



LOCATION: 5650 Touhy Avenue  
Niles, Illinois 60714

**NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

**THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (the "Agreement") is made and entered into this the 25<sup>th</sup> day of FEBRUARY, 2000 by and among Steak and Ale of Illinois, Inc. a Nevada corporation ("Tenant"), The Northern Trust Company, an Illinois banking corporation ("Lender") and TDC Niles L.L.C., an Illinois limited liability company ("Landlord").

**RECITALS:**

7840489, 82, CB

A. Landlord and Tenant executed a Lease dated as of July 13, 1999 (the "Lease"), a memorandum of which may be recorded simultaneously herewith, covering a certain Premises therein described located on a parcel of real estate, a legal description of which is attached hereto and incorporated herein by this reference as Exhibit "A" (said parcel of real estate and the Premises being sometimes collectively referred to herein as the "Property").

B. Landlord has executed a construction mortgage loan (the "Mortgage") dated August 1, 1999 and recorded on August 20, 1999 at Recorder's office of Cook County, Illinois as Document No. 99797419 in favor of Lender, payable upon the terms and conditions described therein.

C. The parties hereto desire to assure Tenant's possession and control of the Property under the Lease upon the terms and conditions therein contained.

For and in consideration of the mutual covenants and premises herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed by the parties hereto, the parties hereto do hereby agree as follows:

1. The Lease is and shall be subject and subordinate to the Mortgage, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all future advances made thereunder.

2. Should Lender become the owner of the Property, or should the Property be sold by reason of foreclosure, or other proceedings brought to enforce the Mortgage which encumbers the Property, or should the Property be transferred by deed in lieu of foreclosure, or should any portion of the Property be sold under a trustee's sale, the Lease shall continue in full force and

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effect as a direct lease between the then owner of the Property covered by the Mortgage and Tenant, upon, and subject to, all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, including any extensions therein provided. Tenant does hereby agree to attorn to Lender or to any such owner as its landlord, and Lender hereby agrees that it will accept such attornment.

3. Notwithstanding any other provision of this Agreement, Lender or any other subsequent owner of the Property shall not be (a) liable for any default of any landlord under the Lease (including Landlord), and the remedies of Tenant for any such default shall be limited to termination of the Lease and set off against Rent due under the Lease if Lender or such owner does not voluntarily cure such default within a commercially reasonable time after notice following obtaining ownership of and right to possess the Property; (b) bound by any Rent that Tenant may have paid under the Lease more than one month in advance; (c) bound by any amendment or modification of the lease hereafter made without Lender's prior written consent; (d) responsible for the return of any security deposit delivered to Landlord under the Lease and not subsequently received by Lender.

4. If Lender sends written notice to Tenant to direct its rent payments under the Lease to Lender instead of Landlord, then Tenant agrees to follow the instructions set forth in such written instructions and deliver Rent payments to Lender; however, Landlord and Lender agree that Tenant shall be credited under the Lease for any Rent payments sent to Lender pursuant to such written notice.

5. All notices which may or are required to be sent under this Agreement shall be in writing and shall be sent by certified or registered U.S. mail, postage prepaid, return receipt requested, and sent to the party at the address appearing below or such other address as any party shall hereafter inform the other party by written notice given as set forth above:

Tenant: Steak and Ale of Illinois, Inc.  
6500 International Parkway  
Suite 1000  
Plano, Texas 75093  
Attn: Vice President-Real Estate

with a copy to: Steak and Ale of Illinois, Inc.  
6500 International Parkway  
Suite 1000  
Plano, Texas 75093  
Attn: General Counsel

Lender: The Northern Trust Company  
50 South LaSalle Street  
Chicago, Illinois 60675  
Attention: Commercial Real Estate

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Landlord: TDC Niles L.L.C.  
513 Central Avenue  
Suite 400  
Highland Park, Illinois 60635  
Attn: Kenneth A. Fixler

With copy to: Wildman Harold Allan & Dixon  
225 West Wacker, 26th Floor  
Chicago, IL 60606  
Attn: Mr. Tom Duffy

All notices delivered as set forth above shall be deemed effective three (3) days from the date deposited in the U.S. mail.

6. Said Mortgage 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 in the Property. In the event the Property or any part thereof shall be taken for public purposes 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 with respect to such fixtures, furniture, equipment and personal property shall be determined and controlled by the applicable provisions of the Lease.

7. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors in interest, heirs and assigns and any subsequent owner of the Property secured by the Mortgage.

8. Should any action or proceeding be commenced to enforce any of the provisions of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorney's fees.

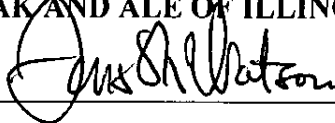
9. Unless required by applicable law even though the Lease is subordinate to the Mortgage, Tenant shall not be joined as a party/defendant in any action or proceeding which may be instituted or taken by reason or under any default by Landlord in the performance of the terms, covenants, conditions and agreements set forth in the Mortgage.

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The parties hereto have caused this Non-Disturbance Agreement to be executed as of the day and year first above written.

## TENANT

STEAK AND ALE OF ILLINOIS, INC.


By: 

Name: TODD M. WATSON  
SR. VICE-PRESIDENT

Title: SECRETARY/TREASURER

## LENDER

THE NORTHERN TRUST COMPANY


By: 

Name: R.W. Wiarda

Title: V.P.

## LANDLORD

TDC NILES, L.L.C.

By: 

Name: Richard H. Tucker

Title: Manager

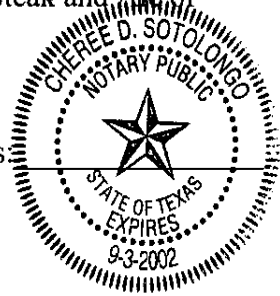
Property of Cook County Clerk's Office

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State of Texas )  
 ) ss.  
County of Colum )

The foregoing instrument was acknowledged before me on February 25, 2000, by Dawn M. Watson, Sr. VP of Steak and Ale of Illinois, Inc. on behalf of the corporation.

Chere D. Sotolongo Commission expires \_\_\_\_\_  
Notary Public



State of ILLINOIS )  
 ) ss.  
County of COOK )



The foregoing instrument was acknowledged before me on Feb. 4, 2000, by Robert W. Wanda, V.P. of Northern Trust on behalf of the Lender.

Dawn M. Hill Commission expires: May 16, 2000  
Notary Public

State of Illinois )  
 ) ss.  
County of Lake )



The foregoing instrument was acknowledged before me on Feb. 14, 2000, by Richard D. Tucker, Manager of TDC Niles, LLC on behalf of the limited liability company.

Stacia J. Reed Commission expires: 8/9/00  
Notary Public

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## EXHIBIT A TO NON-DISTURBANCE AND ATTORNMENT AGREEMENT

### LEGAL DESCRIPTION OF THE PROPERTY

THAT PART OF LOT 1 IN A.B. DICK COMPANY SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 3, 1992 AS DOCUMENT NUMBER 92907082, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS; COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 89 DEGREES 53 MINUTES 46 SECONDS WEST ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 22.80 FEET; THENCE SOUTH 36 DEGREES 03 MINUTES 40 SECONDS EAST, 33.80 FEET; THENCE SOUTH 00 DEGREES 49 MINUTES 37 SECONDS WEST ALONG A LINE 9.5 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID LOT 1 AND THE EAST LINE OF LOT 2 IN SAID A.B. DICK COMPANY'S SUBDIVISION, A DISTANCE OF 1178.10 FEET; THENCE SOUTH 37 DEGREES 30 MINUTES 39 SECONDS WEST, 38.58 FEET TO THE SOUTH LINE OF SAID LOT 2; THENCE SOUTH 89 DEGREES 53 MINUTES 56 SECONDS WEST ALONG SAID SOUTH LINE OF LOT 2 AND THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 453.52 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89 DEGREES 53 MINUTES 56 SECONDS WEST ALONG SAID SOUTH LINE OF LOT 1, A DISTANCE OF 250.53 FEET; THENCE NORTH 00 DEGREES 49 MINUTES 37 SECONDS EAST, 197.73 FEET; THENCE NORTH 48°01'29" EAST, 18.92 FEET; THENCE SOUTH 89 DEGREES 10 MINUTES 23 SECONDS EAST, 236.62 FEET; THENCE SOUTH 00 DEGREES 49 MINUTES 37 SECONDS WEST, 206.52 FEET; THE POINT OF BEGINNING, CONTAINING 1.197 ACRES, MORE OR LESS.

PIN: 10-29-403-018

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