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Eugene "Gene" Moore Fee: \$38.50
Cook County Recorder of Deeds
Date: 04/20/2004 01:24 PM Pg: 1 of 8

PREPARED BY AND RETURN TO:
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**LOWNDES, DROSDICK, DOSTER,
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SECOND MODIFICATION OF COMMERCIAL MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

THIS SECOND MODIFICATION OF COMMERCIAL MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (the "Instrument") is made and entered into on or about April 13, 2004 and effective as of April 15, 2004, by and among **WELLS FARGO BANK, N.A.**, successor by merger to **WELLS FARGO BANK MINNESOTA, NATIONAL ASSOCIATION**, as Custodian and Collateral Agent, whose address is CMBS Mortgage Document Custody, 751 Kasota Avenue, Suite MDC, Minneapolis, Minnesota 55141 ("Collateral Agent" or "Beneficiary" or "Grantee" or "Holder" for recordation purposes, as the context requires); and **STEAK AND ALE OF ILLINOIS, INC.**, a Nevada corporation, whose address is 6500 International Parkway, Plano, Texas 75093 ("Trustor," "Borrower" or "Grantor" for recordation purposes).

WITNESSETH:

WHEREAS, CNL Financial IX, LP, a Delaware limited partnership, ("CNL IX") is the owner and holder of that certain Promissory Note executed by Borrower in favor of CNL Franchise Network, LP, a Delaware limited partnership, dated March 8, 2001, in the original principal amount of **ONE MILLION EIGHT HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$1,850,000.00)** ("Original Note"), which note has been amended and restated contemporaneously herewith in the principal amount of **SIX MILLION EIGHT HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$6,875,000.00)** (the "Note"); and

WHEREAS, the Note is secured by, *inter alia*, that certain Commercial Mortgage, Assignment of Rents and Security Agreement dated March 8, 2001 executed by Borrower, and recorded on March 16, 2001, as Document No. 0010212279, and subsequently assigned through mesne assignments, and further modified by that certain Modification of Mortgage recorded contemporaneously herewith, all documents recorded in the Public Records of Cook County, Illinois (as assigned, the "Trust Deed"); and

WHEREAS, the Trust Deed encumbers a leasehold estate created pursuant to a lease (herein "lease") dated July 13, 1999, between TDC Niles, L.L.C., an Illinois limited liability company, as Landlord, and Steak and Ale of Illinois, Inc., a Nevada corporation, as Tenant, the aforesaid lease relating to certain property located in Cook County, Illinois (the "Property") as more particularly described on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Original Note, the Note and the loan are also evidenced and/or secured by other documents which, together with the Original Note, the Note, the Trust Deed, and all other documents executed by Borrower in connection with such loan (which may include, but are not limited to, UCC Financing Statements and Security Agreements), are collectively hereinafter referred to as the "Original Loan Documents;" and

Return Recorded Documents To:
LandAmerica National Commercial Services
450 S. Orange Avenue, Suite 170
Orlando, FL 32801
Attention: **Christi Pawlak**

0914501-105507/737580

S & A

LMS NO. 2856/NILES, IL

04-444

Attorneys Unit # 11344 Case# 04-04696

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WHEREAS, to further effectuate modifications to the Original Loan Documents made pursuant to that certain Forbearance Agreement dated March 10, 2004 and amended contemporaneously herewith and based on CNL IX's overall relationship with Borrower and Guarantor, CNL IX has requested and Borrower is willing to further modify the said documents and certain other loans; and

WHEREAS, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Bank Minnesota, National Association, as Collateral Agent and Custodian ("Wells Fargo"), has executed that certain Limited Power of Attorney From Custodian, dated as of February 24, 2004 authorizing its Servicer, CNL Financial Services, LP ("Servicer") to execute this Instrument on Wells Fargo's behalf.

NOW THEREFORE, in consideration of the premises hereof, and the mutual covenants contained herein, and of the sum of TEN AND NO/100 DOLLARS (\$10.00) in hand paid by each party to the other, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. RECITALS CORRECT. The recitals included in this Instrument are not mere recitals, but constitute binding stipulations of fact by all of the parties hereto.

