

# UNOFFICIAL COPY



This document prepared by and after  
recording return to:

Dykema Gossett PLLC  
10 South Wacker Drive  
Suite 2300  
Chicago, Illinois 60606  
Attn: Gary P. Segal, Esq.

Doc#: 1309249050 Fee: \$60.00  
RHSP Fee: \$10.00 Affidavit Fee:  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 04/02/2013 12:39 PM Pg: 1 of 12

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") dated as of March 11, 2013, is made by and among C & O CHICAGO, L.L.C., an Illinois limited liability company ("Subtenant"), PORTILLO'S HOT DOGS, INC., an Illinois corporation ("Tenant"), ONTARIO GREAT LAKES PROPERTIES CORP., an Illinois corporation ("Landlord"), and MB FINANCIAL BANK, N.A., a national banking association, its successors and assigns ("Lender").

WHEREAS, Lender has agreed to make a loan to Landlord in the maximum principal amount of \$6,000,000.00 (the "Loan"), secured by, among other things, a Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents (herein, as may from time to time be extended, amended, restated or supplemented, the "Security Instrument"), covering, among other property, the land described in Exhibit A which is attached hereto and incorporated herein by reference (the "Property");

WHEREAS, Tenant is the tenant under a Lease from Landlord (or Landlord's predecessor in ownership of the Property) dated August 1, 1994 (herein, as may from time to time be extended, amended, restated or supplemented, the "Lease"), covering the Property;

WHEREAS, Subtenant is the subtenant under a Sublease dated August 30, 1994 with Tenant (herein, as may from time to time be extended, amended, restated or supplemented, the "Sublease"), covering the Property; and

WHEREAS, the term "Landlord" as used herein means the present landlord under the Lease or, if the Landlord's interest is transferred in any manner, the successor(s) or assign(s) occupying the position of Landlord under the Lease at the time in question.

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

1. Subordination. Subtenant agrees and covenants, subject to the terms of this Agreement, that the Sublease and the rights of Subtenant thereunder, all of Subtenant's right, title and interest in and to the property covered by the Sublease, and any Sublease thereafter executed

4/02/13 11:30 AM

# UNOFFICIAL COPY

by Subtenant covering any part of the Property, are and shall be subject, subordinate and inferior in all respects to (a) the Security Instrument and the rights of Lender thereunder, and all right, title and interest of Lender in the Property, and (b) all other security documents now or hereafter securing payment of any indebtedness of the Landlord (or any prior landlord) to Lender which cover or affect all or any portion of the Property (collectively, the "Loan Documents"), including the Loan. This Agreement is not intended and shall not be construed to subordinate the Sublease to any mortgage, deed of trust or other security document other than those referred to in the immediately preceding sentence, securing the indebtedness owing to Lender. Without limiting the generality of the foregoing subordination provision, the Subtenant hereby agrees that all 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 portion of the improvements to the Property, shall not be subject and subordinate to the Lender's right, title and interest in and to such proceeds and awards pursuant to the Loan Documents.

2. Non-Disturbance. Lender agrees that so long as the Lease and the Sublease are in full force and effect and neither Tenant nor Subtenant are in default in the payment of rent, additional rent or other payments due under the Lease, Sublease or in the performance of any of the other terms, covenants or conditions of the Lease or Sublease on Tenant's or Subtenant's part to be performed (beyond the period, if any, specified in the Lease within which Tenant may cure such default):

(a) Subtenant's possession of the Property under the Sublease shall not be disturbed or interfered with by Lender in the exercise of any of its foreclosure rights under the Security Instrument or in connection with the conveyance of the Property by deed in lieu of foreclosure, and

(b) Lender will not join Subtenant as a party defendant for the purpose of terminating Subtenant's interest and estate under the Sublease in any proceeding for foreclosure of the Security Instrument.

3. Attornment.

(a) Subtenant covenants and agrees that in the event of the foreclosure of the Security Instrument, whether by power of sale or by court action, or upon a transfer of the Property by a deed in lieu of foreclosure (the purchaser at foreclosure or the transferee in such deed in lieu of foreclosure, including Lender if it is such purchaser or transferee, being herein called the "New Owner"), Subtenant shall attorn to the New Owner as the owner of the Property. In no event shall the New Owner be:

(i) liable for any act, omission, default, misrepresentation, or breach of warranty, of any previous landlord (including Landlord) or obligations accruing prior to New Owner's actual ownership of the Property;

(ii) subject to any offset, defense, claim or counterclaim which Subtenant might be entitled to assert against any previous landlord (including Landlord);

# UNOFFICIAL COPY

(iii) bound by any payment of rent, additional rent or other payments, made by Subtenant to any previous landlord (including Landlord) for more than one (1) month in advance of the date when due under the Lease;

(iv) bound by any amendment or modification of the Sublease hereafter made, without the written consent of Lender; or

(v) liable for any deposit that Subtenant may have given to any previous landlord (including Landlord) which has not been transferred to New Owner.

