

# UNOFFICIAL COPY

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## SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") is made as of the 1st day of March, 1994 by and between (i) **FORTIS BENEFITS INSURANCE COMPANY**, a Minnesota corporation, having an address of 500 Bielenberg Drive, Woodbury, Minnesota 55125 ("Fortis"), (ii) **EFREN BOGLIO** ("Efren"), individually and as assignee of Bola, Inc. and Giordano's Pizzeria, Inc., both dissolved Illinois corporations, (iii) **JOSE L. BOGLIO** ("Jose"), both individually and as assignee of America's Best Pizza, Inc. and Americana Enterprises, Inc., both dissolved Illinois corporations and (iv) **CARLOS A. JUAN** ("Carlos"), both individually and as assignee of America's Best Pizza, Inc. and Americana Enterprises, Inc., both dissolved Illinois Corporations (Efren, Jose and Carlos being herein collectively referred to as "Junior Mortgagee").

### WITNESSETH:

DEPT-01 RECORDING \$43.50  
 7:11:11 TRAM 4735 03/23/94 10:27:00  
 8802 \* -94-261276  
 COOK COUNTY RECORDER

**WHEREAS**, Junior Mortgagee is the holder and owner of that certain Secured Installment Note dated December 22, 1988 (the "Junior Note") in the principal amount of Seven Hundred Thousand and No/100 Dollars made by (i) American National bank and Trust Company of Chicago, not personally but as Trustee under that certain Trust Agreement dated as of July 24, 1986 and known as Trust Number 068847-04 (said bank in its capacity as Trustee aforesaid is herein referred to as the "Trustee" and said Trust Agreement is herein referred to as the "Trust Agreement") and (ii) John Apostolou (herein referred to as "Apostolou") (Trustee and Apostolou are herein sometimes referred to as "Borrower"), in favor of Junior Mortgagee; and

**WHEREAS**, the Junior Note is secured by that certain Junior Mortgage made by Borrower in favor of Junior Mortgagee and dated as of December 22, 1988 and recorded in the Office of the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office") as Document Number 88599658, as amended pursuant to the terms of that certain First Agreement of Modification and Extension of Note and Mortgage dated as of October 18, 1991 and recorded in the Recorder's Office as Document Number 92387210 (the "Junior Mortgage") on certain real estate located in Cook County, Illinois and more particularly described on Exhibit A attached hereto and made a part hereof (the "Property") (the Junior Note, the Junior Mortgage and all other documents evidencing or securing the indebtedness evidenced by the Junior Note are herein referred to collectively as the "Junior Loan Documents"); and

**WHEREAS**, Fortis has agreed to make a loan to Borrower in the principal amount of Two Million Four Hundred Thousand and No/100 Dollars (\$2,400,000) (the "Loan")

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evidenced by a Mortgage Note dated as of March 1, 1994 made by Trustee in favor of Fortis (the "Senior Note"); and

**WHEREAS**, the indebtedness evidenced by the Senior Note is secured by, among other things (i) that certain Mortgage and Security Agreement of even date with the Senior Note in favor of Fortis, (ii) that certain Assignment of Rents and Leases of even date with the Senior Note, (iii) that certain Collateral Assignment of Beneficial Interest of even date with the Senior Note, and (iv) that certain Pledge and Security Agreement of even date with the Senior Note. The Mortgage, the Assignment of Rents, the Collateral Assignment, the Pledge Agreement and such other documents securing the Senior Note are sometimes hereafter referred to collectively as the "Senior Loan Documents"); and

**WHEREAS**, Junior Mortgagee has agreed the interest of Junior Mortgagee as evidenced by the Junior Loan Documents shall be subject and subordinate to the interest of Fortis as evidenced by the Senior Loan Documents;

**NOW, THEREFORE**, to induce Fortis to make the Loan and for and in consideration of the foregoing recitals, the sum of Ten Dollars in hand paid each to the other, the mutual covenants and promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Subordination of Junior Loan Documents**. Subject to the terms and conditions herein contained, Junior Mortgagee hereby unconditionally subordinates the Junior Note and the Junior Loan Documents, all its interest thereunder and the lien and security interest created thereby to the Senior Loan Documents, all of the interest of Fortis thereunder and the lien and security interest created thereby, as well as all of the terms and conditions contained therein and to all extensions, amendments, modifications, consolidations and supplements thereto given by Borrower to further secure the indebtedness secured by the Senior Loan Documents. The Junior Loan Documents and liens and security interest created thereby shall be expressly subject and subordinate to (i) any and all advances made by Fortis and intended to be secured by the Senior Loan Documents, in whatever amounts and whenever made and to the extent made, (ii) to interest due or to become due pursuant to the terms of the Senior Note and (iii) to any expenses, charges, and fees incurred by Fortis and chargeable to Borrower under the Senior Loan Documents, even though any and all of such advances, interest, expenses, charges and fees may increase the indebtedness secured by the Senior Loan Documents or any extensions, consolidations, modifications or supplements thereto and intended to be secured by the Senior Loan Documents. The Loan shall not be deemed paid until it is no longer subject to restoration, rescission or return.