2. REPRESENTATIONS OF BORROWER. Borrower does hereby acknowledge, warrant, and represent to and in favor of CNL IX and Collateral Agent: (a) that the principal balance of the indebtedness represented by the Note as of the date hereof is SIX MILLION EIGHT HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$6,875,000.00) and that said indebtedness is due from Borrower to the holder in accordance with the terms of the Note, as modified, and is free from any defense, claim, or right to set-off; (b) that other than the Trust Deed or the Original Loan Documents, and any related deeds of trust, as modified, given by Borrower to CNL IX and/or Collateral Agent and/or Servicer, there are no deeds of trust, liens or other encumbrances against the Property (other than Permitted Encumbrances as defined in the Trust Deed), and (c) that there are no suits, judgments, bankruptcies or executions pending against Borrower in any court which could in any way adversely affect the title to the Property; and (d) that the undersigned signator on behalf of the Borrower has full power and authority to bind the Borrower.

3. AMENDMENT TO TRUST DEED.

(a) The second paragraph of the Trust Deed is hereby deleted in its entirety and replaced with the following:

"**WHEREAS**, Borrower is indebted to **CNL FINANCIAL IX, LP**, a Delaware limited partnership (herein "Lender"), in the principal amount of **SIX MILLION EIGHT HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$6,875,000.00)** (the "Loan"), which Loan is evidenced by that certain promissory note from Borrower to Lender dated effective as of April 15, 2004 (herein "Note") providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on April 1, 2021 (the "Maturity Date")."

(b) The Paragraph 30 of the Trust Deed, which is entitled "FUTURE ADVANCES," is hereby deleted in its entirety and replaced with the following:

"**30. FUTURE ADVANCES**. It is expressly understood and agreed between the parties hereto that this Instrument is given to secure further advances or extensions of credit with interest thereon which the Secured Party shall make to the Borrower from time to time. All advances, made at the time of recording hereof or to be made in the future, are secured by this Instrument as if made on the date of recording hereof. However, the aggregate maximum principal amount of the indebtedness secured hereunder at any time outstanding shall not exceed the sum of 115% X **SIX MILLION EIGHT HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$6,875,000.00)**."

4. NOTE AMENDMENT. Simultaneously with the execution of this Instrument and as evidence of the existing indebtedness owed by the Borrower under the Original Loan Documents and the Original Note, the Borrower has executed the Note in favor of CNL IX, which modifies the Original Note amount, payment terms and the maturity date of such Original Note.

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5. MODIFIED LOAN DOCUMENTS. The Note, the Original Loan Documents, this Instrument and each and every document executed in connection with this Instrument, shall hereinafter be referred to collectively as the "Modified Loan Documents."

6. SECURITY FOR THE NOTE. The parties hereto covenant, stipulate, agree and acknowledge as follows: that the obligation of Borrower to repay to the holder any and all amounts and/or advances made and to be made pursuant to the loan, this Instrument, and evidenced by the Note, are secured by the Trust Deed, as modified by this Instrument. The parties agree that this Instrument constitutes a mortgage modification and that the lien of the Trust Deed, as amended hereby, shall relate back and shall remain in priority as of the time and date of the recording of the Trust Deed as if the modification were included in the Trust Deed at the time of recording.

7. WAIVER OF JURY TRIAL. THE BORROWER AND HOLDER BY ACCEPTANCE HEREOF, FOR ITSELF AND FOR EACH HOLDER HEREOF, HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREE, THAT:

(a) NEITHER THE BORROWER, COLLATERAL AGENT, SERVICER, CNL IX, NOR ANY ASSIGNEE, SUCCESSOR, HEIR OR LEGAL REPRESENTATIVE OF ANY OF THE SAME SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THIS INSTRUMENT OR ANY LOAN DOCUMENT EVIDENCING, SECURING OR RELATING TO THE OBLIGATIONS OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES THERETO;

(b) NEITHER THE BORROWER, COLLATERAL AGENT, CNL IX NOR THE SERVICER SHALL SEEK TO CONSOLIDATE ANY SUCH ACTION, IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;

(c) THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS;

(d) NEITHER THE BORROWER, CNL IX, COLLATERAL AGENT, NOR SERVICER HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES;

(e) IN NO EVENT SHALL CNL IX, COLLATERAL AGENT, OR SERVICER BE RESPONSIBLE OR LIABLE FOR CONSEQUENTIAL OR PUNITIVE DAMAGES; AND

(f) THIS PROVISION IS A MATERIAL INDUCEMENT FOR CNL IX, COLLATERAL AGENT, AND SERVICER TO ENTER INTO THIS TRANSACTION AND IS SEPARATELY GIVEN, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

8. MODIFICATION FEES. The parties agrees that all reasonable recordation costs shall be paid by CNL IX. The parties agree that each party shall pay its own attorney's fees with regard to this Instrument.