(b) The provisions of this Agreement regarding attornment by Subtenant shall be self-operative and effective without the necessity of execution of any new lease or other document on the part of any party hereto or the respective legal representatives, successors or assigns of any such party. Subtenant agrees, however, to execute and deliver upon the request of New Owner, any reasonable instrument or certificate which in the reasonable judgment of New Owner may be necessary or appropriate to evidence such attornment; provided, however, Subtenant shall not be required to change any term or condition of the Sublease.

4. Acknowledgment and Agreement by Tenant. Subtenant acknowledges and agrees as follows:

(a) Subtenant will not amend, alter or waive any provision of, or consent to the amendment, alteration or waiver of any provision of, the Sublease without the prior written consent of Lender. Subtenant shall not prepay any rents or other sums due under the Sublease for more than one (1) month in advance of the due date therefor. Subtenant acknowledges that Lender will rely upon this instrument in connection with the Loan as secured, in part, by the Security Instrument.

(b) From and after the date hereof, in the event of a default by Landlord under the Lease or Sublease which would give Tenant or Subtenant the right, either immediately or after the lapse of time, the giving of notice, or both, to terminate the Lease, Sublease or to claim a partial or total eviction, Subtenant will not exercise any such right unless it has given written notice of such act or omission to the Lender at the same time as any required notice pursuant to the Lease or Sublease; provided, however, that Lender shall have no duty or obligation to cure or remedy any default. It is specifically agreed that Subtenant shall not, as to Lender, require cure of any such default which is personal to Landlord, and therefore not susceptible to cure by Lender.

(c) In the event that Lender notifies Tenant or Subtenant of a default under the Security Instrument or any of the other Loan Documents and demands that Tenant or Subtenant pay its rent and all other sums due under the Lease or Sublease directly to Lender, Subtenant shall honor such demand and pay the full amount of its rent and all other sums due under the Sublease directly to Lender, without offset, or as otherwise required pursuant to such notice beginning with the payment next due after such notice of default, without inquiry as to whether a default actually exists under the Security

# UNOFFICIAL COPY

Instrument or other Loan Documents, and notwithstanding any contrary instructions of or demands from Landlord.

(d) To the extent that Subtenant has a right or option to purchase the Property or any interest therein, such right or option shall be subject and subordinate to the Security Instrument and is hereby waived and released as against Lender and Lender's exercise of its remedies set forth in the Loan Documents or applicable law, but shall remain in place as to any New Owner.

(e) Lender and any New Owner shall have no obligation nor incur any liability with respect to the erection or completion of any improvements on the Property or any improvements for Subtenant's use and occupancy, either at the commencement of the term of the Sublease or upon any renewal or extension thereof or upon the addition of additional space, pursuant to any expansion rights contained in the Sublease.

(f) In the event that Lender or any New Owner that is an affiliate of Lender ("Lender Affiliate"), shall acquire title to the Property, Lender or such Lender Affiliate (but not any subsequent New Owner) shall have no obligation, nor incur any liability, beyond Lender's or Lender Affiliate's then equity interest, if any, in the Property, as the case may be, and Subtenant shall look exclusively to such equity interest of Lender or Lender Affiliate for the payment and discharge of any obligations imposed upon Lender or Lender Affiliate hereunder or under the Sublease or for recovery of any judgment from Lender, or Lender Affiliate, and in no event shall Lender, Lender Affiliate, or any of their respective officers, directors, shareholders, agents, representatives, servants, employees or partners ever be personally liable for any such judgment.