2. **Subrogation Rights of Fortis**. Junior Mortgagee shall not acquire by subrogation, contract or otherwise any lien on any other estate right or interest in the

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Property or the property mortgaged, assigned or pledged under the Senior Loan Documents, (including, but not limited to, any lien which may arise with respect to real estate taxes, assessments or other governmental charges) which is or may be prior or superior to the lien of the Senior Loan Documents or any extension, modification, consolidation or supplement thereto.

3. **Exercise of Rights and Remedies.** Provided Borrower is not in default under the terms of the Senior Loan Documents, Junior Mortgagee agrees that it shall not exercise or pursue any remedies reserved under the Junior Mortgage or under applicable law or in a court of equity as to the Junior Mortgage, without the prior written consent of Fortis, which will not be unreasonably withheld, except that Junior Mortgagee shall have the right to foreclose the lien of the Junior Mortgage in the event of a monetary default by Borrower under the Junior Note or the other Junior Loan Documents which has remained uncured for a period of sixty (60) consecutive days. Junior Mortgagee hereby waives any right to require a marshalling of the Property in the event of a foreclosure, sale or other disposition of the Property in extinguishment of the indebtedness secured by the Senior Loan Documents, and Junior Mortgagee agrees that Fortis or any court having jurisdiction over any such foreclosure may sell the Property in part or as an entirety.

4. **Subordination to Leases.** The Junior Loan Documents and the lien and security interest thereof are and shall at all times continue to be subject and subordinate to any and all present and future leases for tenant occupancy in any buildings forming a part of the Property, regardless of any provision to the contrary set forth in any such lease. If Junior Mortgagee at any time institutes foreclosure proceedings in respect of the Junior Mortgage (i) Junior Mortgagee shall not make or join any tenant under any such lease as a party to such proceedings or any other eviction proceedings in connection therewith and (ii) all rents, issues and profits received, collected or receivable by Junior Mortgagee shall be received as trust funds and shall be paid to Fortis and applied to the indebtedness due under the Senior Loan Documents in such manner as Fortis shall determine. Junior Mortgagee hereby agrees that, in exercising any of its rights or remedies under the Junior Loan Documents, the Junior Mortgagee will not, without the prior written consent of Fortis, (i) make any alterations to the Property, (ii) enter into any leases of the Property or any part thereof or obtain any tenants of the Property or any part thereof, (iii) permit or suffer any assignment of any lease or sublease affecting the Property or any part thereof, (iv) evict any tenant of the Property or amend, modify, extend, terminate, cancel, accept the surrender of or subordinate any lease of the Property or any part thereof, or (v) accelerate the payment of any rent or grant any reduction or abatement of rent under any lease.

5. **Subordination of Insurance and Condemnation Proceeds.** Junior Mortgagee hereby subordinates to Fortis:

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- (a) All of Junior Mortgagee's right, title, interest, or claim, if any, in and to the proceeds of all policies of insurance covering the Property or the other property assigned, mortgaged or pledged under the Senior Loan Documents, resulting from any casualty affecting the Property for application in accordance with the Senior Loan Documents; and
- (b) All of Junior Mortgagee's right, title and interest or claim, if any, in and to all awards or other compensation made for any taking or condemnation of any part of the Property or the other property mortgaged, assigned or pledged under the Senior Loan Documents, pursuant to or by reason of eminent domain proceedings, for application in accordance with the provisions of the Senior Loan Documents.

In the event that any balance remains, subsequent to any application and disposition of any such insurance proceeds or condemnation award in accordance with the provisions of the Senior Loan Documents, then such excess shall be made payable to Junior Mortgagee or Borrower for application in accordance with the Junior Loan Documents.

6. **Notice of Default Under Junior Loan Documents.** Junior Mortgagee shall give Fortis notice of any default under any of the Junior Loan Documents and copies of all notices and other communications relating such defaults, together with copies of any foreclosure or other documents relating to the Junior Loan Documents. Junior Mortgagee shall not be liable to Fortis for its default for failure to give any such notice.