9. RELEASE. Borrower hereby remises, releases and forever discharges CNL IX, Collateral Agent, and Servicer, their affiliates, successors and/or assigns, and all of its and their respective officers, directors, employees, agents, attorneys and stockholders (collectively, the "Released Parties"), of and from any and all manner of actions, causes and causes of action whatsoever, at law or in equity (collectively, the "Released Claims"), and including, but not limited to, all claims relating to the obligations evidenced by the Note and secured by, *inter alia*, the Modified Loan Documents executed in connection therewith, and the relationships and activities of the Borrower and CNL IX, Collateral Agent, and Servicer with respect to this Instrument and the Modified Loan Documents from the Closing of the loan through the date this Instrument is signed by the last party executing this Instrument. This Instrument and the Modified Loan Documents, as modified by this Instrument, are not intended to benefit, modify, release or discharge any third party, and all rights as against persons or parties not a party to this Instrument are expressly reserved by CNL IX, Collateral Agent, and Servicer. Borrower hereby indemnifies and holds CNL IX,

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Collateral Agent, and Servicer harmless from and against any claim, loss, damage, costs, charge or expense whatsoever arising out of or relating to any claim by any third party not a party to this Instrument of any alleged or purported benefit, modification, release or discharge resulting from this Instrument or the Modified Loan Documents.

10. MISCELLANEOUS. Except for the changes and modifications effected hereby, it is expressly agreed that the Modified Loan Documents shall remain in full force and effect in strict accordance with the terms thereof, and nothing herein contained shall affect or be construed to affect the lien, charge, or encumbrances effected by the Trust Deed or the other Modified Loan Documents, or the priority thereof over other liens, charges, encumbrances, and conveyances, or to release or affect the liability of any party or parties who may now or hereafter be liable under or on account of the Modified Loan Documents. Under no circumstances shall this Instrument or any portion hereof or the Note constitute or be deemed to constitute a novation of or to cancel any of the obligations arising under the Original Loan Documents. This Instrument shall be binding upon and shall inure to the benefit of, the heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto and to CNL IX, Collateral Agent, and Servicer. Each of the parties hereto represents and declares that such party has carefully read this Instrument and that such party understands the contents thereof and signs the same freely and voluntarily. The parties hereto acknowledge that they had the opportunity to consult with legal counsel of their own choosing concerning this instrument.

11. COUNTERPARTS. This Instrument may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

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IN WITNESS WHEREOF, this Instrument has been executed by the parties hereto in manner and form sufficient to bind them as of the day and year first above written.

Signed, sealed and delivered in the presence of:

“COLLATERAL AGENT”

Michelle Dreyer
Name: Michelle Dreyer

Laura Kelly
Name: Laura Kelly

WELLS FARGO BANK, N.A. successor by merger to WELLS FARGO BANK MINNESOTA, NATIONAL ASSOCIATION, as Custodian and Collateral Agent

By: CNL FINANCIAL SERVICES, LP, a Delaware limited partnership, as Servicer, pursuant to the authority granted under that certain Limited Power of Attorney From Custodian, dated as of February 24, 2004, and recorded immediately prior hereto.

