

**ASSIGNMENT AND ASSUMPTION OF SUBLEASE**

**AND**

**GUARANTY OF OBLIGATIONS OF ASSIGNEE**

**THIS ASSIGNMENT AND ASSUMPTION OF SUBLEASE AND GUARANTY OF OBLIGATIONS OF ASSIGNEE** (this “**Agreement**”) is made and entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2005 (the “**Effective Date**”), by, between and among **CHI-CHI’S, INC.**, a Delaware corporation, successor by merger to Chi-Chi’s USA, Inc., a Kentucky corporation (“**Assignor**”), **CHEESEBURGER-SOUTH EASTERN PENNSYLVANIA, LIMITED PARTNERSHIP** (“**Assignee**”), and **OUTBACK STEAKHOUSE, INC.**, a Delaware corporation (“**Guarantor**”).

**RECITALS:**

A. Becker Associates, LLC, as successor in interest to Exton Express, Inc., a Pennsylvania corporation, as successor in interest to La Maison De Bifteck, a Pennsylvania limited partnership (“**SubLandlord**”), and Dondie Corporation, a Pennsylvania corporation (reportedly dissolved as of October 4, 1993), and Chi-Chi’s USA, Inc., a Kentucky corporation (collectively, “**Original Tenant**”), entered into a Ground SubLease dated the 21st day of August, 1990 (the “**Sub-Lease**”), pursuant to which the Original Tenant leased from Sub-Landlord certain premises (the “**Leased Premises**”) located in the City of Exton, County of Chester, State of Pennsylvania, and more particularly described in the Sub-Lease, having a street address of 120 North Pottstown Pike, Exton, Pennsylvania. The Sub-Lease is apparently evidenced of record by that certain Memorandum of Sub-Lease recorded on September 12, 1990, in the records of the Recorder of Deeds for Chester County, Pennsylvania County, in Record Book 2146, page 315, of the aforesaid records.

B. Assignor is the successor by merger to Chi-Chi's USA, Inc., a Kentucky corporation, and is the current Tenant under the Lease.

C. Assignor desires to assign all of Assignor's right, title and interest in, to and under the Lease and in and to the Leased Premises to Assignee and Assignee desires to accept such assignment and assume the performance of the obligations of the Tenant under the Lease, pursuant to the terms set out below.

D. Guarantor is an affiliate of Assignee, and Guarantor has agreed to guaranty the performance of the Lease obligations assumed by Assignee, pursuant to the terms set out below.

For good and valuable consideration, Assignor, Assignee and Guarantor, agree as follows:

1. **Recitals.** The Recitals set out above are true and correct and are a part of this Agreement.

2. **Assignment.** Effective as of the Effective Date, Assignor hereby transfers, assigns, and sets over to Assignee all of Assignor's right, title, and interest in, to and under the Lease and in and to the Leased Premises. This Agreement is being executed and delivered pursuant to, and this Agreement and the transfer being made pursuant hereto are subject to, the terms and provisions of that certain Order Under 11 U.S.C. §§ 105, 363 and 365 and Fed. R. Bankr. P. 2002, 6004 and 6006 (I) Authorizing The Debtors To Enter Into Sale Agreement Pursuant To Which the Right to Sell the Debtors' Interest In Its Real Property and To Direct and Designate the Assignment of the Debtors' Interests in the Leases For Certain of Their Leased Real Property Which Will Be Sold Free And Clear Of Claims, Liens And Encumbrances, (II) Approving A Process For The Subsequent Sale Of The Real Property And Assumption And Assignment Of The Leases For Such Leased Real Property To Designees, and (III) Granting Other Relief, dated September 7, 2004 and entered in Chapter 11 Case No. 03-13063 (Related Docket No. 981), In re Chi-Chi's, Inc., et al., Debtors, in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court Order"), including that certain Designation Rights Agreement attached to the Bankruptcy Court Order as Exhibit A, a copy of which Bankruptcy Court Order (including such Designations Rights Agreement attached thereto as Exhibit A), has heretofore been received and reviewed by Assignee and Guarantor. Notwithstanding the foregoing provisions of this Agreement (i) nothing herein is intended to or shall affect the rights or obligations of any person or entity under the Bankruptcy Court Order (including such Designation Rights Agreement attached thereto as Exhibit A), (ii) nothing herein shall expand the rights, obligations or liabilities of Assignor beyond those contained in the Bankruptcy Court Order and Designation Rights Agreement, and (iii) any and all rights that Assignor may have under the Lease shall be deemed included in this conveyance to Assignee.