5. Acknowledgment and Agreement by Landlord. Landlord, as landlord under the Lease and grantor under the Security Instrument, acknowledges and agrees for itself and its representatives, successors and assigns, that: (a) this Agreement does not constitute a waiver by Lender of any of its rights under the Security Instrument or any of the other Loan Documents, or in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Security Instrument and the other Loan Documents; (b) the provisions of the Security Instrument and the other Loan Documents remain in full force and effect and must and shall be complied with by Landlord; and (c) Tenant or Subtenant are hereby authorized to pay its rent and all other sums due under the Lease or Sublease (as applicable) directly to Lender upon receipt of a notice as set forth in paragraph 4(c) above from Lender and that neither Tenant nor Subtenant are obligated to inquire as to whether a default actually exists under the Security Instrument or any of the other Loan Documents. Landlord hereby releases and discharges Tenant and Subtenant of and from any liability to Landlord resulting from Tenant's or Subtenant's payment to Lender in accordance with this Agreement. Landlord represents and warrants to Lender that a true and complete copy of the Lease and Sublease has been delivered by Landlord to Lender.

6. Lease Status. Landlord, Tenant and Subtenant represent and warrant to Lender that neither Landlord, Tenant nor Subtenant has knowledge of any default or event which with the giving of notice or the passage of time, or both, would constitute a default on the part of the other under the Lease or Sublease, that the Lease and Sublease are bona fide and contains all of

# UNOFFICIAL COPY

the agreements of the parties thereto with respect to the letting of the Property and that all of the agreements and provisions therein contained are in full force and effect.

7. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person, (ii) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) five (5) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses set forth at the end of this Agreement or as such party may from time to time designate by written notice to the other parties. Any party by notice to the others in the manner provided herein may designate additional or different addresses for subsequent notices or communications.

8. Miscellaneous.

(a) This Agreement supersedes any inconsistent provision of the Lease and Sublease.

(b) Nothing contained in this Agreement shall be construed to derogate from or in any way impair, or affect the lien, security interest or provisions of the Security Instrument or any of the other Loan Documents.

(c) This Agreement shall bind and shall inure to the benefit of the parties hereto, their respective successors and permitted assigns, and any New Owner, and its heirs, personal representatives, successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of Lender, all obligations and liabilities of the assigning Lender under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Lender's interest is assigned or transferred.

(d) THIS AGREEMENT AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS AND APPLICABLE UNITED STATES FEDERAL LAW EXCEPT ONLY TO THE EXTENT, IF ANY, THAT THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED NECESSARILY CONTROL.

(e) The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" as used in this Agreement refer to this entire Agreement and not to any particular section or provision.

(f) This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

(g) If any provision of the Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not apply to or affect any other provision hereof, but this Agreement shall be construed as if such invalidity, illegality, or unenforceability did not exist.

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and sealed as of the date first above written.

**ADDRESS OF LENDER:**

MB Financial Bank, N.A.  
6111 North River Road  
Rosemont, Illinois 60018  
Attention: Stephen Clingen

**LENDER:**

**MB FINANCIAL BANK, N.A.**, a national banking association

By: Stephen Clingen  
Name: Stephen Clingen  
Title: Senior Vice President

**ADDRESS OF TENANT:**

c/o The Portillo Restaurant Group  
2001 Spring Road #500  
Oak Brook, Illinois 60523  
Attention: \_\_\_\_\_

**TENANT:**

**PORTILLO'S HOT DOGS, INC.**, an Illinois corporation

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

**ADDRESS OF SUBTENANT:**

c/o The Portillo Restaurant Group  
2001 Spring Road #500  
Oak Brook, Illinois 60523  
Attention: \_\_\_\_\_

**SUBTENANT:**

**C & O CHICAGO, L.L.C.**, an Illinois limited liability company

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

**ADDRESS OF LANDLORD:**

Ontario Great Lakes Property Corp.  
17 W. 170 Massel Court  
Bensenville, Illinois 60106  
Attention: Barbara Katsigiannis

**LANDLORD:**

**ONTARIO GREAT LAKES PROPERTIES CORP.**, an Illinois corporation

By: Barbara Katsigiannis  
Barbara Katsigiannis, President

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and sealed as of the date first above written.

**ADDRESS OF LENDER:**

MB Financial Bank, N.A.  
6111 North River Road  
Rosemont Illinois 60018  
Attention: Stephen Clingen

**LENDER:**

MB FINANCIAL BANK, N.A., a national banking association

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

**ADDRESS OF TENANT:**

c/o The Portillo Restaurant Group  
2001 Spring Road #500  
Oak Brook, Illinois 60523  
Attention: Susan B. Shelton

**TENANT:**

PORTILLO'S HOT DOGS, INC., an Illinois corporation

By: [Signature]  
Name: Karen L. Peterson  
Title: V.P.

