding same.	0.20	75.00
	RB	Completed Summons and prepared Complaint to be filed.	0.50	80.00
8/24/2011	SV	Electronically initiated and filed case	0.70	77.00
	RB	Filed Complaint and emailed copy of final Complaint to client.	0.50	80.00
8/25/2011	SV	Correspondence to client with copy of Complaint	0.10	11.00
			<u>10.30</u>	<u>\$1,636.00</u>
		For professional services rendered		
8/25/2011		Payment - Thank You. Check No. 5207		<u>(\$350.00)</u>
		Total payments and adjustments		(\$350.00)

	<u>Amount</u>
Balance due	<u>\$1,286.00</u>

## Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Peter S. Lubin	0.20	375.00	\$75.00
Rupa Baskaran	9.00	160.00	\$1,440.00
Sandy Obos	0.30	110.00	\$33.00
Sarah Villalobos	0.80	110.00	\$88.00

**DiTommaso Lubin**

17W 220 22nd Street  
Suite 200  
Oakbrook Terrace, IL 60181,

Invoice submitted to:  
Frank Bianco  
908 W. Armitage  
Chicago, IL 60614

October 04, 2011

In Reference To: Bianco v. Nu U of Lincoln Park

Invoice #16324

Professional Services

			<u>Hours</u>	<u>Amount</u>
9/15/2011	RB	Received Defendants' addresses from Burke and reserved the Complaint.	0.50	80.00
9/19/2011	RB	Prepared waiver of summons for new defendants and emailed to them and mailed to new addresses on file.	1.00	160.00
9/22/2011	RB	Spoke to Mark Litner regarding grounds for possession after 5 day notice is posted. Emailed him copy of Complaint.	0.50	80.00
9/28/2011	RB	Drafted Motion for Order of Possession and Declaration of Frank Bianco. Gave to Peter for review. Emailed Declaration to Frank for his signature.	2.00	320.00
9/29/2011	PSL	Reviewed and corrected petition for possession and supporting affidavit.	0.20	75.00
	PSL	Reviewed and corrected affidavit and petition in light of statute.	0.30	112.50
	RB	Received revisions from Peter on Motion for Order of Possession. Made revisions and filed.	0.80	128.00
9/30/2011	RB	Drafted Jurisdictional Addendum to Complaint.	0.40	64.00
For professional services rendered			<u>5.70</u>	<u>\$1,019.50</u>

## Additional Charges :

	<u>Amount</u>
9/1/2011 postage	16.46
9/21/2011 Financial Examinations & Evaluations	725.00
9/28/2011 postage	8.03
Total costs	<u>\$749.49</u>
Total amount of this bill	<u>\$1,768.99</u>
Previous balance	\$1,286.00
9/30/2011 Payment - Thank You. Check No. 5217	<u>(\$1,286.00)</u>
Total payments and adjustments	<u>(\$1,286.00)</u>
Balance due	<u><u>\$1,768.99</u></u>

## Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Peter S. Lubin	0.50	375.00	\$187.50
Rupa Baskaran	5.20	160.00	\$832.00

**DiTommaso Lubin**

17W 220 22nd Street  
Suite 200  
Oakbrook Terrace, IL 60181,

Invoice submitted to:

Frank Bianco  
908 W. Armitage  
Chicago, IL 60614

November 02, 2011

In Reference To: Bianco v. Nu U of Lincoln Park

Invoice #16355

**Professional Services**

		<u>Hours</u>	<u>Amount</u>
10/7/2011 RB	Spoke with Frank about personally serving summons and complaint upon Defendant - emailed a copy of summons and complaint.	0.50	80.00
10/12/2011 PA	Legal research and review of relevant Illinois law in preparation for argument on Motion for Order of Possession / forcible entry and detainer (1.1); drafted order to be entered based on cook county template (.3). 50 % courtesy discount	0.70	210.00
10/13/2011 PA	Attended court on Motion for Order of Possession; travel time.	1.40	420.00
10/18/2011 SO	Correspondence to client with copy of October 13, 2011 Court Order and Order of Possession.	0.10	11.00
10/31/2011 PA	Brief legal research and review of relevant law in preparation to make argument on Motion for Order of Possession / Forcible entry and detainer. 50% Courtesy discount.	0.50	150.00
For professional services rendered		3.20	\$871.00
Previous balance			\$1,768.99
Balance due			<u>\$2,639.99</u>

**Timekeeper Summary**

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Patrick Austermuehle	2.60	300.00	\$780.00



Frank Bianco

Page 2

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Rupa Baskaran	0.50	160.00	\$80.00
Sandy Obos	0.10	110.00	\$11.00

**DiTommaso Lubin**

17W 220 22nd Street  
Suite 200  
Oakbrook Terrace, IL 60181,

Invoice submitted to:

Frank Bianco  
908 W. Armitage  
Chicago, IL 60614

December 02, 2011

In Reference To: Bianco v. Nu U of Lincoln Park

Invoice #16413

Professional Services

		<u>Hours</u>	<u>Amount</u>
11/18/2011	RB    Compiled Bianco damages from emails and spoke with Frank about calculating future rent payment damages and other costs. Began preparing itemized damages list--5 (reduced to 2.0)	2.00	320.00
11/21/2011	RB    Prepared Itemized Damages for prove up.	0.50	80.00
11/22/2011	RB    Prepared Itemized damages for prove up.	0.50	80.00
	RB    Prepared Bianco Affidavit	1.20	192.00
11/23/2011	RB    finished drafting affidavit of damages and gave to Pat to review--3/0 (reduced to 1.5)	1.50	240.00
		<u>5.70</u>	<u>\$912.00</u>
	For professional services rendered		
	Previous balance		\$2,639.99
			<u>\$3,551.99</u>
	Balance due		

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Rupa Baskaran	5.70	160.00	\$912.00