

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

U.S. Bank National Association,
a national banking association
9918 Hibert Street, Suite 301
San Diego, CA 92131
Loan 1 of 2

Space Above This Line For Recorder's Use

2204996
15-36-427-025

**SUBORDINATION, ATTORNMENT AND
NON-DISTURBANCE AGREEMENT
(NO SUBTENANT)**

NOTICE: THIS SUBORDINATION OF LEASE RESULTS IN THE LEASEHOLD ESTATE IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS AGREEMENT, made this **23rd** day of **August, 2006** by and between the following parties is based upon the recitals set forth.

PARTIES:

A. "Owner" **Left Fork, LLC.** is the owner of that real property located at **68 West 3900 South, Salt Lake City, Utah 84107**, APN No. **15-36-427-025**, and more particularly described in attached **Exhibit "A"** (hereinafter the "Real Property") which is improved as a **commercial building**.

B. "Lender" **U.S. Bank National Association**, which made a loan to Owner which is secured by a deed of trust/mortgage encumbering the Real Property.

C. "Tenant" **Left Fork Grill, LLC.** is a tenant of Owner pursuant to a written lease dated **August 1, 2006**. Tenant occupies that portion of the Property described as **68 West 3900 South, Salt Lake City, Utah 84107**.

RECITALS

1. Lender has made a loan to Owner for, among other things, the purchase of the Real Property, which loan is secured by a Deed of Trust/Mortgage encumbering the Real Property. As a condition of the loan, Lender required that the Deed of Trust/Mortgage be, and remain, superior to any other interest in or encumbrance upon the Real Property.

2. Owner, as landlord, has executed the Lease in favor of Tenant. The interest of Tenant under the Lease is reflected in that Memorandum of Lease recorded _____ as Document No. _____ in the Official Records of the County of **Salt Lake, State of Utah**. Owner and Tenant agree that the Lease, and the interests of

Owner and Tenant under the Lease, shall be and shall remain subordinate to the interests of Lender under the Deed of Trust/Mortgage on the terms and conditions set forth in this Agreement.

3. The parties agree that Lender would not have made the loan to Owner which is secured by, among other things, the Deed of Trust/Mortgage without the subordination of the interests of Tenant in the Real Property so that such interests are junior and inferior to the interests of Lender under the Deed of Trust/Mortgage.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and in order to induce Lender to make the loan above referred to, it is hereby declared, understood and agreed as follows:

1. The Deed of Trust/Mortgage securing a note in favor of Lender, and any renewals, modifications, amendments or extensions thereof, shall unconditionally be and remain at all times a lien or charge on the Real Property prior and superior to the Lease, to the leasehold estate created thereby and to all rights and privileges of Tenant or its successors thereunder, and said Lease, the leasehold estate created thereby together with all rights and privileges of Tenant thereunder are hereby subjected, and made subordinate, to the lien or charge of the Deed of Trust/Mortgage in favor of Lender.

2. This agreement shall be the whole and only agreement with regard to the subjection and subordination of the Lease and the leasehold estate created thereby together with all rights and privileges of Tenant thereunder to the lien or charge of the Deed of Trust/Mortgage in favor of Lender above referred to and shall supersede and cancel, but only insofar as would affect the priority between the Lease and the Deed of Trust/Mortgage hereinbefore specifically described, any prior agreements as to such subjection or subordination, including, but not limited to, those provisions, if any, contained in the Lease above described, which provide for the subjection or subordination of said Lease and the leasehold estate created thereby to a deed or deeds of trust or to a mortgage or mortgages. Tenant declares, agrees and acknowledges that:

(a) Lender in making disbursements pursuant to any loan or escrow agreements, between Owner and Lender for the disbursement of the proceeds of Lender's Loan is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part; and

(b) Tenant intentionally and unconditionally subjects and subordinates the Lease above described, the leasehold estate created thereby together with all rights and privileges of Tenant thereunder in favor of the lien or charge upon said land of the

Deed of Trust/Mortgage in favor of Lender above referred to and understands that in reliance upon, and in consideration of, this subjection and subordination specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this subjection and subordination.

