

This instrument should be returned to:

Lawyers Title Insurance Corporation
Attn: Andy Baker
Suite 1895
Riverwood 100 Building
3350 Riverwood Parkway, S.E.
Atlanta, Georgia 30339

LTIC-COMMERCIAL BE
CASE # 98-04045 (6)

SUBORDINATION AGREEMENT AND AGREEMENT NOT TO ENCUMBER OR TRANSFER

THIS SUBORDINATION AGREEMENT AND AGREEMENT NOT TO ENCUMBER OR TRANSFER (the "Agreement") is made and entered into as of June 11, 1998, but made effective on June 16, 1998, by and among **STEAK AND ALE OF ILLINOIS, INC.**, a Nevada corporation ("Company"), **S & A RESTAURANT CORP.**, a Delaware corporation ("SARC"), **S & A PROPERTIES CORP.**, a Delaware corporation ("SAPC"), and **S&A FEE PROPERTIES SPE 1, L.L.C.**, a Delaware limited liability company ("Borrower"), all of which have an address at 6500 International Parkway, Plano, Texas 75073 (Company, SARC, SAPC, and Borrower hereinafter individually referred to as an "Affiliate Lease Party" and collectively referred to as "Affiliate Lease Parties") and **CNL FINANCIAL III, L.L.C.**, a Delaware limited liability company, whose address is 400 East South Street, Suite 500, Orlando, Florida 32801 (hereinafter referred to as "Lender").

WITNESSETH:

WHEREAS, Borrower is indebted to Lender in the principal sum of **TWO MILLION NINE HUNDRED TWENTY-SIX THOUSAND AND NO/100 DOLLARS (\$2,926,000.00)** (the "Loan"), which indebtedness is evidenced and represented by that certain Promissory Note (the "Note"), and secured by that certain Commercial Mortgage/Deed of Trust, Assignment of Rents and Security Agreement (the "Mortgage") and certain other documents related to the Note (the Note, Mortgage and such other documents collectively referred to as the "Loan Documents"), all dated on or about the date hereof; and

WHEREAS, SARC and SAPC have each guaranteed payment and performance of the Note and all of the obligations of Borrower under the Loan Documents by executing those certain Guaranty agreements of even date herewith in favor of Lender (respectively referred to as the "SARC Guaranty" and the "SAPC Guaranty"); and

WHEREAS, Borrower is the owner of certain real property which is legally described on Exhibit "A" attached hereto (the "Property"); and

WHEREAS, the Property is leased or subleased by Borrower to Company (either directly or through another Affiliate Lease Party) and the Company has the right to possess and occupy the Property in connection with the operation of the Bennigan's restaurant located on the Property (any such lease(s) and sublease(s) collectively referred to herein as the "Affiliate Leasehold Interest"); and

WHEREAS, the Company has guaranteed payment and performance of the Note and all of the obligations under the Loan Documents by executing that certain Limited Guaranty agreement of even date herewith in favor of Lender ("Company Guaranty"), which Company Guaranty is secured by a first priority security interest pursuant to that certain Security Agreement of even date herewith by and between Lender and Company (the "Company Security Agreement") in the Collateral (as defined in the Security Agreement) located on the Property, as further evidenced by certain financing statements (the Company Guaranty, Company Security Agreement and financing statements collectively referred to herein as the "Company Agreements"); and

WHEREAS, Lender has required as a condition to making the Loan that the Affiliate Lease Parties execute this Subordination Agreement and Agreement Not to Encumber or Transfer regarding the Affiliate Leasehold Interest, for the benefit of Lender.

NOW, THEREFORE, in consideration of Lender making the Loan and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Affiliate Lease Parties do hereby agree as follows:

1. **Definitions.** Terms defined in the Mortgage and not otherwise defined in this Guaranty shall have the meanings given those terms in the Mortgage when used herein and such definitions are incorporated herein as though set forth in full.

