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Cook County Recorder of Deeds
Date: 09/19/2008 08:28 AM Pg: 1 of 10

Michael D. Burstein
MUCH SHELIST
191 North Wacker Drive, Suite 1800
Chicago, Illinois 60606.1615

PERMANENT TAX INDEX NUMBERS:

17-09-262-018-0000
17-09-262-019-0000

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PROPERTY ADDRESS

400 North State Street
Chicago, Illinois

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (this "**Agreement**") made the 7th day of July, 2008, by and among **FIRST MIDWEST BANK**, an Illinois banking corporation, having an office at 8501 West Higgins Road, Chicago, Illinois 60631 (the "**Mortgagee**"), **GREAT STREET, LLC**, an Illinois limited liability company, whose address is 1762 Highland Avenue, Wilmette, Illinois 60091 (the "**Landlord**"), and **BB RESTAURANT, LLC**, an Illinois limited liability company, having an address at Buddha Bar office, 17 Little West 12th Street, Suite 311, New York, New York 10014 (the "**Tenant**");

WITNESSETH:

WHEREAS, the Tenant acknowledges that the Mortgagee is the holder of record of the Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing (hereinafter called the "**Mortgage**") dated March 18, 2008, and recorded with the Recorder of Deeds in Cook County, Illinois on March 26, 2008, as Document No. 0808633143, encumbering the Real Estate (as hereinafter defined) and securing a principal indebtedness in the amount of **SIX MILLION ONE HUNDRED NINETY THOUSAND AND NO/100 DOLLARS** (\$6,190,000.00);

WHEREAS, the Tenant has entered into that certain lease agreement dated July 7, 2008, with the Landlord (the "**Lease Agreement**", the Lease Agreement, together with all amendments and modifications thereof, being collectively referred to herein as the "**Lease**"), pursuant to which the Tenant has leased certain premises (the "**Leased Premises**") consisting of approximately 20,250 rentable square feet of space in the building ("**Building**") on the parcel of land (the

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Box 400-CTCC

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“**Land**”; the Land and Building being collectively referred to herein as the “**Real Estate**”) legally described on Exhibit A attached hereto and made a part hereof; and

WHEREAS the Tenant has agreed to subordinate the Lease to the Mortgage and to the lien of the Mortgage, and the Mortgagee has agreed to grant non-disturbance to the Tenant under the Lease, subject to and on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of Ten (\$10) Dollars and other good and valuable consideration, the receipt of which is hereby acknowledged, the Mortgagee and the Tenant hereby covenant and agree as follows:

1. **Subordination of Lease.** The Tenant agrees that the Lease, and all of the terms, covenants and provisions of the Lease, and all rights, remedies and options of the Tenant under the Lease, are, and shall at all times continue to be, subject and subordinate in all respects to: 1) the Mortgage, and 2) the lien and security interest of the Mortgage, and 3) each other document or instrument evidencing or securing all or any part of the indebtedness secured by the Mortgage (the Mortgage and each such other document or instrument being called the “**Loan Documents**”), and 4) each increase, renewal, modification, spreader, consolidation, replacement and extension of any Loan Document (each such increase, renewal, modification, spreader, consolidation, replacement and extension being called an “**Amendment**”), and 5) each sum secured by any Loan Document, as amended by each such Amendment, with the same force and effect as if the Mortgage and the other Loan Documents and Amendments had been executed, delivered and recorded both prior to the execution and delivery of the Lease and prior to the date on which the Tenant first took possession of any part of the Real Estate. Without limiting the generality of the foregoing subordination provision, the Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Real Estate, shall be subject and subordinate to the Mortgagee’s right, title and interest in and to such proceeds and awards.

2. **Payment of Rent Upon Default.** The Tenant acknowledges that the Landlord has collaterally assigned to the Mortgagee any and 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, the Tenant agrees that, upon receipt of a notice of a default by the Landlord under such assignment and a demand by the Mortgagee for direct payment to the Mortgagee of the rents due under the Lease, the Tenant will honor such demand and make all subsequent rent payments directly to the Mortgagee. The Tenant further agrees that any Lease termination fees payable under the Lease shall be paid jointly to the Landlord and the Mortgagee.

3. **Non-disturbance.** Except as provided below, the Mortgagee agrees that if any action or proceeding is commenced by the Mortgagee to foreclose the Mortgage or to sell the Real Estate, the Tenant shall not be named as a party in any such action nor shall the Tenant be named a party in connection with any sale of the Real Estate, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale (i) the Tenant shall be in possession of the premises leased pursuant to the Lease, (ii) the Lease shall be in full force and effect, and (iii) the Tenant

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shall not be in default under any of the terms, covenants or conditions of either the Lease or of this Agreement.