3. Non-Disturbance Agreement: Despite the subordination under the above, Tenant's peaceful and quiet possession of the Leased Premises shall not be disturbed and Tenant's rights and privileges under the Lease shall not be diminished by Lender's exercise of its rights or remedies under the Deed of Trust and any related loan documents, provided that Tenant:

(a) is not in default in the payment of the rent or additional rent or in the performance of any of the other material terms, covenants, or conditions of the Lease that Tenant is required to perform (beyond any period given Tenant under the Lease to cure such default);

(b) has not canceled or terminated the Lease (without regard to whether landlord or Tenant is then in default under the Lease), nor surrendered, or abandoned the Leased Premises;

(c) has not made any advance payment of rent or additional rent (except as specifically required by the terms of the Lease); and

(d) has complied with any direction of Lender to make payments of rent directly to Lender pursuant to rights of Lender to such rents under the Deed of Trust/Mortgage.

4. Tenant shall not be named or joined in any foreclosure, trustee's sale, or other proceeding to enforce the Deed of Trust/Mortgage and/or the Loan Documents unless such joinder shall be legally required to perfect the foreclosure, trustee's sale, or other proceeding. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

5. Attornment

(a) If Lender shall succeed to Owner's interest in the Real Property or the Leased Premises by foreclosure of the Deed of Trust/Mortgage, by deed in lieu of foreclosure, or in any other manner, Tenant shall be bound to Lender under all the terms, covenants and conditions of the Lease for the balance of its term with the same force and effect as if Lender were the landlord under the Lease. Tenant shall be deemed to have full and complete attornment to, and to have established direct privity between Tenant and:

(i) Lender when in possession of the Real Property or the Leased Premises;

(ii) a receiver appointed in any action or proceeding to foreclose the Deed of Trust;

(iii) any party acquiring title to the Real Property or the Leased Premises; or

(iv) any successor to landlord.

(b) Tenant's attornment is self-operating, and it shall continue to be effective without execution of any further instrument by any of the parties to this Agreement or the Lease. Lender agrees to give Tenant written notice if Lender has succeeded to the interest of the landlord under the Lease. Subject to section 6, the terms of the Lease are incorporated into this Agreement by reference.

(c) If the interests of landlord under the Lease are transferred by foreclosure of the Deed of Trust, deed in lieu of foreclosure, or otherwise, to a party other than Lender ("Transferee"), in consideration of, and as condition precedent to, Tenant's agreement to attorn to any such Transferee, Transferee shall be deemed to have assumed all terms, covenants, and conditions of the Lease to be observed or performed by landlord from the date on which the Transferee succeeds to landlord's interests under the Lease; provided that the liability of any Transferee to Tenant under the terms of the Lease shall be limited in the same manner as Lender's liability is limited under section 6.

(d) If the interests of landlord under the Lease are transferred by foreclosure of the Deed of Trust, deed in lieu of foreclosure, or otherwise, the Transferee shall have the right to collect any due, but unpaid, obligations owing under the Lease, including any accrued, but unpaid rent

6. Lender as landlord. If Lender shall succeed to the interest of landlord under the Lease, Lender shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from the date of Lender's succession to the landlord's interest under the Lease, have the same remedies against Lender for breach of the Lease that Tenant would have had under the Lease against landlord; provided, however, that despite anything to the contrary in this Agreement or the Lease, Lender or any Transferee, as successor to the landlord's interest, shall not be:

(a) liable for any act or omission of any previous landlord (including Owner), provided that the foregoing shall not be construed to limit Tenant's right to possession of the Leased Premises for the entire term of the Lease, as extended, on the terms and conditions of the Lease;

(b) subject to any offsets or defenses that Tenant might have had against any previous landlord (including Owner);

(c) liable for any security deposit not received by Lender, or bound by any rent or additional rent that Tenant may have paid for more than one month in advance to any previous landlord (including Owner);

(d) bound by an amendment or modification of the Lease made without Lender's written consent, which consent shall not be unreasonably withheld or delayed, so long as Tenant pays to Lender a reasonable amount to defer the costs, including attorney's fees, incurred in response to a request for such consent;

(e) bound by any covenant to undertake or complete any construction of the Real Property or the Leased Premises, or any portion of them.

