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NON-DISTURBANCE, SUBORDINATION AND ATTORNMENT AGREEMENT

Dated: as of January 28, 2000

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Tenant:

Rosebud Restaurants, Inc.  
1419 West Diversey Parkway  
Chicago, Illinois 60614

<u>Tenant:</u> Rosebud Restaurants, Inc. 1419 West Diversey Parkway Chicago, Illinois 60614	<u>Mortgagee:</u> American National Bank and Trust Company of Chicago 1825 W. Lawrence Ave. 2 <sup>nd</sup> Floor Chicago, IL 60640
<u>Mortgaged Property:</u> Common address: 1419 West Diversey Parkway Chicago, Illinois 60614 P.I.N. No: 14-29-302-020-0000 14-29-302-054-0000	
<u>Prepared by:</u> Daniel F. Gosch Dickinson Wright PLLC 200 Ottawa Ave., NW Suite 900 Grand Rapids, Michigan 49503	<u>When recorded, please return to:</u> Daniel F. Gosch Dickinson Wright PLLC 200 Ottawa Ave., NW Suite 900 Grand Rapids, Michigan 49503

BOX 333-CTT

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NON-DISTURBANCE, SUBORDINATION AND ATTORNMENMENT AGREEMENT

THIS AGREEMENT, dated this 28th day of January, 2000, by and between American National Bank and Trust Company of Chicago, a national banking corporation, whose address is 1825 W. Lawrence Ave, 2<sup>nd</sup> Floor, Chicago, Illinois (herein called the "Mortgagee"), and Rosebud Restaurants, Inc., an Illinois corporation whose address is 1419 West Diversey Parkway, Chicago, Illinois 60614 (herein called the "Tenant").

WITNESSETH:

WHEREAS, the Mortgagee is the holder of a Mortgage (herein the "Mortgage") from Alex Dana (herein the "Mortgagor") dated as of the date hereof, encumbering property located in the City of Chicago, Cook County, Illinois and more specifically described on attached Exhibit A (the "Mortgaged Premises");

WHEREAS, Mortgagor, as lessor, and the Tenant, as lessee, have, or about to enter into a lease of the Mortgaged Premises (said lease being herein called the "Lease"), a true and complete copy of which is attached as Exhibit B hereto.

NOW, THEREFORE, the parties agree as follows:

1. The Lease and any other lease between Mortgagor and Tenant relating to the Mortgaged Premises shall at all times be subject and subordinate in each and every respect to the Mortgage and to any and all increases, renewals, modification, extensions, substitutions, replacements and/or consolidations of the Mortgage and to any future mortgage or mortgages affecting the Mortgaged Premises held by the Mortgagee. Notwithstanding the foregoing, if the Tenant is not in default under the Lease or any other lease with Mortgagor relating to the Mortgaged Premises, or this agreement or any other agreement with the Mortgagee and if no event has occurred that would entitle the Mortgagor to terminate the Lease, then (a) the Mortgagee will not name or join the Tenant in any foreclosure, exercise of a power of sale, sale by advertisement, or any other proceeding to enforce the Mortgage, unless the Mortgagee must so name or join the Tenant in order to perfect the foreclosure of the Mortgage or the exercise of the its rights under any other proceeding; (b) the Mortgagee's enforcement of the Mortgage will be subject to the Lease and the rights of Tenant thereunder, not terminate the Lease or any other lease with Mortgagor relating to the Mortgaged Premises or disturb the Tenant's use or possession of the Leased Premises; and (c) the leasehold estate granted the Tenant under the Lease or any other lease with Mortgagor relating to the Mortgaged Premises will not be affected in any manner by any proceeding to enforce or foreclose the Mortgage.

2. The Tenant agrees to give prompt written notice to the Mortgagee of any default by the Mortgagor or any successor in interest to the Mortgagor (as landlord) in the performance of the landlord's obligations under the Lease or any other lease between Mortgagor and Tenant relating to the Mortgaged Premises if such default is of such a nature as to give the Tenant a right to terminate the Lease or any other lease between Mortgagor and Tenant relating to the Mortgaged Premises, reduce the rent payable thereunder or to credit or offset any amounts against future rents payable thereunder, and to give the Mortgagee the opportunity to cure such default as provided in the Lease or in any other lease of the Mortgaged Premises. It is further

agreed that such notice and opportunity to cure will be given to any successor holder of the Mortgage, provided that prior to any such default by the landlord such successor in interest shall have given written notice to the Tenant of its acquisition of the Mortgagee's interest therein and designated the address to which such notice is to be directed.