4. **Landlord's Default.** Prior to pursuing any remedy available to the Tenant under the Lease, at law or in equity as a result of any failure of the Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by the Landlord under the Lease (any such failure being hereinafter referred to as a "**Landlord's Default**"), the Tenant shall: (a) provide the Mortgagee with a notice of the Landlord's Default, specifying the nature thereof, the section of the Lease under which such Landlord's Default arose, and the remedy which the Tenant will elect under the terms of the Lease or otherwise, and (b) allow the Mortgagee not less than thirty (30) days following receipt of notice of the 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, the Tenant shall give the Mortgagee such additional time as the Mortgagee may reasonably need to obtain possession and control of the Real Estate and to cure such Landlord's Default so long as the Mortgagee is diligently pursuing a cure. The Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless the Mortgagee fails to cure same within the time period specified above. For purposes of this Section 4, a Landlord's Default shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Lease have lapsed without the Landlord having effectuated a cure thereof.

5. **Attornment.** The Tenant agrees that if 1) the Mortgagee, or 2) any successor in interest to the Mortgagee, or 3) any purchaser or grantee of the Real Estate (or any portion thereof subject to the Lease) (the Mortgagee, each such successor, and each such purchaser or grantee, being collectively called a "**Transferee**") shall become the owner of the Real Estate (or the portion thereof which is subject to the Lease) by reason of the foreclosure of the Mortgage or the acceptance of a deed or assignment in lieu of foreclosure of the Mortgage, or otherwise, then the Lease shall not be terminated or affected by such transfer to the Transferee, but shall continue in full force and effect as a direct lease between the Transferee and the Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event the Tenant agrees to attorn to the Transferee without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time the Mortgagee exercises its remedies then the Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law) and the Transferee agrees to accept such attornment. Notwithstanding the above, such Transferee shall not be:

(a) liable for any act or omission of any prior landlord (including the Landlord);

(b) subject to any offsets or defenses which the Tenant has against any prior landlord (including the Landlord) unless the Tenant shall have provided the Mortgagee with (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 4 above;

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(c) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which the Tenant might have paid in advance for more than the current month to any prior landlord (including the Landlord);

(d) liable to refund or otherwise account to the Tenant for any security or other deposits not actually paid over to such new owner by the Landlord;

(e) bound by any amendment or modification of the Lease made without the Mortgagee's consent;

(f) 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 the Landlord); or

(g) 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.

6. **Representations and Warranties by Tenant.** The Tenant hereby represents and warrants to the Mortgagee that (i) as of the date hereof the Tenant is the owner and holder of the tenant's interest under the Lease, and (ii) the Lease constitutes the entire agreement between the Tenant and the Landlord with respect to the Leased Premises and there are no other agreements, written or verbal, governing the tenancy of the Tenant with respect to the Leased Premises. The Tenant has executed and delivered to the Mortgagee that certain Tenant Estoppel Certificate dated on or about the date hereof (the "**Estoppel Certificate**"). The provisions of the Estoppel Certificate are hereby incorporated into this Agreement as if fully set forth in this Agreement in their entirety, and the Tenant acknowledges that the Mortgagee will be relying on the statements made in the Estoppel Certificate in determining whether to disburse the proceeds of the loan secured by the Mortgage and whether to enter into this Agreement.

7. **Covenants by Tenant.** The Tenant shall not, without the prior written consent of the Mortgagee (i) enter into any agreement amending, modifying or terminating the Lease, (ii) prepay any of the rents, additional rents or other sums due under the Lease for more than one (1) month in advance of the due date thereof, (iii) voluntarily surrender the premises leased under the Lease or terminate the Lease without cause or shorten the term thereof, or (iv) assign the Lease or sublet the premises leased under the Lease or any part thereof. Any such amendment, modification, termination, prepayment, voluntary surrender, assignment or subletting, without the prior written consent of the Mortgagee shall not be binding on the Mortgagee.

8. **Notices.** Any notice, request or demand given or made under this Agreement (each such notice, request, or demand being called a "Notice") shall be in writing and shall be hand delivered or sent by Federal Express or other reputable courier service or by postage prepaid registered or certified mail, return receipt requested. Each Notice which is given by the Tenant or the Mortgagee (the party giving the Notice is called the "**Sending Party**") to the other (such other party being called the "**Receiving Party**") shall be deemed given: (a) when received by the Receiving Party at its address set forth below, if such Notice is hand delivered or is sent by Federal Express (or other reputable

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courier service) to such address, and (b) three (3) business days after being postmarked and addressed to such Receiving Party at its address set forth below if sent by registered or certified mail, return receipt requested:

To the Mortgagee: FIRST MIDWEST BANK
8501 West Higgins Road
Chicago, Illinois 60631
Attention: Dean R. Glassberg
Senior Vice President

With a copy to: MUCH *SHEL*IST
191 North Wacker Drive
Suite 1800
Chicago, Illinois 60606
Attention: Michael D. Burstein

To the Landlord: GREAT STREET, LLC
1762 Highland Avenue
Wilmette, Illinois 60091
Attention: Marc Bushala