Lender shall be liable under the Lease only during such time as it is the owner of the Real Property and the landlord under the Lease. Upon Lender's transfer of the Real Property, or such portion of the Real Property as encompasses the Leased Premises, Lender shall be released and exonerated from any liability under the Lease for any acts or omissions occurring after such transfer and Tenant agrees to look solely to the transferee of Lender for performance of the obligations of the landlord under the Lease. Tenant further agrees that it will, within 60 days of notice of the transfer of Lender's interest in the Real Property, provide Lender with a list of all claims that exist against Lender as a result of its status as landlord. Failure to specify a claim in a timely manner shall forever bar tenant from bringing such claim against Lender.

7. Notice of Default, Right To Cure. Tenant agrees concurrently to give Lender a copy of any written notice of any default given by Tenant to landlord under the Lease. Tenant agrees that, before it exercises any of its rights or remedies under the Lease, Lender shall have the right, but not the obligation, to cure the default within the same time given landlord in the lease to cure the default, plus an additional thirty (30) days, or if no time period is given to landlord in the Lease to cure, then within a reasonable time. If any such asserted default constitutes a legal basis for Tenant to cancel its obligations under the Lease, Tenant agrees that the Lease shall not be canceled or terminated until Lender shall have had a reasonable period of time within which to (a) obtain possession of the Real Property or the Leased Premises, and (b) cure such default. Tenant also agrees to use its best efforts to give Lender notice of any material casualty damage to the Leased Premises.

8. Assignment of Rents. If Owner defaults in its performance of the terms of the Deed of Trust/Mortgage, Tenant agrees to recognize the Assignment of Rents made by Owner to Lender and shall pay to Lender, as assignee, from the time Lender gives Tenant written notice that Owner is in default under the terms of the Deed of Trust/Mortgage Deed of Trust/Mortgage, the rents under the Lease, but only those rents that are due or that become due under the terms of the Lease after written notice by Lender. Payments of rents to Lender by Tenant under the assignment of rents upon landlord's default shall continue until the first of the following occurs:

(a) No further rent is due or payable under the Lease;

(b) Lender gives Tenant notice that Owner's default under the Deed of Trust/Mortgage has been cured and instructs Tenant that the rents shall thereafter be payable to landlord; or

(c) The lien of the Deed of Trust/Mortgage has been foreclosed and the purchaser at the foreclosure sale (whether Lender or a Transferee) gives Tenant written notice of the foreclosure sale. On giving written notice, the purchaser shall succeed to landlord's interests under the Lease, after which time the rents and other benefits due landlord under the Lease shall be payable to the purchaser as the owner of the Mortgage Premises

9. Tenant's Reliance. Tenant shall be entitled to full credit under the Lease for any rents paid to Lender in accordance with section 9 to the same extent as if such rents were paid directly to landlord. Any dispute between Lender (or Lender's Transferee) and landlord as to the existence of a default by landlord under the terms of the Deed of Trust, the extent or nature of such default, or Lender's right to foreclosure of the Deed of Trust, shall be dealt with and adjusted solely between Lender (or Transferee) and landlord, and Tenant shall not be made a party to any such dispute (unless required by law).

