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Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
11/20/2015 11:13:32.97



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THIS PAGE INCLUDED FOR INDEXING

PAGE DOWN FOR BALANCE OF INSTRUMENT

RETURN TO: Great Western Bank  
200 E 10<sup>th</sup> St, Ste 100  
Sioux Falls, SD 57104

CHECK NUMBER

0007405053

This Instrument Prepared By:  
Great Western Bank  
200 East 10<sup>th</sup> Street, Suite 100  
P.O. Box 2345  
Sioux Falls, SD 57101-2345  
Telephone: (605) 334-2548

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## **COLLATERAL ASSIGNMENT OF LEASE AGREEMENT**

THIS COLLATERAL ASSIGNMENT OF LEASE AGREEMENT (the "Assignment") is made and entered into this 30<sup>th</sup> day of September, 2015, by and between Great Western Bank, a financial institution chartered under the laws of the State of South Dakota ("Great Western"), and Granite City Restaurant Operations, Inc., a Minnesota corporation ("Borrower").

### **RECITALS**

WHEREAS, Westroads Mall, L.L.C., a Delaware limited liability company ("Landlord"), owns the real property which is legally described as:

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 1,239.03 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°25'52" W, a distance of 108.81 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°25'52" 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,

hereinafter referred to as (the "Property");

WHEREAS Landlord has leased the Property to Borrower pursuant to that certain Lease Agreement originally entered into between Landlord and Dunham Capital Management, LLC dated May 15, 2006, and subsequently assigned by Dunham Capital Management, LLC to GC Omaha Limited Partnership and by GC Omaha Limited Partnership to Borrower (the "Lease"), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference;

WHEREAS, Great Western has agreed to extend credit and other financial accommodations to the Borrower pursuant to a certain Loan Agreements and Promissory Note of even date herewith, providing for extensions of credit and other financial obligations in an original principal amount of \$1,080,000.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of and substitutions for such promissory note and loan agreement (collectively, the "Loan"), all to be secured, in part, by an assignment to Great Western of all of Borrower's right, title and interest in the Lease and the Property pursuant to this Assignment.

NOW, THEREFORE, for and in consideration of the covenants and provisions herein contained, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Landlord, Borrower, and Great Western agree as follows:

1. Assignment of Lease.

a. Borrower does hereby sell, grant, assign, endorse and transfer to Great Western, its successors and assigns, as collateral, all of the right, title and interest of Borrower in, to and under the Lease to Great Western. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Great Western of all of Borrower's right, title and interest in, to and under the Lease.

b. Great Western shall have the right, but no obligation, to cure any default by Borrower, including, without limitation, the payment of Lease rent to Landlord, to protect Great Western's interest in the Loan or the collateral securing the Loan, including, without limitation, the Lease; provided however, that curing such default, including, without limitation, payment by Great Western of Lease rent shall not be assumption by Great Western of the obligations of the Lease.

c. Until Great Western gives notice to Borrower and Landlord of Great Western's exercise of its rights under this Assignment, which notice may only be given in

the event of a default by Borrower in its obligations to Great Western (beyond any applicable cure period), Borrower shall have all rights, power and authority granted to Borrower under the Lease (except as otherwise limited by any other provision of this Assignment or any of the related loan documents). The permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under the Lease, shall terminate at Great Western's option in the event of a default by Borrower in its obligations to Great Western (beyond any applicable cure period), by Great Western giving notice of the same to Borrower and Landlord. Upon such termination, Great Western shall have all rights, powers and authority granted under the Lease and this Assignment, and Borrower consents to and authorizes Landlord to deal directly with Great Western.

d. Borrower acknowledges and agrees that the exercise by Great Western, either directly or by a receiver, of any of the rights conferred under this Assignment, shall not be construed to make Great Western, a creditor in possession of the Property as long as Great Western has not itself taken possession of the Property. The acceptance by Great Western of this Assignment shall not at any time or in any event obligate Great Western to take any action under this Assignment or to expend any money or incur any expenses. Borrower agrees that Great Western shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation with regard to the Property except after Great Western's actual taking possession of the Property. Prior to Great Western's actual taking possession of the Property, Great Western shall not (i) be obligated to perform any of the terms, covenants and conditions contained in the Lease; (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Property; or (iii) be responsible for the operation, control, care, management or repair of the Property or any portion thereof. The execution of this Assignment by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Landlord and/or Borrower, as the case may be, prior to Great Western's such taking of possession.

