



MISC 2010114852



DEC 03 2010 10:11 P 9

9/1 misc

FEE 45.50 FR 58-43303

BKP G/D COMP

DEL SCAN FY

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
12/3/2010 10:11:55.32



2010114852

THIS PAGE INCLUDED FOR INDEXING  
PAGE DOWN FOR BALANCE OF INSTRUMENT

Return To:

See Attached

Hagen, Wilka, & Archer, LLP  
Lawyers

P.O. Box 964

Sioux Falls, SD 57101-0964

Check Number

032389

032374

This Instrument Prepared By:

By: John F. Archer  
Hagen, Wilka & Archer, LLP  
600 South Main Ave., Ste. 102  
Sioux Falls, SD 57104  
605-334-0005

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

This Agreement is made and entered into as of the \_\_\_\_ day of September, 2010, by and among **Granite City Food & Brewery, Ltd.** (hereinafter referred to as "Tenant"), with a mailing address of 5402 Parkdale Drive, Suite 101, St. Louis Park, Minnesota, and **GC Omaha Limited Partnership** (hereinafter referred to as "Landlord") with a mailing address of 230 S. Phillips Avenue, Sioux Falls, South Dakota and **Great Western Bank** (hereinafter referred to as "Lender"), with a mailing address of 200 East 10<sup>th</sup> Street, Suite 100, Sioux Falls, South Dakota.

**WITNESSETH:**

WHEREAS, Tenant has heretofore entered into a sublease dated May 17, 2006, with Landlord, as subsequently amended, whereby Landlord has demised to Tenant the premises described in said lease located at 1001 North 102<sup>nd</sup> Street, Omaha, Nebraska 68114, which are hereinafter referred to as the "Leased Premises" and constitute a portion of the real estate legally described in Exhibit A attached hereto ("Real Estate"); said lease together with any amendments or modifications thereof, whether now or hereafter existing, shall be hereinafter referred to as the "Lease"; and

WHEREAS, Lender has provided a loan to Landlord ("Loan") and in connection with the Loan, Landlord executed a Deed of Trust, Assignment of Rents, Commercial Security Agreement, UCC Financing Statement, Collateral Assignment of Tenant's Interest in Lease, Collateral Assignment of Lessor's Interest in Lease, and Fixture Financing Statement in favor of Lender dated on or about October 18, 2006, and recorded in Douglas County, Nebraska, (the "Mortgage") encumbering the Real Estate to secure an indebtedness of One Million Seven Hundred Forty Thousand Seven Hundred Eighty-Eight and 00/100 Dollars (\$1,740,788.00) which Mortgage the parties agree shall be in all respects superior to the Lease; and

WHEREAS, Tenant, as a condition to executing a Third Amendment to Lease, has requested the execution of this Agreement; and

WHEREAS, Tenant, Landlord and Lender desire to confirm their understanding with respect to the Lease and the Mortgage.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and to induce Lender to make the Loan to Landlord, the parties do hereby covenant and agree as follows:

1. The Lease and all rights of Tenant thereunder and Tenant's interest in the Real Estate together with any rights to purchase the Real Estate shall be subject and subordinate to the lien of the Mortgage and to all renewals, modifications, consolidations, replacements, and extensions thereof, to the full extent of the principal sum secured thereby and interest accrued and from time to time unpaid thereon.

2. Notwithstanding such subordination, so long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent, additional rent or other charges, or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant shall not be interfered with or disturbed by Lender in Tenant's possession and occupancy of the Leased Premises during the original or any renewal term of the Lease or any extension thereof duly exercised by Tenant.

If the interests of Landlord shall be transferred to and/or owned by Lender by reason of judicial foreclosure, power of sale foreclosure or other proceedings brought by it in lieu of or pursuant to a foreclosure, or by any other manner, and Lender succeeds to the interest of Landlord under the Lease, Lender shall, within thirty (30) days after the end of any redemption period or after execution and delivery of documents effecting such a transfer in lieu of foreclosure, serve written notice upon the Tenant of Lender's succession to Landlord's interest under the Lease; thereafter, subject to Lender's performance of all of its obligations under the Lease, Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any renewal or extension thereof duly exercised by Tenant with the same force and effect as if Lender were the landlord under the Lease and Tenant shall attorn to Lender as its landlord. Such attornment shall be effective and self-operative, without the execution of any further instruments on the part of any of the parties hereto, immediately upon Lender serving such notice on the Tenant. The respective rights and obligations of Tenant and Lender upon such attornment shall, to the extent of the then remaining balance of the term of the Lease and any period of renewal or extension duly exercised by Tenant as provided for in the Lease, be the same as now set forth therein, it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein. After delivery of the notice specified herein to Tenant, Tenant shall, from and after such event, have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against the prior landlord thereunder; provided, however, the Lender shall not be:

- A. liable for any act or omission of any prior landlord, including, but not limited to, the Landlord;
- B. subject to any offsets or defenses which Tenant might have against any prior landlord, including, but not limited to, the Landlord;
- C. bound by any rent or additional rent which Tenant might have paid for more than the then current month to any prior landlord, including, but not limited to, the Landlord;
- D. bound by any amendment or modification to the Lease made without Lender's prior written consent; or
- E. liable for any consequential damages.

Neither Lender nor any other party who, from time to time, shall be included in the definition of Lender hereunder shall have any liability or responsibility under or pursuant to the terms of this

Agreement or the Lease after such party ceases to own a fee interest in or to the Real Estate except for claims based on events while such party owned the fee interest.

3. Tenant acknowledges that Landlord has assigned the Lease and all rents and other payments due under the Lease to Lender as security for the Loan. Tenant further acknowledges that Lender may, at its option, at any time direct that Tenant make all such rent and other payments directly to Lender or to any receiver duly appointed with respect to the Real Estate by written notice to Tenant. Upon receipt of such notice, Landlord hereby authorizes and directs Tenant and Tenant agrees to pay all such rent and other payments to Lender or to such receiver, as provided in said notice. However, neither the giving of such notice by Lender nor the payment of rent and other payments due under the Lease to Lender shall affect the obligations of Landlord under the Lease nor impose any obligations of Landlord under the Lease upon Lender. If Tenant makes any such payments to Lender, Lender will indemnify, defend and hold Tenant harmless from any claims by Landlord against Tenant relating to any rent payments Tenant has made to Lender.

4. The term "Lender" shall be deemed to include Lender and any of its successors and assigns, including anyone who shall have succeeded to Lender's interest by, through or under judicial or other foreclosure or other proceedings brought pursuant to the Mortgage, or deed in lieu of such foreclosure or proceedings, or otherwise.

5. This Agreement and the covenants and agreements contained herein shall be binding and inure to the benefit of the parties hereto and their respective heirs, administrators, representatives, successors and assigns.

6. In the absence of the prior written consent of Lender, Landlord and Tenant agree not to do any of the following: (a) prepay or allow prepayment of the rent under the Lease for more than one (1) month in advance, (b) voluntarily surrender or accept surrender of the Leased Premises or terminate the Lease without cause, (c) sublease or assign the Leased Premises other than to a parent, affiliate or wholly owned subsidiary of Tenant or to any entity with which or into which Tenant may consolidate or merge or to whom all or substantially all of the assets of Tenant are sold or transferred, and (d) amend or modify the terms of the Lease, and in the event there is a breach of any of the above, the resulting agreements and/or acts shall be deemed null and void at the option of the Lender.

7. To the extent now required by the Lease, in the event Landlord shall fail to perform or observe any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to Lender at the address of Lender as set forth herein and Lender shall have the right (but not the obligation) to cure such failure. Tenant shall not take any action with respect to such failure under the Lease, including without limitation any action in order to cancel, terminate, rescind or avoid the Lease or to abate or offset against or otherwise withhold any rent thereunder, for a period of thirty (30) days after receipt of such written notice by Lender; provided, however, that in the case of any default which cannot with reasonable diligence be cured within said 30-day period, if Lender shall proceed promptly to cure such failure and thereafter prosecute the curing of such failure with reasonable diligence and continuity, the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of such failure with reasonable diligence and continuity.

8. This Agreement is to be governed and construed in accordance with the laws of the State of Minnesota.

9. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be free interchangeable.

10. All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be in writing and shall be considered as properly given if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, or by delivering same in person to the intended addressee, or by prepaid telegram. Notice so given in person or by telegram shall be effective upon its deposit. Notice so given by mail shall be effective two (2) days after deposit in the United States mail. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be as set forth above; provided, however, that any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other parties in the manner set forth hereinabove.