With a copy to: ACOSTA, KRUSE & ZEMENIDES, LLC
6336 North Cicero Avenue, Suite 202
Chicago, Illinois 60646
Attention: Erika L. Kruse

To the Tenant: BB RESTAURANT, LLC
Buddha Bar office
17 Little West 12th Street
Suite 311, New York, New York 10014
Attention: Nina Kakiashvili Zepic

With a copy to: WILLIAM P. WALZER
c/o Roy P. Kozupsky & Assoc., LLP
45 West 45th Street
New York, NY 10036

When the Sending Party gives a Notice to a Receiving Party, then such Sending Party will use reasonable efforts also to send a copy of such Notice to the address which immediately follows the address of the Receiving Party and is preceded by the legend "With a copy to". However, failure to deliver such copy or copies to any address which is immediately preceded by such legend shall have no consequence whatsoever to the effectiveness of any such Notice if it is nonetheless actually given as provided above to the Receiving Party. Each party to this Agreement may designate a change of address by Notice given, as provided in this Agreement, to the other parties fifteen (15) days prior to the date such change of address is to become effective.

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9. **Successors And Assigns.** This Agreement shall be binding upon and inure to the benefit of the Mortgagee and the Tenant and their respective successors and assigns.

10. **Definitions.** Notwithstanding anything to the contrary in this Agreement, "Mortgagee," as used in this Agreement, includes the successors and assigns of the Mortgagee and any person, party or entity which shall become the owner of the Real Estate by reason of a foreclosure of the mortgage or the acceptance of a deed or assignment in lieu of foreclosure or otherwise. "Landlord" as used in this Agreement means and includes the present landlord under the Lease and such landlord's predecessors and successors in interest under the Lease. "Real Estate" as used in this Agreement means the Real Estate, the improvements now or hereafter located thereon and the estates therein encumbered by the Mortgage.

11. **No Oral Changes.** This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties to this Agreement.

12. **Applicable Law.** This Agreement shall be governed by and construed under the substantive laws of the State of Illinois.

13. **Headings Have No Legal Effect.** The headings and captions of this Agreement are for convenience of reference only, and have no legal effect, and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions of this Agreement.

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


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IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

GREAT STREET, LLC, an Illinois limited liability company

By: **PHOENIX GROUP MANAGEMENT, LLC**, an Alaska limited liability company, its manager

By: 
Marc Bushala, its sole manager

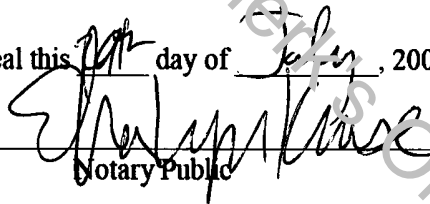
STATE OF ILLINOIS

SS.

COUNTY OF COOK

The undersigned, a Notary Public in and for the said County, in the State aforesaid, **DO HEREBY CERTIFY** that Marc Bushala, the sole manager of **PHOENIX GROUP MANAGEMENT, LLC**, an Alaska limited liability company, the manager of **GREAT STREET, LLC**, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such manager, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability companies, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10th day of July, 2008.


Notary Public



My Commission Expires:

10/10/11

[Signatures Continue on Following Page]

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[Signatures Continued from Preceding Page]

TENANT:

BB RESTAURANT, LLC, an Illinois limited liability company

By: _____

Nina Kakiashvili Zajic, Member

STATE OF NEW YORK)

) SS.

COUNTY OF NEW YORK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, **DO HEREBY CERTIFY** that Nina Kakiashvili Zajic, a Member of **BB RESTAURANT, LLC**, an Illinois limited liability company, 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 or she signed and delivered the said instrument as his or her own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28th day of July, 2008.

WILLIAM F. WALZER
Notary Public, State of New York
No. 30-4758889
Qualified in Nassau County
Term Expires 7-31-2010

Notary Public

My Commission Expires:

7-31-2010

[Signatures Continue on Following Page]

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[Signatures Continued from Preceding Page]

MORTGAGEE:

FIRST MIDWEST BANK, an Illinois banking corporation

By: 

Name: Dean Glassberg

Title: Senior Vice President

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that Dean Glassberg, the Senior Vice President of **FIRST MIDWEST BANK**, an Illinois banking corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Senior Vice President, he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said banking corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 14th day of July, 2008.



Kristen A. Priebe
Notary Public
My Commission Expires:

03/08/08

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EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

PARCEL 1:

LOT 2 IN BLOCK 3 IN KINZIE'S ADDITION TO CHICAGO IN SECTION 10 TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 1 IN BLOCK 1 IN WOLCOTT'S ADDITION TO CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PROPERTY ADDRESS OF REAL ESTATE:

400 North State Street
Chicago, Illinois

PERMANENT TAX IDENTIFICATION NUMBERS:

17-09-262-018-0000
17-09-262-019-0000

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