By: CNL Financial Services GP Corp., a Delaware corporation, as General Partner

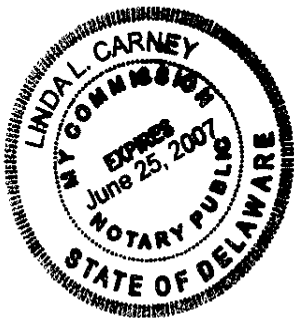
By: Lisa S. Foster
Lisa S. Foster, Vice President

Property of Cook County Clerk's Office

STATE OF DELAWARE
COUNTY OF NEWCASTLE

The foregoing instrument was acknowledged before me by Lisa S. Foster, as Vice President of CNL FINANCIAL SERVICES, GP CORP., a Delaware corporation, as General Partner of CNL FINANCIAL SERVICES, LP, a Delaware limited partnership, acting under the authority granted pursuant to that certain Limited Power of Attorney From Custodian, dated as of February 24, 2004, executed by WELLS FARGO BANK, N.A. successor by merger to WELLS FARGO BANK MINNESOTA, NATIONAL ASSOCIATION. She is personally known to me or has produced _____ as identification.

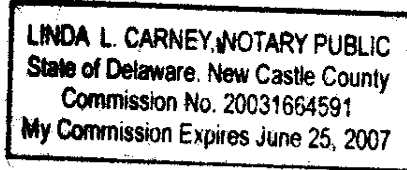
SUBSCRIBED AND SWORN TO this 13th day of April, 2004.



Linda L. Carney
Notary Public, State of Delaware

Print Name: _____
Commission Number: _____
Commission Expires: _____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGES]



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CONFIRMATION OF GUARANTY

The following Guarantor (a) hereby acknowledges the obligations under the Guaranty dated March 8, 2001 (the "Guaranty") shall continue in full force and effect in all respects and are not subject to any offset, defense or counterclaim whatsoever; (b) further acknowledge that the Guaranty is legal, valid, binding and enforceable in all respects; (c) hereby waive any and all claims and defenses of any nature whatsoever, legal, equitable or otherwise, which the Guarantor may now have with respect to the obligations under the Guaranty; (d) hereby consent to the execution and delivery of the Instrument and Note from Borrower; (e) hereby acknowledge and agree that the Guaranty, as originally executed, shall remain in full force and effect and shall extend to and guarantee all such obligations (as defined in the originally executed Guaranty) of the Borrower; and (f) hereby reaffirms such Guaranty and agrees that it shall continue to bound by such Guaranty, as amended and reaffirmed hereby.

Signed, sealed and delivered
in the presence of:

Cathy Sikora
Name: Cathy Sikora

Julia S. [unclear]
Name: Julia S. [unclear]

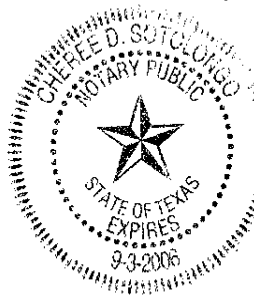
S&A RESTAURANT CORP.,
a Delaware corporation

By: Mark Scouler
Mark Scouler, Executive Vice President
MS

STATE OF TEXAS
COUNTY OF COLLIN

The foregoing instrument was acknowledged before me by Mark Scouler, as Executive Vice President of S & A RESTAURANT CORP., a Delaware corporation, for and on behalf said corporation. He is personally known to me or has produced _____ as identification.

SUBSCRIBED AND SWORN TO this 13th day of April, 2004.



Cheree D. Sotolongo
Notary Public, State of Texas
Printed Name: Cheree D. Sotolongo
Commission No.: _____
Commission Expires: September 3, 2006

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EXHIBIT "A"

PARCEL 1:

Lot 7 in Pointe Plaza Subdivision, being a subdivision of Lot 2 in Annie Mullen Subdivision, being a subdivision of part of the Southeast $\frac{1}{4}$ of Section 29, Township 41 North, Range 13 East of the Third Principal Meridian, according to the Plat of Pointe Plaza Subdivision aforesaid recorded December 22, 1999 as Document Number 09188471, in Cook County, Illinois.

PARCEL 2:

Non-exclusive easements for access, ingress and egress for the benefit of Parcel 1 as created by Easements with Covenants and Restrictions Affecting Land ("ECR") dated December 30, 1998 and recorded March 13, 1999 as Document Number 99265776 and First Amendment thereto dated March 13, 1999 recorded April 7, 1999 as Document Number 99334830 by and between Wal-Mart Real Estate Business Trust and TDC Niles, L.L.C., over and across the common area as defined and described therein, in Cook County, Illinois.

5650 Touhy Avenue, Niles, Cook County, Illinois
PIN No. 10-29-403-030