e. In the event of any default by the Borrower under the Lease (beyond any applicable cure period) that is personal to the Borrower or otherwise that Great Western is without the legal power to cure by payment or performance and that would otherwise result in the termination of the Lease, (i) such default shall, upon Great Western's election (exercisable by written notice to the Landlord), result in an assignment of the Lease to Great Western or Great Western's designee, (ii) the Landlord shall permit Great Western, or such designee of Great Western, to take possession of the Property on or before the date on which the Lease would otherwise have terminated, (iii) the Landlord shall recognize Great Western or such designee as the Borrower under the Lease, and (iv) the Lease shall continue in full force and effect with the same terms and conditions (including, without limitation, the same rent and the same unexpired term of the Lease as existed on the day immediately preceding the day upon which the Lease would have expired by virtue of such default).

f. Great Western may exercise all of the Borrower's rights under the Lease if the Borrower fails to exercise any such right; provided, however, that Great Western shall

be required to perform the Borrower's obligations under the Lease only if and to the extent Great Western acquires the Borrower's interest under the Lease through foreclosure or power of sale, deed or assignment in lieu foreclosure or the exercise of any similar remedy by Great Western (a "Foreclosure Transfer"), or enters into a direct lease with the Landlord.

2. Access to Leased Premises. In the event of a default by Borrower in its obligations to Great Western (beyond any applicable cure period), Landlord hereby covenants and agrees to allow Great Western, its agents, representatives, employees, and assigns, reasonable access to the Property for purposes of recovering, inspecting, maintaining, transporting, storing, preparing for sale, or conducting a sale of any collateral belonging to Borrower located on the Property, including without limitation, any of Borrower's inventory of livestock, feed, or supplies located or stored on the Property. Great Western's right to access the Property shall be after reasonable notice and during normal business hours, unless otherwise agreed. Great Western shall compensate Landlord for any costs incurred in connection with providing Great Western with access to the Property. Borrower acknowledges and agrees that Great Western shall not be considered to be a creditor in possession of the Property solely as a result of Great Western accessing the Property for purposes of removing its collateral from the Property.

3. Intentionally Omitted.

4. Warranties and Representations. Borrower represents and warrants to Great Western as follows:

a. The Lease has been duly executed and delivered and the Lease is in full force and effect in its initial term which expires on February 28, 2027. In addition to the initial term, Borrower has the right, provided it is not then in default, to renew the Lease for two additional terms of five years each on the same terms and conditions as provided during the initial term.

b. Except as set forth on Exhibit A, the Lease has not been modified, amended, or assigned to any other party.

c. There are no agreements, written or oral, other than those contained in the Lease, between Landlord and Borrower with respect to the Lease.

d. Borrower has materially complied with all laws, rules, regulations and ordinances applicable to Borrower, Borrower's business operation, and the Property, and Borrower is not in default in the performance of any of Borrower's obligations under the Lease as of this date.

e. To the knowledge and belief of Borrower, Landlord is not in default in the performance of any of its obligations under the Lease as of this date.

5. Borrower's Additional Obligations. So long as any principal, interest or other charges are owed by Borrower to Great Western with respect to or as a part of the Loan, Borrower agrees as follows:

a. The Lease shall not be modified in any manner or surrendered, cancelled, or terminated by Borrower without Great Western's prior written consent, which consent shall not be unreasonably withheld, delayed, or conditioned, and Borrower shall exercise its renewal options under the Lease in a timely manner.

b. Borrower shall give prompt written notice to Great Western if any damage or destruction of the Property by fire or other casualty occurs or if Borrower receives notice of any pending or threatened condemnation proceedings against or affecting the Property.

c. In the event that Borrower breaches the terms and conditions of the Lease, this Assignment, or any of the related loan documents, or that any of Borrower's representations, warranties or covenants herein are breached, unfulfilled, or materially misleading, or that Borrower has received a notice of default from Landlord, Borrower shall give prompt written notice of the same to Great Western.

d. Borrower will not, without the prior written consent of Great Western, (i) transfer, assign or sublet all or any part of its interest in the Property, (ii) assign or transfer any interest in the Lease, or (iii) create or cause or allow the creation of any lien, mortgage, assignment, charge, or any other encumbrance with regard to the Property.