11. This document may be signed in one or more counterparts, each of which shall constitute an original and collectively shall constitute one and the same agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

TENANT:  
GRANITE CITY FOOD & BREWERY LTD.

By: [Signature]  
Its: CFO

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF HENNEPIN     )

On the 27<sup>th</sup> day of September, 2010, before me, the undersigned officer, personally appeared James Gilbertson, who acknowledged himself to be the CFO of Granite City Food & Brewery, Ltd., a corporation, and that as such CFO, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as CFO.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Teri Tenes Staggeneyer  
Notary Public –  
My commission expires: 01/31/2015

**LANDLORD:  
GC OMAHA LIMITED PARTNERSHIP**

By: Dunham Equity Management, L.L.C.

Its: General Partner

By:   
Its: Donald A. Dunham, Jr.  
Managing Member

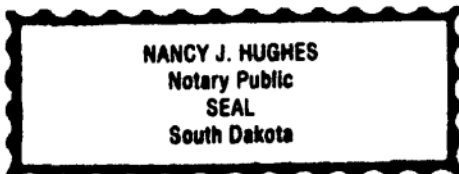
STATE OF SOUTH DAKOTA )

: SS

COUNTY OF MINNEHAHA )

On the 27th day of September, 2010, before me, the undersigned officer, personally appeared Donald A. Dunham, Jr., who acknowledged himself to be the Authorized Member of Dunham Equity Management, L.L.C., a South Dakota limited liability company, General Partner of GC Omaha Limited Partnership, a South Dakota limited partnership, and that as such Authorized Member, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the limited liability company by himself as Authorized Member.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



  
Notary Public - South Dakota

My commission expires: 9/30/2015

MORTGAGEE:  
GREAT WESTERN BANK

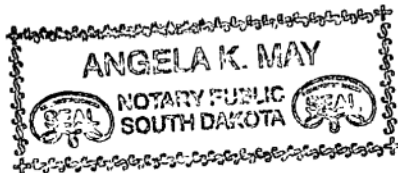
By: [Signature]  
Its Simon Dine President

STATE OF SOUTH DAKOTA )

) ss.

COUNTY OF MINNEHAHA )

On this the 17th day of September, 2010, before me, the undersigned officer, personally appeared Gerald Kruger, who acknowledged himself to be the SVP of Great Western Bank, a banking corporation, and that he, as such SVP, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as SVP.



Angela K. May  
Notary Public  
My commission expires: 5-24-2016



## EXHIBIT A

### LEGAL DESCRIPTION

A legal description of a portion of Lot 2, Westroads Replat 2, an addition to the City of Omaha, located in the Southeast Quarter of Section 16, Township 15 North, Range 12 East of the Sixth Principal Meridian, Douglas County, Nebraska and more particularly described by metes and bounds as follows: Referring to a found 1" pinched top pipe, being the North-Northeast Corner of Parcel C, Block 3, Westroads Addition, an addition to the City of Omaha, located in the Southeast Quarter of Section 16, Township 15 North, Range 12 East of the Sixth Principal Meridian, Douglas County, Nebraska and also said point is on the South Right-of-way Line of Nicholas Street; Thence S 89°48'31" W, (an assumed bearing) and on the North Line of Parcel C, Block 3 of said Westroads Addition and Lot 2, Westroads Replat 2, an addition to the City of Omaha, located in the Southeast Quarter of Section 16, Township 15 North, Range 12 East of the Sixth Principal Meridian, Douglas County, Nebraska or the South Right-of-way Line of said Nicholas Street, a distance of 1239.03 feet to a found chiseled 'x' in concrete, being the North-Northwest Corner of Lot 2 of said Westroads Replat 2 and also said point is the Point of Curvature; Thence S 15°49'26" W, a distance of 227.54 feet to a chiseled 'x' in concrete, being the POINT OF BEGINNING: Thence S 20°34'18" E, a distance of 178.20 feet to a chiseled 'x' in concrete; Thence S 69°25'42" W, a distance of 103.81 feet to a chiseled 'x' in concrete; Thence N 20°34'18" W, a distance of 178.20 feet to a chiseled 'x' in concrete; Thence N 69°25'42" E, a distance of 103.81 feet to the point of beginning and containing a calculated area of 18,500.00 square feet or 0.4247 acres, more or less.