

**Subordination Non-Disturbance and Attornment Agreement**

This subordination, non-disturbance and attornment agreement (agreement) is made and entered into this 10 day of Dec., 2012, by and between 1<sup>st</sup> Bank, division of Glacier Bank (lender), Barber Brothers, LLC & Springville 2012, LLC (owners) Springville 400 South, LLC (landlord) and Art City Coffee, LLC (tenant).

Tenant, or its predecessor in interest, entered into a lease with a commencement date of April 1, 2008, First Amendment thereto dated April 28, 2008, and Lease Commencement Acknowledgement and Acceptance of Delivery dated May 29, 2008 (the lease), wherein Tenant agreed to rent space from Landlord, or its predecessor in interest, in the commercial building constructed on real property owned by landlord in Utah County, Utah (the premise). The real property is legally described on Exhibit "a" attached to and incorporated by reference in this agreement.

- F-83367 UT
- A. As collateral security for the performance by Owner of certain obligations owing to Lender, including, without limitations, the obligations created under that terms of a Term Loan Promissory Note, dated Dec. 10, 2012, and all the instruments and documents relating thereto (collectively the indebtedness), Owner has granted to Lender a security interest in the Premise and the Lease.
  - B. As a condition to granting the Indebtedness to Owner, Lender requires that Tenant, among other things, execute this Agreement.

**Agreement:**

Now, Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender, Owner, Landlord, and Tenant agree as follows:

1. **Acknowledgment of Tenant Rights Under the lease.** Each of Landlord and Tenant hereby acknowledge hereby acknowledge that Tenant is the original tenant under the lease. Moreover, Landlord and Tenant acknowledge that Tenant is entitled to all of the rights, benefits, privileges and responsibilities as the tenant under the lease.
2. **Agreement to Pay Rent to Lender:** Upon notice from Lender of a default by Owner of the Indebtedness, Tenant will pay all rental payments, charges, assessments and other amounts due under the Lease directly to Lender when such payments are due and at such place as Lender may direct. Tenant agrees that it will not assert against Lender any setoff, defense, or counterclaim which Tenant may claim against Landlord under the Lease, except to the extent Lender has received the benefit of the act Tenant giving rise to a right of setoff or a defense or counterclaim (such as a repair made by Tenant which was the obligation of Landlord under the Lease), and such right of setoff is available to Tenant under the terms of the Lease. Notwithstanding Lender's exercise of the foregoing rights to receive payments from Tenant, Lender shall not be responsible for Landlord's duties and obligations under the Lease, unless Lender's interest in the Premises acquires title to the land upon which the Premises are now located and elects, pursuant to paragraph 6 below, to have the Tenant attorn to Lender or such other new owner of the premises.
3. **Subordination:** Tenant hereby subordinates the leasehold estate created by the lease to the lien and encumbrance of the Term Loan Deed of Trust, Assignment of Rents and Leases

recorded in favor of 1<sup>st</sup> Bank, Division of Glacier Bank, recorded as entry # 109818:/2012 in the office of the Utah County recorder's office, as the same may be amended, supplemented, modified, renewed, or replaced after the date of this agreement. The Deed of Trust encumbers the Premises for the benefit of Lender as security for the Indebtedness.

4. Non-Disturbance: In the event of any foreclosure of the Deed of Trust or any conveyance in lieu of foreclosure, provided Tenant is not then in default beyond any grace period under the lease and that the lease is then in full force and effect, lender shall not terminate the lease, join tenant in foreclosure proceedings, or disturb tenant's possession of the premises, and the lease shall continue in full force and effect as a direct lease between tenant and lender.
5. Attornment by Tenant: If, at any time during the term of the lease, Owners interest in the premises shall be foreclosed, tenant agrees, at the election and upon the demand of any owner of the premises, including, without limitation, the holder or beneficiary of any mortgage or trust deed affecting the lease, to attorn to any such owner, mortgagee, beneficiary or holder (collectively the purchaser) and recognize such purchaser as landlord upon the terms and conditions set forth in the lease for the remainder of the lease term. The foregoing shall inure to the benefit of any purchaser; and shall be self-operative upon any such demand without requiring any further instrument to give effect to these provisions. Tenant however, upon demand of any purchaser agrees to execute from time to time an instrument in confirmation of the foregoing provisions, satisfactory to tenant and to any such owner, mortgage, beneficiary or holder, in which Tenant shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy, which shall be the same as those set forth in the lease and shall apply to the remainder of the lease term.
6. Termination of Lease: Tenant and Landlord agree that neither shall seek to terminate the lease by reason of any act or omission of the other until written notice is given to Lender, by registered mail or certified mail, setting forth the grounds, upon which such termination is sought. Notice should be mailed to the lender at PO Box 870, Morgan, Utah 84050 at least 30 days before the effective date of any termination. During such 30 day period, lender shall have the right, but not the obligation, to remedy or cure such default.
7. General Provisions: (a) This agreement shall be binding on the inure to the benefit of the parties hereto and their respective successors and assigns. This agreement shall be construed and interpreted in accordance with the laws of the state of Utah, without giving effect to principles of conflicts of laws. This agreement may be amended only in writing executed by all parties. This agreement may be executed in several counterparts, which when taken together shall constitute one and the same agreement.