6. Great Western's Expenditures. If any action or proceeding is commenced that would materially affect Great Western's interest in the Loan or the collateral securing the Loan, or if Borrower fails to comply with any provision of this Assignment, the Lease, or any of the related documents, including but not limited to Borrower's failure to discharge or pay when due any amounts Borrower is required to discharge or pay under this Assignment, the Lease, the Loan, or any documents, instruments, certificates or agreements executed in conjunction therewith or pursuant thereto, Great Western on Borrower's behalf may (but shall not be obligated to) take any action that Great Western deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances, Lease rents, and other claims, at any time levied or placed on any collateral securing the Loan and paying all costs for insuring, maintaining and preserving any such collateral. All such expenditures incurred or paid by Great Western for such purposes will then bear interest at the rate charged pursuant to the Loan from the date incurred or paid by Great Western to the date of repayment by Borrower. All such expenses will become a part of the indebtedness (as such term is used and defined in the related loan documents) and, at Great Western's option, will: (a) be payable on demand; (b) be added to the balance of the Loan and be apportioned among and be payable with any installment payments to become due during the remaining term of the Loan or the related promissory note; or (c) be treated as a balloon payment which will be due and payable at the Loan or Note's maturity.

7. Release of Assignment. From and after payment in full of the Loan secured by this Assignment, and the recordation of releases or satisfactions thereof, without the transfer of the Property to Great Western as a purchaser, this Assignment shall become void and of no further force or effect.

8. Modifications. This Assignment may not be modified other than by an agreement in writing signed by Great Western or its successors and assigns.

9. Severability. If any term or provision of this Assignment shall to any extent be held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each term and provision hereof shall be valid and enforceable to the fullest extent permitted by law.

10. Applicable Law. This Assignment shall be governed by and construed in accordance with the laws of the State of South Dakota without regard to its choice of law principals. Any dispute having its origins in the provisions of this Assignment shall be heard in the courts of the State of South Dakota situated in Minnehaha County, South Dakota.

11. Binding Effect. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

12. Remedies. All rights and remedies herein conferred may be exercised whether or not foreclosure proceedings are pending. Great Western shall not be required to resort first to the security of this Assignment, any guarantees, or any of the related documents before resorting to the security of the other, and Great Western may exercise the provisions and remedies of this Assignment and of the related documents concurrently or independently and in any order of preference.

13. Drafting Presumption. The parties agree that they participated in the drafting of this Assignment and, in the event that any dispute arises in the interpretation or construction of this Assignment, no presumption shall arise that either one party or the other drafted this Assignment.

14. Notices. All notices and other communications to any party shall be in writing and shall be delivered by hand or overnight courier service, or mailed by certified mail:

To Great Western      Great Western Bank  
Attention: Aaron Tribble  
100 E. 10<sup>th</sup> Street, Suite 100  
P.O. Box 2345  
Sioux Falls, SD 57101-2345  
Telephone: (605) 334-2548

To Borrower:          Granite City Restaurant Operations, Inc.  
Attn: Chief Financial Officer  
701 Xenia Ave., Suite 120

Minneapolis, MN 55416  
Telephone: (952) -646-2307

To Landlord: Westroads Mall, L.L.C.  
c/o Westroads Mall  
110 North Wacker Drive  
Chicago, IL 60606  
Attention: Law/Leasing Administration Department  
Telephone: (312) 960-5734

15. Waiver. No waiver shall be deemed to be made by any party of any of its rights hereunder unless the same shall be in writing signed on behalf of such party, and each such waiver, if any, shall be a waiver only with respect to the specific matter or matters to which the waiver relates and shall in no way impair the rights of such party or the obligations of any other party in any other respect at any other time.