3. **Acceptance and Assumption.** Assignee accepts the assignment made in Paragraph 2 above, and agrees, from and after the Effective Date, to observe and perform all of the terms, covenants and agreements, to be observed or performed by the Tenant under the Lease which relate to the period during which Assignee is the Tenant under the Lease. Assignee is not assuming any liability for matters arising prior to the Effective Date.

4. **Guaranty of Assignee's Lease Obligation.** The Guarantor hereby guarantees the performance of the Lease obligations assumed by Assignee (the "**Assumed Obligations**"), in accordance with the following (the "**Guaranty**"):

(A) Guarantor hereby guarantees to and for the benefit of the Landlord (from time to time) under the Lease (an intended third party beneficiary of this Agreement) the performance by Assignee of the Assumed Obligations, including: (I) Assignee's payment, when due, of all rental due to the Landlord under the Lease and (II) Assignee's performance of all the other obligations of the Assignee as the Tenant under the Lease.

(B) The Landlord under the Lease shall not be required to exhaust its remedies against Assignee before pursuing its rights against Guarantor and Guarantor acknowledges that the Landlord under the Lease shall be entitled to pursue its rights against Guarantor, before, after, concurrently with, or without pursuing its remedies against Assignee.

(C) In the event that the Lease is rejected in any bankruptcy of Assignee, Guarantor agrees, upon the request of the Landlord under the Lease, made within thirty (30) days of such rejection, to enter into a new lease with the Landlord, effective as of the date of rejection and otherwise under the same terms and conditions as the Lease.

(D) In any action by the Landlord under the Lease to enforce the Guaranty the prevailing party shall be entitled to recover reasonable attorneys fees.

(Remainder of page intentionally left blank)

**IN WITNESS WHEREOF**, the Assignor, Assignee and Guarantor have executed this Agreement.

WITNESSES:

ASSIGNOR:

CHI-CHI'S, INC.,  
a Delaware corporation

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

(SEAL)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_, as \_\_\_\_\_ of Chi-Chi's, Inc., a Delaware corporation, on behalf of the corporation. He/she is either personally known to me, or has produced a \_\_\_\_\_ driver's license as identification.

(NOTARIAL SEAL)

\_\_\_\_\_  
Print Name: \_\_\_\_\_

NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

[signatures continued on next page]

**ASSIGNEE:**

**PENNSYLVANIA, LIMITED PARTNERSHIP,  
A FLORIDA LIMITED PARTNERSHIP**

By: Cheeseburger in Paradise, LLC,  
a Delaware limited liability  
company

Its: General Partner

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2005, by \_\_\_\_\_, on behalf of \_\_\_\_\_. He is  
either personally known to me, or has produced a \_\_\_\_\_ driver's license as  
identification.

(NOTARIAL SEAL)

\_\_\_\_\_  
Print Name: \_\_\_\_\_

NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

[signatures continued on next page]

**GUARANTOR:**

**OUTBACK STEAKHOUSE, INC.,**

a Delaware corporation

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: Carl W. Sahlsten

Its: Senior Vice President

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2005, by Carl W. Sahlsten, as Senior Vice President of Outback Steakhouse, Inc., a Delaware corporation, on behalf of the corporation. He is either personally known to me, or has produced a Florida driver's license as identification.

(NOTARIAL SEAL)

\_\_\_\_\_  
Print Name: \_\_\_\_\_

NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_