2. **Agreement Not To Encumber.** The Affiliate Lease Parties jointly and severally agree that, except as permitted in or required by the Loan Documents or the Company Agreements, so long as any principal, interest or other sums due and payable under the Note or any of the other Loan Documents remain outstanding, the Affiliate Leasehold Interest shall remain free and clear of all liens, encumbrances, mortgages, security interests and additional financing whatsoever (other than those of Lender). The Affiliate Lease Parties shall within the time periods and in accordance with the provisions of Paragraph 4 of the Mortgage pay and discharge from time to time when the same shall become due all judgments entered against any Affiliate Lease Party and all lawful claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien, charge or encumbrance not otherwise permitted by the Loan Documents and the Company Agreements upon the Affiliate Leasehold Interest or any part thereof, or on the rents, issues, income, revenues, profits and proceeds arising therefrom and, in general, the

Affiliate Lease Parties shall further do or cause to be done everything necessary so that the Affiliate Leasehold Interest shall not be further encumbered, without expense to the Lender. The Affiliate Lease Parties shall furnish to Lender promptly after demand proof of payment of all items which are required to be paid by Affiliate Lease Parties hereunder.

3. **Agreement Not To Transfer.** Except as permitted in connection with (i) a Transfer Event or Concept Sale pursuant to Paragraph 19(A) of the Mortgage; (ii) a substitution of the Property pursuant to Paragraphs 19(B), (C) or (D), (iii) a lease of the Property pursuant to Paragraph 19(G) of the Mortgage, (iv) a transfer to a Parent Affiliate pursuant to Paragraph 16 of the Mortgage or (v) a lease, sublease or assignment to a party other than a Parent Affiliate pursuant to Paragraph 16 of the Mortgage, the Affiliate Lease Parties jointly and severally agree that, so long as any principal, interest or other sums due and payable under the Note or any of the other Loan Documents remain outstanding, the Affiliate Lease Parties shall not, without the prior written consent of the Lender, voluntarily, involuntarily, by operation of law, or otherwise sell, transfer, assign, convey, mortgage or otherwise dispose of all or any part of the Affiliate Leasehold Interest, or any or all of its right, title, estate or interest in the Affiliate Leasehold Interest.

4. **Agreement to Subordinate.** All Affiliate Leasehold Interests of the Affiliate Lease Parties are hereby declared to be and at all times hereafter shall be and remain subordinate in all respects to the Mortgage and all of the other Loan Documents and all of the rights of the Lender thereunder. The Affiliate Lease Parties jointly and severally covenant and agree that during the term of the Loans: (i) Lender shall have the right to terminate any and all Affiliate Leasehold Interests upon a Default under this Agreement, the Note, the Loan Documents or the Company Agreements; (ii) the Affiliate Lease Parties shall not cause or permit any recordation in any public records of any Affiliate Leasehold Interest or any memorandum of lease related thereto except for that certain Amended Memorandum of Lease evidencing the Restated and Amended Lease between SARC and SAPC; (iii) the Affiliate Lease Parties shall not enter into or be entitled to any nondisturbance agreement from Lender or any other party with respect to an Affiliate Leasehold Interest; and (iv) the Affiliate Lease Parties shall maintain any Affiliate Leasehold Interest necessary to allow the Fee Site Guarantor and the Leased Site Guarantor (as the case may be) to operate the restaurant located at the Property, unless any such Affiliate Leasehold Interest is terminated by Lender pursuant to clause (i) of this Paragraph.

5. **Warranties of Affiliate Lease Parties.** Solely for the benefit of Lender (including successors and assigns) and not to or for the benefit of any third party, the Affiliate Lease Parties jointly and severally warrant that the record owner in fee simple of the aforescribed real property is Borrower, that the Affiliate Leasehold Interest described on Exhibit "B" attached hereto is correct, and that the Affiliate Leasehold Interest is free and clear of all mortgages, liens and claims of any third party whatsoever.

6. **Default.** The Affiliate Lease Parties jointly and severally agree that (a) the failure of the Affiliate Lease Parties to pay, perform, or comply with any one or more of the foregoing

requirements which failure continues uncured for thirty (30) calendar days after the delivery by Lender of written notice to Affiliate Lease Parties of such failure or, if Affiliate Lease Parties are diligently attempting to effect cure, such longer period of time as may be necessary in Lender's reasonable judgment to effect such cure, or (b) a Default under the Note or any of the other Loan Documents shall, at the Lender's option, constitute a Default hereunder. Upon such Default, Lender, at its option, may thereupon or thereafter declare the indebtedness evidenced by the Note and the other Loan Documents to be immediately due and payable as if all of said monies were originally stipulated to be paid on such day and thereupon, without notice or demand, may exercise all remedies set forth herein and available at law or in equity.