3. If the interests of the landlord under the Lease or in any other lease between Mortgagor and Tenant relating to the Mortgaged Premises shall be transferred by reason of foreclosure, deed in lieu of foreclosure or other proceedings for enforcement of the Mortgage, the Tenant shall be bound to the person acquiring the interest of the landlord as a result of any such action or proceeding, its successor and assigns (herein called the "Purchaser"), under all of the terms, covenants and conditions of the Lease or in any other lease between Mortgagor and Tenant relating to the Mortgaged Premises for the balance of the term thereof remaining and any extensions or renewals thereof, with the same force and effect as if the Purchaser were the landlord under the Lease or in any other lease between Mortgagor and Tenant relating to the Mortgaged Premises, and the Tenant does hereby attorn to the Purchaser, including the Mortgagee if it be the Purchaser, as its landlord, said attornment to be effective and self-operative without the execution of any further instruments upon the Purchaser succeeding to the interest of the landlord under the Lease or in any other lease between Mortgagor and Tenant relating to the Mortgaged Premises. The Purchaser shall not be (a) liable for any act or omission of any prior landlord, or (b) subject to any offsets or defenses which the Tenant might have against any prior landlord, or (c) bound by any rent or additional rent which the Tenant might have paid for more than one month to any prior landlord, or (d) bound by any amendment or modification of the Lease or any other lease of the Mortgaged Premises made without the Mortgagee's prior written consent. Mortgagee hereby agrees that so long as Tenant is not in default under the Lease, Mortgagee shall not disturb tenant's tenancy under the Lease.

4. The Tenant hereby represents, warrants and covenants with the Mortgagee that (a) the Lease represents the entire agreement between the parties as to the leased premises and the Lease has not been modified, supplemented, changed, altered or amended in any respect except as hereinabove described, (b) the Tenant has not made, and will not make, any prepayment of rent or any other payment to the Mortgagor more than one month prior to its due date which may be used to reduce or offset rent payable under the Lease or any other lease between Mortgagor and Tenant relating to the Mortgaged Premises, (c) the Tenant shall not enter into any amendment, modification, termination or supplement to the Lease or any other lease between Mortgagor and Tenant relating to the Mortgaged Premises without the prior written consent of the Mortgagee (which consent shall not be unreasonably withheld or delayed) and any such amendment, modification, termination or supplement obtained without such consent shall be void, ab initio unless the Lease is renewed or terminated by Tenant in accordance with rights provided in the Lease, (d) the Lease is in full force and effect and the Tenant has no knowledge of any defaults or potential defaults on the part of the Mortgagor, as landlord, under the Lease or any other lease between Mortgagor and Tenant relating to the Mortgaged Premises, (e) the Tenant currently has no right of setoff against any obligation for present or future rentals and has no knowledge of any existing circumstances which would give rise to such right of setoff, and (f) that the space and all tenant improvements required to be furnished by the Mortgagor according to the terms of the Lease or any other lease between Mortgagor and Tenant relating to the Mortgaged Premises have been fully completed and that the Mortgagor has otherwise fulfilled all of its duties under the Lease and any other lease between Mortgagor and Tenant relating to the Mortgaged Premises.

5. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors in interest. This Agreement shall be governed by the internal laws of the State of Illinois.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto the day and year first above written.

American National Bank and Trust Company of Chicago

By: Gregory H. Bork

Its: 1st Vice President

Rosebud Restaurants, Inc

By: [Signature]

Its: President

STATE OF ILLINOIS )  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me on this 28<sup>th</sup> day of January, 2000, by Gregory H. Bork, the First Vice President of American National Bank and Trust Company of Chicago, on behalf of the banking corporation.



Maria R. Cantu  
Notary Public  
Acting in Cook County  
My Commission Expires: 8-13-03

STATE OF ILLINOIS )  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me on this 27 day of January, 2000, by Alex Dana, the President of Rosebud Restaurants, Inc. on behalf of said corporation.



Heather E. Way  
Notary Public  
Acting in Cook County  
My Commission Expires: 12/07/02

**Exhibit A**

**Legal Description**

Lots 3, 4, 5 and the West 17 Feet of Lot 6 in Lenbecke's Subdivision of Lot 5 in Block 45 in Sheffield' Addition to Chicago in the West ½ of the Southwest ¼ of Section 29, Township 40 North, Range 14, East of the Third Principal Meridian in Cook County, Illinois

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