(b) Except as otherwise provided in this agreement, whenever Lender, Landlord or Tenant desire to give or serve any notice, demand, request or other communication with respect to this agreement, each notice shall be in writing and shall be effective only if the notice is mailed and addressed as follows:

If to the Lender: 1<sup>st</sup> Bank, Division of Glacier Bank  
PO Box 870  
Morgan, Utah 84050

If to the Landlord /  
Owner Mark Papanikolas  
3098 Highland Dr, Suite 325  
SLC, Utah 84106

If to the Tenant: Art City Coffee, LLC  
860 E 4500 S Suite 302  
SLC, Utah 84107

(c) The deed of trust shall not cover or encumber and shall not be construed as subjecting in any manner to the lien thereof any of tenant's improvements or trade fixtures, furniture, equipment or other personal property at any time placed or installed on the premise. In the event the premise or any part thereof shall be taken for public purpose by condemnation or transfer in lieu thereof or the same are damaged or destroyed, the rights of the parties to any condemnation award or insurance proceeds shall be determined and controlled by the applicable provisions of the Deed of Trust.

(d) Tenant shall not be joined as a party defendant in any action or proceedings which may be instituted or taken solely by reason or under any default by landlord in the performance of the terms, covenants, conditions and agreements set forth in the Deed of Trust.

(e) This agreement may be recorded at the option of the Lender.



Dated effective as of the date first above written.

Owner:  
Barber Brothers LLC / Springville 2012, LLC  
(also in behalf of Landlord)

BY: Sam J. Barber  
Sam J. Barber

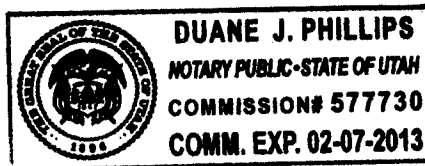
By: Mark E. Papanikolas  
Mark E. Papanikolas

STATE OF UTAH )  
: ss.  
COUNTY OF Salt Lake

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of Dec 2012,  
by Sam J. Barber who is Member of Barber  
Brothers, LLC and by Mark E. Papanikolas who is Member of Springville  
2012, LLC

Duane J. Phillips  
Notary Public  
Residing at Salt Lake County, Ut

My commission Expires:  
2/7/13





**EXHIBIT A  
TO  
SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT**

(Legal Description of Real Property)

The real property referenced in the foregoing instrument is located in Utah County, State of Utah, and is more particularly described as:

**Parcel 1:**

**A Portion of the Southeast Quarter of Section 31, Township 7 South, Range 3 East, Salt Lake Base and Meridian, located in Springville, Utah, more particularly described as follows:**

Beginning at a point on the Northerly right-of-way line of a 500 South/Frontage Road (1950 West) as shown and described on a street dedication Plat recorded as Entry No. 2566:01; Map #8895, according to the Official Records of Utah County, said point being located North 89°11'58" East along the Section line 574.56 feet and North 479.12 feet from the South Quarter Corner of Section 31, Township 7 South, Range 3 East, Salt Lake Base and Meridian; thence North 00°47'16" East 166.32 feet; thence West 44.64 feet; thence North 41°28'09" East 74.61 feet; thence Northeasterly along the Arc of a 140.00 foot radius non-tangent curve to the left (radius bears: North 49°52'21" West) 97.17 feet through a Central Angle of 39°46'00" (chord: North 20°14'39" East 95.23 feet); thence North 00°21'39" East 3.32 feet to the Southerly right-of-way line of State Road 77 (400 South), the previous 3 (three) courses along said frontage road; thence South 89°37'10" East 216.44 feet along State Road 77; thence along the Arc of a 28.50 foot radius curve to the right 44.73 feet through a Central Angle of 89°55'06" (chord: South 44°39'30" East 40.28 feet); thence South 00°18'03" West 275.58 feet, the Previous 2 (two) courses along a street dedication of 1750 West recorded as Entry No. 2056:2001, Map #8892, according to the Official records of Utah County; thence along a street dedication of a new frontage road recorded as Entry No. 2566:2001, Map #8895, the following 3 (three) courses; thence along the Arc of a 13.00 foot radius curve to the right 20.53 feet through a Central Angle of 90°29'13" (chord: South 45°32'39" West 18.46 feet); thence North 89°12'44" West 270.18 feet to the point of beginning.

Less and Excepting from Parcel 1, that portion of subject property conveyed by that certain Warranty Deed recorded October 14, 2009 as Entry No. 108766-2009 of Official Records, being a parcel of land in fee, being part of an entire tract of property, situate in the Southeast Quarter of the Southeast Quarter of Section 31, Township 7 South, Range 3 East, Salt Lake Base and Meridian, and Described as follows:

Beginning at a point 800.58 feet North 0°16'02" West along the section line and 825.92 feet East from the South quarter corner of said Section 31; and running thence S37°13'01"E 61.27 feet; thence N00°18'03"E 20.08 feet to a point on a 28.5 foot radius curve to the left; thence 40.35 feet along said curve the chord of which bears N44°39'34"W for 40.28 feet; thence N89°37'10"W 8.85 feet to the point of beginning.

**Parcel 2:**

Together with those rights accrued under that certain Amended and Restated Reciprocal Easement Agreement recorded on June 17, 2003, as Entry No. 91359:2003 of Official Records, and in that certain First Amendment to Amended and Restated Reciprocal Easement Agreement recorded on November 7, 2007, as Entry No. 158830:2007 of Official Records.

*tax parcel 23:030:0084*