



Doc#: 0410441004  
Eugene "Gene" Moore Fee: \$46.50  
Cook County Recorder of Deeds  
Date: 04/13/2004 09:33 AM Pg: 1 of 12

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

THIS AGREEMENT is made and entered into as of the 12th day of December, 2003, by and between CHINA GRILL-CHICAGO, LLC, a Delaware limited liability company, ("Tenant"), HRH CHICAGO, LLC, an Illinois limited liability company ("Landlord"), and U.S. BANK NATIONAL ASSOCIATION, its successors and assigns individually and as agent of one or more banks pursuant to one or more Assignment and Acceptance Agreements ("Mortgagee").

**RECITALS;**

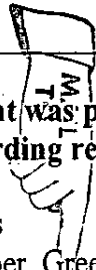
A. Mortgagee is the holder of a certain Construction Mortgage and Security Agreement, with Assignment of Leases and Rents and Fixture Filing dated October 25, 2001, recorded November 16, 2001 with the Cook County Recorder of Deeds as Document No. 11080159 (as amended from time to time, "Mortgage") encumbering the Real Estate (hereinafter defined) and securing a principal indebtedness in an amount equal to Forty Nine Million and 00/100 Dollars (\$49,000,000.00).

B. Landlord has entered into a lease agreement dated October 25, 2001 with St. George Hotel, L.L.C., an Illinois limited liability company and Firststar Bank, N.A., not personally but solely as Trustee under Trust Agreement dated October 10, 2001 and known as Trust No. 7504, pursuant to which HRH leased certain premises consisting of the land and improvements located in the building ("Building") on the parcel of land ("Land") legally described in Exhibit A attached hereto (the Land and Building herein being collectively referred to as "Real Estate").

02040069/Annex 1 of 1

This instrument was prepared by:  
and after recording return to:

Scott M. Lapins  
Schwartz, Cooper, Greenberger  
& Krauss  
180 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601



Permanent Index No.:

See Exhibit "A" attached

Address of Property:

222-230 N. Michigan Avenue  
Chicago, Illinois

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C. Tenant has entered into a lease agreement (such lease agreement hereinafter being referred to as "Lease Agreement," and the Lease Agreement, together with all amendments and modifications thereof, hereinafter being referred to as "Lease") dated as of December 12, 2003 with Landlord, pursuant to which Tenant leased certain premises ("Leased Premises") consisting of approximately 6325 square feet on the first floor of the Building and 2830 square feet on the lower level of the Building.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Tenant represents and warrants to Mortgagee that the Lease constitutes the entire agreement between Tenant and Landlord with respect to the Leased Premises and there are no other agreements, written or verbal, governing the tenancy of Tenant with respect to the Leased Premises.
2. Prior to pursuing any remedy available to Tenant under the Lease, at law or in equity as a result of any failure of Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by Landlord under the Lease (any such failure hereinafter referred to as a "Landlord's Default"), Tenant shall: (a) provide Mortgagee with a notice of Landlord's Default and (b) allow Mortgagee not less than thirty (30) days following receipt of such notice of Landlord's Default to cure the same; provided, however, that, if such Landlord's Default is not readily curable within such thirty (30) day period, Tenant shall give Mortgagee such additional time as Mortgagee may reasonably need to cure such Landlord's Default so long as Mortgagee commences the cure within such thirty (30) day period, provides notice to Tenant of the commencement of such cure and thereafter diligently prosecutes such cure to completion. Tenant shall not pursue any remedy to terminate the Lease as a result of any Landlord's Default unless Mortgagee fails to cure same within the time period specified above.
3. Subject to the terms hereof, Tenant covenants with Mortgagee that the Lease shall be subject and subordinate to the lien of the Mortgage and to all modifications and extensions thereof, to the full extent of all principal, interest and all other amounts now or hereafter secured thereby and with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Lease. Tenant agrees that Tenant shall not grant or convey any leasehold mortgage with respect to the Leased Premises.
4. Tenant acknowledges that Landlord has collaterally assigned to Mortgagee all leases affecting the Real Estate, including the Lease, and the rents and other amounts, including, without limitation, lease termination fees, if any, due and payable under such leases. In connection therewith, Tenant agrees that, if permitted by applicable law, upon receipt of a notice (in statutory form, if any) of a default by Landlord under such assignment and a demand by Mortgagee for direct payment to Mortgagee of the rents due under the Lease, Tenant will honor such demand and make all subsequent rent payments directly to Mortgagee.
5. Mortgagee agrees that so long as Tenant is not in default (beyond all applicable notice and cure periods) under the Lease:

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a. Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage (unless Tenant is a necessary party under applicable law); and

b. The possession by Tenant of the Leased Premises and Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term (as the same may be extended) thereof be terminated or otherwise materially adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Leased Premises, or any deed given in lieu of foreclosure, or (ii) any default under the Mortgage;

6. If Mortgagee or any future holder of the Mortgage shall become the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, or if the Real Estate shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the new owner of the Real Estate as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subparagraph (b) below), and in such event:

a. Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term), and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time Mortgagee exercises its remedies then Tenant shall, at no cost to Tenant, execute such additional documents evidencing such attornment as may be required by applicable law);

b. Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term); provided, however, that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord) that is not then continuing under the Lease; provided, however, that Tenant's sole remedy against Mortgagee with respect to any act or omission of any prior landlord (including Landlord) that is not then continuing under the Lease shall be to assert against Mortgagee any offsets of rent or other defenses which Tenant has against any landlord under the Lease (including Landlord);

(ii) subject to any offsets or defenses which Tenant has against any prior landlord (including Landlord) unless and until Tenant shall have provided Mortgagee with timely (A) notice of the Landlord's Default that gave rise to such offset or defense and (B) the opportunity to cure the same, all in accordance with the terms of Section 2 above;

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(iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which Tenant might have paid more than thirty (30) days in advance;

(iv) liable to refund or otherwise account to Tenant for any security deposit not actually paid over to such new owner by Landlord;

(v) bound by any amendment or modification of the Lease made without Mortgagee's consent which consent shall not be unreasonably withheld, delayed or conditioned;

(vi) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including Landlord) which arose prior to the date such new owner took title and is not of a continuing nature;

(vii) bound by any provision requiring the completion of any improvements to the Leased Premises; provided, however, that notwithstanding the foregoing, if any such improvements are not completed as provided for under the Lease, then the Tenant shall have the right, exercisable in Tenant's sole and absolute discretion, upon advance written notice to such new owner, to either (i) terminate the Lease or (ii) elect to complete those elements of the uncompleted improvements required to be completed by Landlord pursuant to the terms of the Lease which Tenant determines, in Tenant's sole and absolute discretion, are necessary to be completed for the operation of Tenant's business in the Leased Premises. In the event that the Tenant elects to complete any portion of such improvements as provided herein, Tenant shall have the right to offset against any rent payable by the Tenant under the Lease a sum equal to all of the costs and expenses incurred by Tenant in completing such improvements; or

(viii) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Real Estate.

7. Any notices, communications and waivers under this Agreement shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Mortgagee:

U.S. Bank National Association  
400 N. Michigan Avenue  
2nd Floor  
Chicago, Illinois 60611  
Attn: Katharine Gallagher

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With a copy to: Schwartz, Cooper, Greenberger & Krauss  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601  
Attn: Scott M. Lapins

To Landlord: HRH Chicago, LLC  
230 North Michigan Avenue  
Chicago, Illinois 60601  
Attn: General Manager

With a copy to: Hard Rock Café International (USA), Inc.  
6100 Old Park Lane  
Orlando, Florida 32835  
Attn: General Counsel

To Tenant: c/o The CoreGroup  
242 N. 22<sup>nd</sup> Street  
First Floor  
Philadelphia, Pennsylvania 19103  
Attn: Neil Faggen, Esq.

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

8. Trade Fixtures. All fixtures and equipment ("Trade Fixtures"), if paid for by Tenant and owned by Tenant or leased by Tenant from any lessor/landlord (an "Equipment Lessor"), installed in or on the Tenant's leased premises (regardless of the manner or mode of attachment) shall be and remain the property of Tenant or any such Equipment Lessor, and may be removed by Tenant or such Equipment Lessor at any time; provided that such Trade Fixtures may be removed without structural damage to the Building and Tenant, at its expense, promptly repairs, in a good and workmanlike manner, all damage to the Building caused by such removal. In no event (including, without limitation, a default under the Lease or the Mortgage) shall Lender or any successor landlord have any lien on, right in, or claim with respect to any such fixtures or equipment, whether or not all of or any part thereof shall be deemed fixtures, and Lender expressly waives (for itself and for any successor landlord) all rights of levy, distraint, or execution with respect to such fixtures and equipment.

9. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of Mortgagee, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

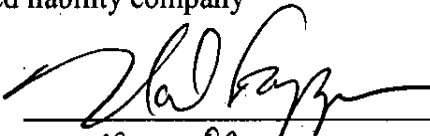
# UNOFFICIAL COPY

10. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed these presents the day and year first above written.