7. **Covenant to Run with the Property.** This Agreement and all covenants herein shall run with the Property described herein and all the terms and provisions hereof shall bind and inure to the benefit of the respective parties hereto. The Affiliate Lease Parties jointly and severally acknowledge and agree that Lender is relying upon this Agreement and that this Agreement may be relied upon and inures to the benefit of Lender and its successors and assigns, and shall be binding upon each of the Affiliate Lease Parties and their successors and assigns.

8. **Survival of Agreement.** Lender and each of the Affiliate Lease Parties agree that should any term or provision of this Agreement be deemed void by a court of competent jurisdiction, the remaining terms and conditions of this Agreement shall continue in full force and effect. Nothing herein shall be construed to waive or diminish any right or security of the Lender under the Note, the Mortgage, the Company Security Agreement, any Guaranty, any of the other Loan Documents, the Company Agreements or any other documents executed in connection therewith.

9. **Fees and Expenses.** The Affiliate Lease Parties jointly and severally agree that all reasonable costs and expenses associated with the execution, delivery and recordation and enforcement of this Agreement, including, but not limited to, recordation costs and documentary stamp and intangible tax, if applicable (together with all interest and penalties thereon, if any) shall be paid by the Affiliate Lease Parties. The Affiliate Lease Parties jointly and severally agree to defend, indemnify and hold harmless the Lender from and against any and all such costs and expenses, and agree that the Lender shall not in any way be held liable for such costs and expenses.

10. **Binding Nature of Agreement.** This Agreement shall constitute a covenant running with the title to the Affiliate Leasehold Interest for the benefit of Lender and shall be binding upon the Affiliate Lease Parties and their successors and assigns, and shall inure to the benefit of the Lender and its successors and assigns.

11. **No Lien Created.** This Agreement does not constitute, nor shall it be construed to constitute, a lien or encumbrance upon the Affiliate Leasehold Interest.

12. **Termination and Release.** Upon payment in full of the Loan or in connection with a transfer of the Property as permitted pursuant to Paragraph 3(i) or (ii) of this Agreement, Lender

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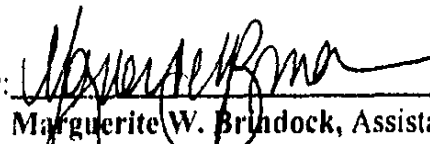
shall execute and provide to the Affiliate Lease Parties a termination of this Agreement, in recordable form. The Affiliate Lease Parties shall pay Lender's reasonable costs incurred in terminating this Agreement.

13. **Applicable Law.** This Agreement is and shall be governed by the laws of the State in which the Property is located.

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

STEAK AND ALE OF ILLINOIS, INC., a Nevada corporation

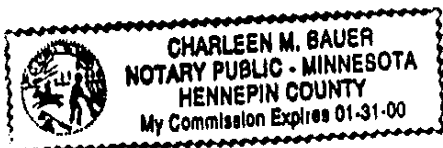
By: 
Todd M. Watson, Senior Vice President

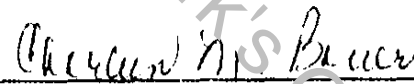
By: 
Marguerite W. Brindock, Assistant Secretary

STATE OF MINNESOTA
COUNTY OF HENNEPIN

The foregoing was acknowledged before me this 12 day of June, 1998, by Todd M. Watson as Senior Vice President and Marguerite W. Brindock as Assistant Secretary of STEAK AND ALE OF ILLINOIS, INC., a Nevada corporation on behalf of the corporation.

(NOTARY SEAL)




Notary Public, State of Minnesota
Printed Name: CHARLEEN M. BAUER
Notary Commission No. _____
My Commission Expires: 01-31-00

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S & A RESTAURANT CORP., a Delaware corporation

By: Adam L. Gray
Adam L. Gray, Senior Vice President

By: Todd M. Watson
Todd M. Watson, Vice President/
General Counsel/Secretary

STATE OF MINNESOTA
COUNTY OF HENNEPIN

The foregoing was acknowledged before me this 12 day of June, 1998, by Adam L. Gray, as Senior Vice President and Todd M. Watson, as Vice President/General Counsel/Secretary of S & A RESTAURANT CORP., a Delaware corporation, on behalf of the corporation.

