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Doc#: 1004104033 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 02/10/2010 11:36 AM Pg: 1 of 10

FIRST MIDWEST BANK

and

PEI WEI ASIAN DINER, INC.

SUBORDINATION, NON-DISTURBANCE AND
ATTORNMENMENT AGREEMENT

Dated: November 24, 2009

AFTER RECORDING
RETURN TO:

P.F. Chang's China Bistro, Inc.
7676 E. Pinnacle Peak Road
Scottsdale, Arizona 85255
Attention: Legal Department

Property of Cook County Clerk's Office

10P
Lg

UNOFFICIAL COPY**Subordination, Non-Disturbance and Attornment Agreement****FOR RECORDER'S USE ONLY****PREPARED BY AND WHEN
RECORDED MAIL TO:**

Pamela J. Sandborg, Esq.
Levenfeld Pearlstein, LLC
400 Skokie Boulevard
Suite 700
Northbrook, Illinois 60062

Chicago, IL
#220
Please Record
Q

**SUBORDINATION, NONDISTURBANCE AND
ATTORNMEN AGREEMENT**

This Agreement is dated as of November 24, 2009 and is made by and among PEI WEI ASIAN DINER, INC., a Delaware corporation ("Tenant"), ELSTON AVENUE PROPERTIES, L.L.C., an Illinois limited liability company ("Landlord") and FIRST MIDWEST BANK, an Illinois banking association ("Lender").

P R E A M B L E:

Pursuant to that certain Lease dated November 30, 2009 (said lease, as amended, and as may from time to time be amended, modified, substituted, extended, renewed or restated shall be referred to as the "Lease"), Landlord, the owner of the property more fully described on Exhibit "A" attached hereto ("Property"), leased to Tenant the portion of the Property more particularly described in the Lease. Landlord has requested Lender to provide financing (the "Financing") from time to time to Landlord, which Financing shall be secured by the Property. Lender has agreed to provide such Financing so long as, among other things, this Agreement is entered into by Tenant.

NOW, THEREFORE, in consideration of the foregoing, to induce Lender to provide the Financing to Landlord and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. **Attornment.** Subject to the terms of this Agreement, Tenant covenants and agrees to attorn to Lender or any other purchaser at any foreclosure sale of the Property as its new landlord and upon such event the Lease shall continue in full force and effect as a direct lease between the Tenant and Lender or such other person, upon all terms, covenants, conditions and agreements set forth in the Lease; provided, however, that in no event shall Lender or such third person be (a) liable for any act or omission of the Landlord, except for non-monetary defaults of a continuing nature, which are reasonably susceptible to cure; (b) subject to any offsets or defenses which the Tenant might be entitled to assert against Landlord except for those offsets or defenses which are expressly provided in the Lease; (c) bound by any payment of rent or additional rent made by the Tenant to Landlord for more than one month in advance; or (d) bound by any amendment or material modification of the Lease after the date of this Agreement which alters the duration of the Lease Term, increases the financial or monetary obligations of the

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Landlord or decreases the financial or monetary obligations of the Tenant and made without Lender's prior written consent, which consent shall not be unreasonably conditioned, withheld or delayed.

2. Payment of Rents. Upon receipt from Lender of written notice to pay Rents to or at the direction of Lender, Tenant shall make all such payments to or at the direction of Lender. Upon receipt of such notice, Tenant thereafter shall pay all Rents then due and becoming due from Tenant under the Lease, to or at the direction of Lender. Lender and Landlord agree that Tenant shall have no obligation to make any inquiry regarding the factual basis of such notice, and Landlord hereby releases Tenant from liability to Landlord in connection with Tenant's compliance with Lender's instruction herein. Also, Landlord hereby irrevocably authorizes Tenant to make the foregoing payments to Lender or such purchaser upon such notice and demand. Such payment of Rents to Lender shall continue until Lender directs Tenant otherwise in writing, or until Tenant receives (i) a court order directing Tenant to pay Rents to another person or entity, or (ii) notice that the Premises have been sold to a person or entity other than Lender. The provisions of this Paragraph 2 will terminate upon the earliest to occur of (a) termination of the Lease, (b) the recording of a release of the Assignment, duly executed by Lender or (c) Tenant's receipt of written notice to such effect from Lender.