**ADDRESS OF SUBTENANT:**

c/o The Portillo Restaurant Group  
2001 Spring Road #500  
Oak Brook, Illinois 60523  
Attention: Susan B. Shelton

**SUBTENANT:**

C & O CHICAGO, L.L.C., an Illinois limited liability company

By: [Signature]  
Name: Karen L. Peterson  
Title: VP

**ADDRESS OF LANDLORD:**

Ontario Great Lakes Property Corp.  
17 W. 170 Massel Court  
Bensenville, Illinois 60106  
Attention: Barbara Katsigiannis

**LANDLORD:**

ONTARIO GREAT LAKES PROPERTIES CORP., an Illinois corporation

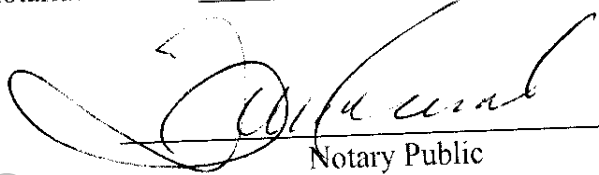
By: \_\_\_\_\_  
Barbara Katsigiannis, President

# UNOFFICIAL COPY

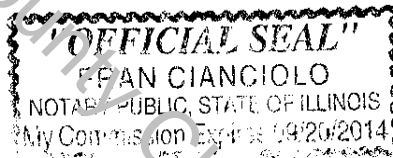
STATE OF Illinois )  
 ) SS.  
COUNTY OF DePue )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Burt Katsgrannis, the President of **ONTARIO GREAT LAKES PROPERTIES CORP.**, an Illinois 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 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 company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 11<sup>th</sup> day of March, 2013.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 9/20/13



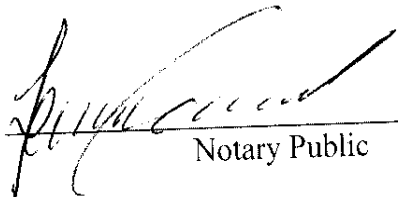


# UNOFFICIAL COPY

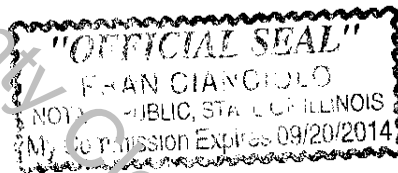
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF DEPE )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Stephen J. Clayton, the SVP of **MB FINANCIAL BANK, N.A.**, a national banking association, 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 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 company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 11 day of March, 2013.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 9/20/14

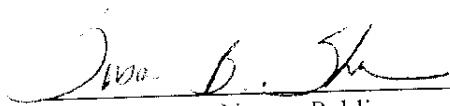


# UNOFFICIAL COPY

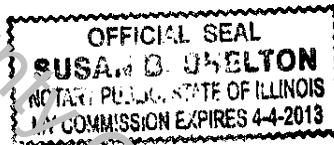
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF DUPAGE )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Karen L. Peterson, the Vice President of **PORTILLO'S HOT DOGS, INC.**, an Illinois 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 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 company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 8th day of March, 2013.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:



# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF DUPAGE )

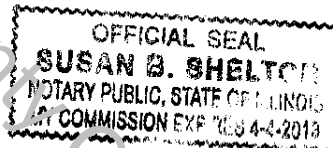
The undersigned, a Notary Public in and for the said County, in the State aforesaid. DO \*V.P. of Portillo's Hot Dogs, Inc., Managing  
HEREBY CERTIFY that Karen L. Peterson the \* \_\_\_\_\_ of C & O CHICAGO, Member,  
L.L.C., an Illinois limited liability company, who is personally known to me to be the same  
person whose name is subscribed to the foregoing instrument appeared before me this day in  
person and acknowledged that 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 company, for the uses and  
purposes therein set forth.

GIVEN under my hand and notarial seal this 8th day of March, 2013.

Susan B. Shelton  
Notary Public

My Commission Expires:

4-4-13



# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1, 2 AND 3 IN BLOCK 22 IN WOLCOTT'S ADDITION TO CHICAGO ALSO LOT 5 IN A.J. MCBEANS SUBDIVISION OF LOTS 14 AND 15 AND 16 IN BLOCK 22 IN WOLCOTT'S ADDITION TO CHICAGO ALL IN THE NORTH PART OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### **Permanent Index Numbers:**

17-09-225-014  
17-09-225-023

#### **Property Address:**

100 W. Ontario Street  
Chicago, IL 60610

Property of Cook County Clerk's Office