10. Lender's Status. Nothing in this Agreement shall be construed to be an agreement by Lender to perform any covenant of the landlord under the Lease unless and until it obtains title to the Real Property or the Leased Premises by power of sale, judicial foreclosure, or deed in lieu of foreclosure, or obtains possession of the Real Property or the Leased Premises under the terms of the Loan Documents. Lender shall not be deemed a "mortgagor in possession" by virtue of its exercise of its rights to the rents or any other right under this Agreement.

11. Cancellation of Lease. Tenant agrees that it will not cancel, terminate, or surrender the Lease, except at the normal expiration of the Lease term or as provided in the Lease, or enter into any agreement, amendment, or modification of the Lease except any agreement, amendment, or modification contemplated by or provided by the terms of the Lease unless Lender gives its prior written consent.

12. Limited Waiver of Due on Sale: To the extent the Deed of Trust/Mortgage contains a "due on sale" clause which would give Lender the right to declare Tenant's obligation to Lender due and payable, Lender waives such "due on sale" clause for purposes of the Lease. This waiver is a one time waiver and does not obligate Lender to any other waiver of the "due on sale" clause.

13. General Terms:

- a. This Agreement shall become effective only upon the execution by all of the parties hereto.
- b. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. The provisions of this Agreement shall be binding upon any guarantor of landlord's obligations under the lease.
- c. Tenant acknowledges that it is relying solely on its decision and the advice of its own legal counsel and other consultants in entering into this Agreement, and that neither the Bank/Lender nor any of its respective

employees, agents, contractors, attorneys, accountants or other representatives have provided any advice to Tenant in connection with this Agreement, any of its provisions or any of the transactions contemplated herein, or regarding any legal, financial, tax or other impact this Agreement may have to Tenant.

- d. Each Signatory shall execute any and all documents and perform any and all acts reasonably necessary or appropriate to consummate the terms and conditions set forth in this Agreement, provided, however, that this provision does not require any party to agree to provisions which are not part of the agreement.
- e. All representatives, warranties, covenants, agreements, terms and conditions made herein will survive the execution of this Agreement and all transactions contemplated hereunder.
- f. The descriptive headings of the several sections of this Agreement are inserted for convenience and will not be deemed to affect the meaning or construction of any of the provisions hereof.
- g. The parties agree that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement. The terms of this Agreement shall be interpreted consistent with the Loan Documents and the Lease, except as specifically modified by the terms set forth herein.
- h. The defined terms in this Agreement will apply equally to both the singular and the plural forms of the terms defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" when used in this Agreement will be deemed to be followed by the phrase "without limitation" The words "approval" and "notice" when used in this Agreement will be deemed to be preceded by the word "written." All references to "Exhibit" or "Exhibits" in this Agreement mean the exhibits attached hereto, the terms and conditions of which are made a part hereof. All references to "Section" or "Sections" in this Agreement mean the applicable section of this Agreement unless otherwise specified. To the extent applicable, the term "landlord" shall refer to a "lessor" or similarly situated person and the term "tenant" shall refer to a lessee or similarly situated person.
- i. This Agreement constitutes the entire agreement between the parties hereto with respect to the priority of the Lease and the obligations of Lender as landlord under the Lease, and supersedes any other agreements, negotiations, communications, understandings and commitments whether written or oral, relating thereto. This Agreement may be modified only by a writing signed by all parties to this Agreement.

- j. If any one or more of the provisions contained in this Agreement for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.
- k. Time is of the essence in the execution and performance of this Agreement and each of its provisions.
- l. This Agreement shall be interpreted, construed and governed by the laws of the state set forth in the Promissory Note, if any, and if not so set forth, of the state set forth in the Deed of Trust/Mortgage. Any litigation arising from or relating to this Agreement shall be filed and prosecuted in a state or federal court located in the City of San Diego, County of San Diego, State of California.
- m. In the event of any litigation or other action to construe, interpret or enforce this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' and expert witness fees and costs.
- n. All notices to be given under this Agreement shall be in writing and either:
 - (a) Sent by priority overnight delivery by means of a nationally recognized overnight courier which provides for online (Internet) tracking of packages, in which case notice shall be deemed delivered one (1) business day after deposit with such courier, or
 - (b) By telecopy or similar means, if a copy of the notice is also sent by priority overnight delivery by means of a nationally recognized overnight courier which provides for online (Internet) tracking of packages, in which case notice shall be deemed delivered on transmittal by telecopier or other similar means, provided that a transmission report is generated reflecting the accurate transmission of the notice and the copy is also delivered.