3. Subordination of Lease. Subject to the terms of this Agreement, Tenant covenants and agrees that all of Tenant's right, title and interest in and under the Lease is and shall be subordinated to the lien or interest of Lender in and to the Property, and to all right, title and interest granted to Lender in and to the Property, in the same manner as if the Lease had been executed after execution, delivery and recording of Lender's interest in the Property.

4. Nondisturbance. Lender covenants and agrees that in the event that Lender or any other person exercises any of its rights, powers or remedies pursuant to any agreement, instrument or document relating to the Financing with respect to the Property, and Lender or any other person acquires title to the Property pursuant to the exercise of any such right, power or remedy, and provided that the Tenant is not then in default under the Lease, then beyond any applicable notice or cure period provided in under the terms of the Lease, then Tenant's leasehold interest, use, possession or quiet enjoyment in the Premises shall not be disturbed by Lender's or any third parties' exercise of any of such rights, powers or remedies.

5. Notices. So long as the Financing remains outstanding and unsatisfied, any and all notices required or permitted to be given or served by the terms and provisions of this Agreement shall be in writing and signed by the duly authorized representative of the party giving the notice and shall be deemed duly given when (1) sent certified or registered mail, postage prepaid, return receipt requested, (2) delivered in person, or (3) delivered by express overnight delivery.

If to the Lender, notice shall be addressed as follows:

First Midwest Bank
770 Dundee Road
Arlington Heights, Illinois 60004
Attention: Steven M. Vernon, III

With a copy to:

Levenfeld Pearlstein, LLC
400 Skokie Boulevard, Suite 700
Northbrook, Illinois 60062
Attention: Pamela J. Sandborg, Esq.

to Tenant, notice shall be addressed as follows:

Pei Wei Asian Diner, Inc.
7676 E. Pinnacle Peak Road
Scottsdale, AZ 85255
Attn: Legal Department

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With copies to:

Pei Wei Asian Diner, Inc.
7676 E. Pinnacle Peak Road
Scottsdale, AZ 85255
Attn: Leasing Administrator

All notices shall be deemed received upon receipt, if delivered by personal or courier delivery, or if delivered by certified or overnight mail, then upon the earlier of (i) actual receipt, or (ii) the date of the first attempted delivery thereof. Either party hereto may change its address and designate such other parties to receive additional copies of any notice for the above purposes by giving notice as aforesaid stating the change and setting forth the new address.

6. Amendment, Modifications. This Agreement may not be modified other than by agreement in writing signed by Lender, Landlord and Tenant, or by their respective successors in interest.

7. Pending Agreement. So long as the Financing remains outstanding and unsatisfied, this Agreement shall inure to the benefit of and shall be binding upon Lender and its successors and assigns, and be binding upon Tenant and its successors and assigns.

8. Counterparts. This Agreement may be executed in any number of counterparts, each of which counterparts, once executed and delivered, shall be deemed to be an original and all of which counterparts taken together, shall constitute but one and the same Agreement.

9. Severability. A determination that any provision of this Agreement is unenforceable or invalid shall not affect this enforceability or validity of any other provision. Any determination that the application of any provision of this Agreement to any person or to particular circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

10. Governing Laws. This Agreement shall be deemed to be a contract made under the laws of the State of Illinois and for all purposes shall be construed in accordance with the internal laws, and not the conflict of laws provisions, of the State of Illinois.

11. Conflicts with Lease. In the event of a conflict between the provisions of this Agreement and the provisions of the Lease, the provisions of this Agreement shall control as between Lender and Tenant; however, except as provided for in Sections 1 and 2 of this Agreement, as between Landlord and Tenant the provisions of the Lease shall control.

12. Insurance Proceeds. Notwithstanding anything to the contrary herein, the Tenant's right to require application and disbursement of casualty and condemnation proceeds under the Lease shall control over conflicting provisions of the Mortgage or other documents associated with the Financing.

[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement on the day and year first set forth above.