**TENANT:**

**CHINA GRILL-CHICAGO, LLC**, a Delaware limited liability company

By:   
Name: NEIL FAGEN  
Title: MEMBER

**LANDLORD:**

**HRH CHICAGO, LLC**, an Illinois limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MORTGAGEE:**

**U.S. BANK NATIONAL ASSOCIATION**, a national banking association

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

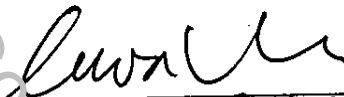
**TENANT:**

**CHINA GRILL-CHICAGO, LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LANDLORD:**

**HRH CHICAGO, LLC**, an Illinois limited liability company

By:   
Name: TREVOR HORWELL  
Title: Authorized Agent

**MORTGAGEE:**

**U.S. BANK NATIONAL ASSOCIATION**, a national banking association

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**IN WITNESS WHEREOF**, the parties hereto have executed these presents the day and year first above written.

**TENANT:**

**CHINA GRILL-CHICAGO, LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LANDLORD:**

**HRH CHICAGO, LLC**, an Illinois limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MORTGAGEE:**

**U.S. BANK NATIONAL ASSOCIATION**, a national banking association

By: *Katharine Gallagher*  
Name: Katharine Gallagher  
Title: Assistant Vice President

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STATE OF PA )  
 ) SS.  
COUNTY OF PHILA )

I, Susan Ehresmann, a Notary Public in and for said County in the State aforesaid, do hereby certify that NEIL FAGGEN, a Member of CHINA GULL - CHICAGO, LLC, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Member, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said partnership/corporation, for the uses and purposes set forth therein.

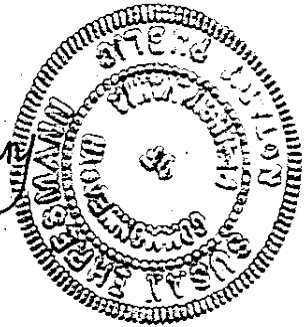
Given under my hand and notarial seal on 12/24, 2003

Notarial Seal  
Susan Ehresmann, Notary Public  
City Of Philadelphia, Philadelphia Count  
My Commission Expires Dec. 10, 2005

Member, Pennsylvania Association Of Notaries

Notary Public

*Susan Ehresmann*



STATE OF )  
 ) SS.  
COUNTY OF )

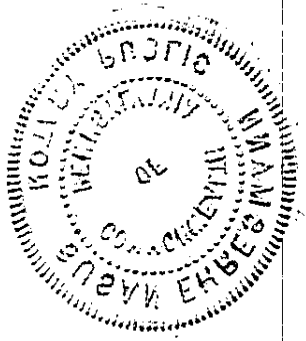
I, \_\_\_\_\_, a Notary Public in and for said County in the State aforesaid, do hereby certify that \_\_\_\_\_, a \_\_\_\_\_ of \_\_\_\_\_, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said partnership/corporation, for the uses and purposes set forth therein.

Given under my hand and notarial seal on \_\_\_\_\_, 20\_\_.

Notary Public

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Property of Cook County Clerk's Office



# UNOFFICIAL COPY

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for said County in the State aforesaid, do hereby certify that \_\_\_\_\_, a \_\_\_\_\_ of \_\_\_\_\_, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said partnership/corporation, for the uses and purposes set forth therein.

Given under my hand and notarial seal on \_\_\_\_\_, 20\_\_.

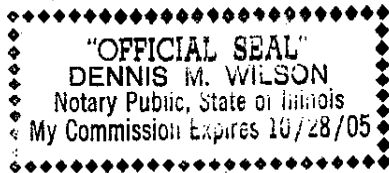
Notary Public

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, DENNIS WILSON, a Notary Public in and for said County in the State aforesaid, do hereby certify that TREVER HORWELL, an AUTHORIZED AGENT of M&H CHICAGO LLC, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such AGENT, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said partnership/corporation, for the uses and purposes set forth therein.

Given under my hand and notarial seal on JANUARY 28, 2004.

Notary Public



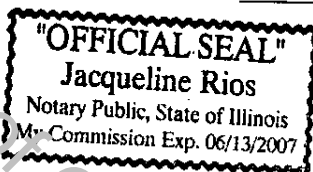
*Dennis M. Wilson*

# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

I, Jacqueline Rios a Notary Public in and for said County in the State aforesaid, do hereby certify that Catherine Spilaker, a V.P. of U.S. BANK NATIONAL ASSOCIATION, who is personally known to be to be the same person whose name is subscribed to the foregoing instrument as such V.P., appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes set forth therein.

Given under my hand and notarial seal on January 8, 2004.



Notary Public

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## EXHIBIT A

### Legal Description of Real Estate

LOTS 10, 11, 12, 13, 14, AND 15 IN BLOCK 7 IN FORT DEARBORN ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**ADDRESS:** 222 and 230 North Michigan Avenue  
Chicago, Illinois

**PINS:** 17-10-303-024-0000

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