7. **Transfer of Interest by Junior Mortgagee.** Junior Mortgagee agrees that it will not, without the prior written consent of Fortis, (i) transfer or assign, or attempt to enforce or collect, or subordinate to any liabilities other than those evidenced by the Senior Loan Documents, any obligations secured by the Junior Loan Documents or any rights in respect thereof, or (ii) commence or join with any other creditor in the commencement of any bankruptcy, reorganization or insolvency proceedings in respect of Borrower, or (iii) accept any prepayment under the Junior Loan Documents if there exists a default under any of the Senior Loan Documents, or (iv) amend, modify or extend any of the terms of any of the Junior Loan Documents.

8. **Rights Reserved to Fortis.** Fortis may, from time to time, whether before or after any discontinuance of this Agreement, without impairing or affecting the rights of Fortis hereunder, take all or part of the following actions: (a) retain or obtain a security interest in any property to secure any of the obligations evidenced by the Senior Note, (b) extend or renew for any period (whether or not longer than the original period), modify, amend, compromise, alter or exchange any of the obligations evidenced by the Senior Note, or release or compromise any obligations of any nature of any party with

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respect thereto, and (c) surrender, release or exchange all or any part of any property securing any of the obligations evidenced by the Senior Note.

9. **Transfer of Interest by Fortis.** Fortis may, from time to time, whether before or after any discontinuance of this Agreement, without notice to Junior Mortgagee assign or transfer all or any part of interest in the obligations evidenced by the Senior Note and secured by the Senior Loan Documents without impairing or otherwise affecting the priority or superiority thereof, and any assignee or transferee of the obligations evidenced by the Senior Note and secured by the Senior Loan Documents or of any part thereof or interest therein shall, to the extent of the interest of such assignee or transferee in the obligations evidenced by the Senior Note and secured by the Senior Loan Documents, be entitled to the benefits of this Agreement to the same extent as if such assignee or transferee were Fortis.

10. **Exercise and Waiver of Rights.** No delay on the part of Fortis in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Fortis of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy; and no amendments to or modifications of this Agreement shall be valid, nor shall any waiver by Fortis of any of its rights hereunder be deemed to be made, unless the same shall be in writing duly signed on behalf of Fortis.

11. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision, or the remaining provisions of this Agreement.

12. **Successors and Assigns.** This Agreement shall extend to and be binding upon and inure to the benefit of (i) Fortis and any and all persons hereafter owning or holding from time to time the Senior Note, and their respective heirs, legal representatives, successors and assigns and (ii) Junior Mortgagee and their respective heirs, legal representatives, successors and assigns.

13. **Notices.** All notices, demand or other communications required or desired to be given hereunder shall be in writing signed by Junior Mortgagee or their respective authorized agents or attorneys, as the case may be, and shall be deemed to have been properly given if served in person or if mailed by United States registered or certified mail, full postage prepaid, return receipt requested, addressed as follows:

If to Junior Mortgagee:

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Ethan Foglio  
4221 West 91st Place  
Oak Lawn, Illinois 60439

With a copy to  
Junior Mortgagee's counsel:

Burke, Warren & McKay  
225 West Washington Street  
Suite 2400  
Chicago, Illinois 60603  
Attn: Edward J. Loanik

If to Trustee:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as  
Trustee under Trust (075847-04  
33 North LaSalle Street  
Chicago, Illinois 60690

With a copy to  
Beneficiary:

John Apostolou  
c/o Giordano's  
306 West Randolph Street  
Suite 402  
Chicago, Illinois 60606

With a copy to  
Apostolou's counsel:

James J. Roche  
James J. Roche & Associates  
642 North Dearborn Street  
Chicago, Illinois 60610

If to Fortis:

Fortis Benefits Insurance Company  
500 Bielenberg Drive  
Woodbury, Minnesota 55125  
Attn: General Counsel

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With a copy to:

Fortis Private Capital, Inc.  
333 Thornall Street  
Edison, New Jersey 08837  
Attn: Senior Vice President

With a copy to  
Fortis' counsel:

Kauf, Drey & Warren  
303 West Madison Street  
Suite 1400  
Chicago, Illinois 60606  
Attn: Michael J. Hornbrook

or to such other address in the United States of America as may from time to time be designated by the party to be addressed by notice to the other in the manner hereinabove provided. Any such notice, demand or other communication mailed as provided in this paragraph shall be deemed to have been given and received on the second (2nd) business day next following the date of mailing by United States registered or certified mail of such notice, demand or other communication.