FIRST MIDWEST BANK

By: [Signature]
Title: Assistant Vice-President

PEI WEI ASIAN DINER, INC.

By: [Signature]
Title: CEO

ELSTON AVENUE PROPERTIES, L.L.C.

By: [Signature]
Title: manager

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TENANT

STATE OF ARIZONA)
) SS.
COUNTY OF MARICOPA)

The Undersigned, a Notary Public in and for said County in the state aforesaid, DO HEREBY CERTIFY THAT Richard Federico, CEO, of Pei Wei Asian Diner, Inc. personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such CEO, appeared before me this day in person and acknowledged that such person signed and delivered said instrument as such person's own free and voluntary act, and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 24th day of November 2009.



[Signature]
NOTARY PUBLIC

My Commission Expires:

June 15, 2012
[SEAL]

Property
Maricopa County Clerk's Office

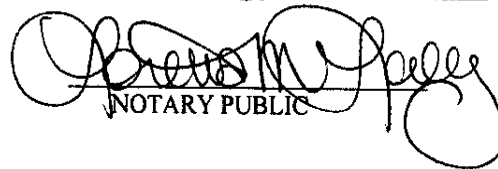
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LENDER

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

The Undersigned, a Notary Public in and for said County in the state aforesaid, DO HEREBY CERTIFY THAT SM Vernon III AVP, of First Midwest Bank personally known to me to be the same person whose name is subscribed to the foregoing instrument as such SM Vernon III appeared before me this day in person and acknowledged that such person signed and delivered said instrument as such person's own free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 8 day of December 2009.


NOTARY PUBLIC

My Commission Expires:

2/27/10
[SEAL]



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EXHIBIT A LEGAL DESCRIPTION

LOTS 11 THROUGH 29 AND LOT 49 IN GEORGE R. HOTCHKISS JR'S SUBDIVISION OF LOT 5 (EXCEPT PART LYING EAST OF LOGAN BOULEVARD AND EXCEPT BOULEVARD AND EXCEPT STREETS) IN SUPERIOR COURT PARTITION OF SNOW ESTATE IN THE SOUTHWEST QUARTER OF SECTION 30, IN TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

ALSO

ALL THAT PART OF THE NORTHWESTERLY-SOUTHEASTERLY 16 FOOT PUBLIC ALLEY, INCLUDING TWO (2), 5 FOOT BY 5 FOOT TRIANGULAR PUBLIC ALLEYS ADJOINING THE SOUTHEASTERLY TERMINUS OF THE AFORESAID NORTHWESTERLY-SOUTHEASTERLY 16 FOOT PUBLIC ALLEY AND TWO (2) IRREGULARLY SHAPED PUBLIC ALLEYS ADJOINING THE NORTHERLY TERMINUS OF THE AFORESAID NORTHWESTERLY-SOUTHEASTERLY 16 FOOT PUBLIC ALLEY, LYING EASTERLY AND NORTHEASTERLY OF THE EASTERLY AND NORTHEASTERLY LINES OF LOT 18, LYING NORTHEASTERLY OF THE NORTHEASTERLY LINE OF LOTS 19 TO 27, BOTH INCLUSIVE, LYING NORTHWESTERLY, SOUTHWESTERLY AND SOUTHERLY OF THE NORTHWESTERLY, SOUTHWESTERLY AND SOUTHERLY LINES OF LOT 49, LYING SOUTHERLY OF THE NORTHERLY LINE OF LOT 27 EXTENDED SOUTHEASTERLY TO THE POINT OF INTERSECTION WITH THE NORTH LINE OF LOT 49 EXTENDED WESTERLY, LYING SOUTH AND SOUTHERLY OF THE NORTH LINE OF LOT 49 EXTENDED WESTERLY TO THE POINT OF INTERSECTION WITH THE NORTHERLY LINE OF LOT 27 EXTENDED SOUTHEASTERLY AND LYING NORTHWESTERLY OF A LINE DRAWN FROM THE POINT OF INTERSECTION OF THE EASTERLY AND SOUTHEASTERLY LINES OF LOT 18 TO THE POINT OF INTERSECTION OF THE SOUTHEASTERLY AND SOUTHERLY LINES OF LOT 49 ALL IN GEORGE R. HOTCHKISS JR'S SUBDIVISION OF LOT 5 (EXCEPT PART LYING EAST OF LOGAN BOULEVARD AND EXCEPT BOULEVARD AND EXCEPT STREETS) IN SUPERIOR COURT PARTITION OF SNOW ESTATE IN THE SOUTHWEST QUARTER OF SECTION 30, IN TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, SAID PART OF PUBLIC ALLEY HEREIN VACATED BEING FURTHER DESCRIBED AS THE NORTHWESTERLY-SOUTHEASTERLY 16 FOOT PUBLIC ALLEY WHOSE SOUTHWESTERLY LINE IS 120 FEET, MORE OR LESS, NORTHEASTERLY OF THE NORTHEASTERLY LINE OF N. ELSTON AVENUE, SAID PART OF PUBLIC ALLEY LYING NORTHWESTERLY OF THE NORTHWESTERLY LINE OF A NORTHEASTERLY-SOUTHWESTERLY 20 FOOT PUBLIC ALLEY WHOSE SOUTHEASTERLY LINE IS 125 FEET, MORE OR LESS, NORTHWESTERLY OF THE NORTHWESTERLY LINE OF W. LOGAN BOULEVARD SAID PART OF THE PUBLIC ALLEY ALSO LYING SOUTH OF THE WESTERLY EXTENSION OF THE SOUTH LINE OF THE EAST-WEST 16 FOOT PUBLIC ALLEY