(NOTARY SEAL)

Charleen M. Bauer
Notary Public, State of Minnesota
Printed Name: CHARLEEN M. BAUER
Notary Commission No. _____
My Commission Expires: 01-31-00



S & A PROPERTIES CORP., a Delaware corporation

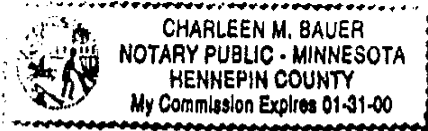
By: [Signature]
Todd M. Watson, Senior Vice President

By: [Signature]
Marguerite W. Brindock, Assistant Secretary

STATE OF MINNESOTA
COUNTY OF HENNEPIN

The foregoing was acknowledged before me this 12 day of June, 1998, by Todd M. Watson, as Senior Vice President and Marguerite W. Brindock, as Assistant Secretary of S & A PROPERTIES CORP., a Delaware corporation, on behalf of the corporation.

(NOTARY SEAL)



[Signature]
Notary Public, State of Minnesota
Printed Name: CHARLEEN M. BAUER
Notary Commission No. _____
My Commission Expires: 01-31-00

PREPARED BY:
DANIEL F. McINTOSH, ESQUIRE
LOWMEYER, DRUSDICK, DUSTER, KANTOR & REED
215 NORTH EOLA DRIVE
ORLANDO, FLORIDA 32801

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

PARCEL 1:

Lots 4 and 5 in Venture Urban Subdivision, being a resubdivision of Lot 3 (excepting therefrom that part taken for additional right of way for 159th Street in Case Number 80L10516 in the Circuit Court of Cook County, Illinois) and also Lot 4 of the Resubdivision of Lot 2 in River Oaks West Unit Number 2, in part of the Northeast 1/4 of Section 24, Township 36 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

PARCEL 2:

Non-exclusive Easement for ingress and egress for the benefit of Parcel 1 as created by Deed from May Properties 1975, Inc., a Delaware corporation, to Steak and Ale of Illinois, Inc., a Nevada corporation, dated July 29, 1981 recorded July 31, 1981 as Document Number 25955725 over the following described property:

That part of Lot 9 in Venture Urban Subdivision, being a resubdivision of Lot 3 (excepting therefrom that part taken for additional right of way for 159th Street in Case Number 80L10516 in the Circuit Court of Cook County, Illinois) and also Lot 4 of the Resubdivision of Lot 2 in River Oaks West Unit Number 2, in part of the Northeast 1/4 of Section 24, Township 36 North, Range 14 East of the Third Principal Meridian, lying North and East of the following described line: Commencing at the intersection of the West line of Torrence Avenue, as dedicated, and the South line of said Lot 9; thence South 89 degrees 59 minutes 04 seconds West, 190.67 feet; thence North 0 degrees 00 minutes 56 seconds West, 311.36 feet to a point of curve; thence Northwesterly on a curve convex to the Northeast, having a radius of 69.75 feet, an arc distance of 109.40 feet and a chord bearing of North 44 degrees 56 minutes 54 seconds West to a point of tangent; thence North 89 degrees 52 minutes 52 seconds West, 424.63 feet; thence North 0 degrees 07 minutes 08 seconds East, 222.33 feet to the North line of said Lot 9 (excepting therefrom the North 38 feet of the East 23 feet, lying West of and adjacent to the West line of Torrence Avenue), all in Cook County, Illinois.

PERMANENT INDEX NUMBER:
29-24-200-038

ADDRESS:
1250 TORRENCE AVENUE
CALUMET CITY, ILLINOIS

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EXHIBIT "B"

**AFFILIATE LEASEHOLD INTEREST
(Fee Mortgage Properties)**

Amended and Restated Sublease made and entered into effective June 16, 1998, by and between S&A Restaurant Corp., a Delaware corporation, as Landlord, and the Company, as a Tenant.

Property of Cook County Clerk's Office