14. **Additional Assurances.** Junior Mortgagee agrees that upon the request of Fortis from time to time, Junior Mortgagee will execute, acknowledge and deliver all such additional instruments and documents, and further assurances, and will do or cause to be done all such further or additional acts or things as may be reasonably necessary or required to effectuate fully the intent and purpose of this Agreement.

15. **Waiver of Liability.** Fortis shall not be liable to Junior Mortgagee for any act or failure or omission to act by Fortis under, pursuant to or in connection with the Senior Loan Documents.

16. **Attorneys' Fee.** All costs, charges and expenses, including court costs and attorneys' fees and expenses, incurred by either party in successfully enforcing the obligations on the part of the other party to be performed shall be paid by the other party.

17. **Copy of Senior Loan Documents.** Fortis shall provide Junior Mortgagee with a copy of the Senior Mortgage and Security Agreement and the Assignment of Rents and Leases referred hereinabove after recordation thereof.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

FORTIS BENEFITS INSURANCE COMPANY

Attest: Deborah Malouin  
Its: ASST. TREASURER

By: [Signature]  
Its: VICE PRESIDENT

[Signature]  
Efren Boglio

JOSE L. BOGLIO

By: [Signature]  
Efren Boglio, pursuant to  
Power of Attorney dated  
June 20, 1991

CARLOS A. JUAN

By: [Signature]  
Efren Boglio, pursuant to  
Power of Attorney dated  
December 14, 1990

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The undersigned hereby acknowledges receipt of a copy of the foregoing Subordination Agreement, waives notice of acceptance thereof by Fortis Benefits Insurance Company and consents to, and agrees to be bound by the terms and provisions thereof, to make no payments or distributions contrary to the terms and provisions thereof, and to do every other act and thing necessary or appropriate to carry out such terms and provisions.

Dated: MAR 1 1994

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee

Attest: [Signature] By: [Signature]



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The undersigned hereby acknowledges receipt of a copy of the foregoing Subordination Agreement, waives notice of acceptance thereof by Fortis Benefits Insurance Company and consents to, and agrees to be bound by the terms and provisions thereof, to make no payments or distributions contrary to the terms and provisions thereof, and to do every other act and thing necessary or appropriate to carry out such terms and provisions.

Dated: MAR 15 1991

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee

Witnessed By: [Signature]  
By: [Signature]

This instrument is subject to the provisions of the Subordination Agreement... The undersigned hereby acknowledges receipt of a copy of the foregoing Subordination Agreement... and agrees to be bound by the terms and provisions thereof... and to do every other act and thing necessary or appropriate to carry out such terms and provisions.

[Signature]  
John Apostolou



This Instrument Prepared by:  
Michael J. Hornbrook  
Kelley Drye & Warren  
303 West Madison Street  
Suite 1400  
Chicago, Illinois 60606

Recordation Return To:  
Michael J. Hornbrook  
Kelley Drye & Warren  
303 West Madison Street  
Suite 1400  
Chicago, Illinois 60606

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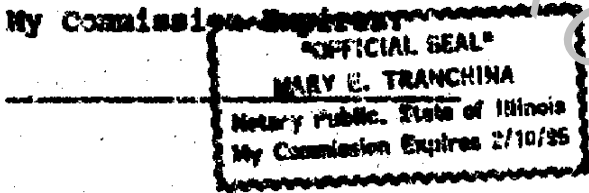
STATE OF ILLINOIS  
COUNTY OF COOK

ss

I, the undersigned, a NOTARY PUBLIC in and for  
in \_\_\_\_\_, DO HEREBY CERTIFY  
that Eiren Boglio, 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 signed and  
delivered the said instrument as his own free and voluntary act and  
as the free and voluntary acts of Jose L. Boglio and Carlos A. Juan  
pursuant to Powers of Attorney dated June 20, 1991 and December 14,  
1990, respectively, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 22<sup>nd</sup> day of  
February, 1994.

Mary E. Tranchina  
Notary Public



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## EXHIBIT A

### [Description of Premises]

Lots 7 and 8 in Assessor's Division of Lot 8 in Block 31 in original Town of Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian; also, the East 1/4 of Section 7 in Block 31 in original Town of Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Index No.: 17-09-429-007, Volume 510 and 17-09-429-011, Volume 510

Street Address: 308 West Randolph Street, Chicago, Illinois

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