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WHOSE NORTH LINE IS 125 FEET, MORE OR LESS, SOUTH OF THE SOUTH LINE OF W. DIVERSEY AVENUE AND LYING SOUTHERLY OF THE EASTERLY EXTENSION OF THE SOUTHERLY LINE OF THE EASTERLY-WESTERLY 20 FOOT PUBLIC ALLEY IN THE BLOCK BOUNDED BY W. DIVERSEY AVENUE, W. LOGAN BOULEVARD AND N. ELSTON AVENUE AS VACATED PER ORDINANCE RECORDED DECEMBER 31, 2007 AS DOCUMENT NO. 0736503042.

ALSO

ALL THAT PART OF THE NORTHEASTERLY/SOUTHWESTERLY 20 FOOT PUBLIC ALLEY VACATED PER ORDINANCE RECORDED SEPTEMBER 12, 2008 AS DOCUMENT NO. 0825631101 AND DEPICTED ON PLAT OF VACATION/DEDICATION RECORDED SEPTEMBER 12, 2008 AS DOCUMENT NO. 0825631102.

ALSO

EXCEPT THE NORTHEASTERLY 20.00 FEET OF LOT 12, IN GEORGE R. HOTCHKISS JR'S SUBDIVISION OF LOT 5 (EXCEPT PART LYING EAST OF LOGAN BOULEVARD AND EXCEPT BOULEVARD AND EXCEPT STREETS) IN SUPERIOR COURT PARTITION OF SNOW ESTATE IN SOUTHWEST QUARTER OF SECTION 30, IN TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS AS DEDICATED PER ORDINANCE RECORDED SEPTEMBER 12, 2008 AS DOCUMENT NO. 0825631101 AND DEPICTED ON PLAT OF VACATION/DEDICATION RECORDED SEPTEMBER 12, 2008 AS DOCUMENT NO. 0825631102.

Tax Parcel Numbers: 14-30-300-020-0000
 14-30-300-023-0000
 14-30-300-025-0000
 14-30-300-026-0000
 14-30-300-027-0000
 14-30-300-028-0000
 14-30-300-029-0000
 14-30-300-030-0000
 14-30-300-031-0000
 14-30-300-041-0000
 14-30-300-042-0000
 14-30-300-043-0000
 14-30-300-044-0000
 14-30-300-045-0000
 14-30-300-046-0000
 14-30-300-047-0000
 14-30-300-048-0000
 14-30-300-049-0000

Common Address: Elston Avenue and Logan Boulevard, Chicago, Illinois