Notice shall be given to the following persons on behalf of the parties and shall be deemed complete only if given to all the designated individuals:

Bank: Nancy Arden
VP – Portfolio
SBA Division
U. S. Bank National Association
9918 Hibert Street, 2nd Floor
San Diego, CA 92131
Tel: 858-536-4545, ext. 348
Fax: 858-877-4568

Owner: **Left Fork, LLC.**
5098 South Glendon Street
Murray, UT 84123

Tenant: **Left Fork Grill, LLC.**
68 West 3900 South
Salt Lake City, Utah 84107

NOTICE: THIS SUBORDINATION OF LEASE CONTAINS A PROVISION WHICH
ALLOWS THE PERSON OBLIGATED ON YOUR LEASE TO OBTAIN A LOAN A
PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN
IMPROVEMENT OF THE LAND.

Lender
U.S. Bank National Association

Owner:
Left Fork, LLC

By: 
Authorized Signor

By: 
Jeffrey A. Masten, Manager

Tenant:
Left Fork Grill, LLC.

By: 
Jeffrey A. Masten, Manager

(ALL SIGNATURES MUST BE NOTARIZED AND ACKNOWLEDGEMENTS ATTACHED)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego } ss.

On August 28, 2006, before me, Todd Santos, Notary Public

personally appeared Jenine Mason

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

Name(s) of Signer(s)

personally known to me

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Place Notary Seal Above

[Handwritten Signature]

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Subordination (no Substant)

Document Date: August 28, 2006 Number of Pages: 9

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Jenine Mason

- Individual
- Corporate Officer — Title(s): Vice President
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

EXHIBIT "A"

Parcel 1: (Fee Simple Interest)

Beginning at a point on the North right of way line of 3900 South Street, said point being North 89°44'50" East 163.98 feet from the Southwest corner of Lot 2, Block 16, Ten Acre Plat "A", Big Field Survey, and running thence North 0°15'11" West 127.47 feet; thence North 89°57'00" East 95.07 feet; thence South 0°03'00" East 127.14 feet to the North right of way line of 3900 South Street; thence South 89°44'50" West along said North line 94.62 feet to the point of beginning.

Parcel 1A: (Easement Estate Interest)

Together with a right of way:

Beginning at a point on the North right of way line of 3900 South Street, said point being North 89°44'50" East 188.98 feet from the Southwest corner of Lot 2, Block 16, Ten Acre Plat "A", Big Field Survey, and running thence North 0°01'33" West 245.88 feet; thence South 89°58'27" West 188.98 feet to the East right of way line of West Temple Street; thence North 0°01'33" West along said East line 20.00 feet; thence North 89°58'27" East 188.98 feet; thence North 0°01'33" West 142.20 feet; thence South 89°58'27" West 172.01 feet; thence North 53°32'34" West 21.10 feet to said East line; thence North 0°01'33" West along said East line 28.66 feet; thence North 53°29'28" East 21.10 feet; thence North 89°58'27" East 192.01 feet; thence South 0°01'33" East 324.43 feet; thence North 89°57'00" East 49.57 feet; thence North 0°03'00" West 110.03 feet; thence South 89°52'28" East 20.00 feet; thence South 0°03'00" East 129.97 feet; thence South 89°57'00" West 69.58 feet; thence South 0°01'33" East 117.31 feet to the North right of way line of 3900 South Street; thence South 89°44'50" West along said North line 20.00 feet to the place of beginning.

APN: 15-36-427-025