16. No Third-Party Beneficiary. The terms and provisions of this Assignment shall be for the sole benefit of the parties hereto and their respective successors and assigns, and no other person, firm, entity or corporation shall have any right, benefit, priority or interest under or because of this Assignment.

17. Attorneys' Fees and Expenses. Borrower agrees to pay upon demand all of Great Western's costs and expenses, including Great Western's attorneys' fees and Great Western's legal expenses incurred in connection with the enforcement of this Assignment. Great Western may hire or pay someone else to help enforce this Assignment, and Borrower shall pay the costs and expenses of such enforcement. Costs and expenses include Great Western's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also shall pay all court costs and such additional fees as may be directed by the court.

18. Memorandum of Assignment. In conjunction with the execution of this Assignment, Great Western may record a Memorandum of Assignment of Lease in the Office of the County Recorder of Douglas County, Nebraska evidencing the existence of this Assignment. In addition, Great Western may at its option record a Deed of Trust evidencing the lien of Great Western in the property and assets of Borrower located on the Property.

*The remainder of this page is intentionally left blank.*

*Signature page follows.*



IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment as of the date and year first above written.

GREAT WESTERN BANK

Michael Gough, CCO  
By: Michael Gough  
Its: Chief Credit Officer

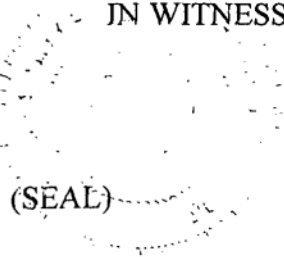
GRANITE CITY RESTAURANT OPERATIONS,  
INC.

\_\_\_\_\_  
By: Jeff Rager  
Its: Chief Financial Officer

STATE OF SOUTH DAKOTA     )  
  : SS  
COUNTY OF MINNEHAHA     )

On this, the 29<sup>th</sup> day of September, 2015, before me, the undersigned officer, personally appeared Michael Gough, who acknowledged himself to be the Chief Credit Officer of Great Western Bank, a banking corporation chartered under the laws of the State of South Dakota, and that he, as such Chief Credit Officer being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Great Western Bank by himself as Chief Credit Officer.

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



Ryan A. [Signature]  
Notary Public  
My Commission Expires: June 7, 2018

STATE OF MINNESOTA     )  
  : SS  
COUNTY OF \_\_\_\_\_ )

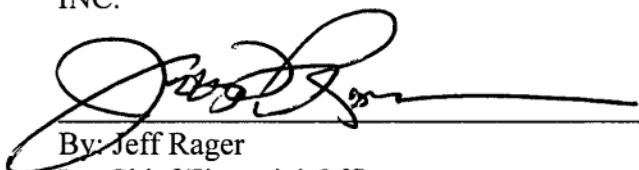
On this, the \_\_\_\_\_ day of September, 2015, before me, the undersigned officer, personally appeared Jeff Rager, who acknowledged himself to be the Chief Financial Officer of

IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment as of the date and year first above written.

GREAT WESTERN BANK

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

GRANITE CITY RESTAURANT OPERATIONS,  
INC.

  
By: Jeff Rager  
Its: Chief Financial Officer

STATE OF SOUTH DAKOTA     )  
  : SS  
COUNTY OF MINNEHAHA     )

On this, the \_\_\_\_\_ day of September, 2015, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of Great Western Bank, a banking corporation chartered under the laws of the State of South Dakota, and that he, as such \_\_\_\_\_ being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Great Western Bank by himself as \_\_\_\_\_.

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

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF MINNESOTA     )  
  : SS  
COUNTY OF Hennepin     )

On this, the 30<sup>th</sup> day of September, 2015, before me, the undersigned officer, personally appeared Jeff Rager, who acknowledged himself to be the Chief Financial Officer of

Granite City Restaurant Operations, Inc., a Minnesota corporation, and that he, as Chief Financial Officer being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the company by himself as Chief Financial Officer.

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

*[Handwritten Signature]*

(SEAL)

Notary Public

My Commission Expires: 1/31/16

