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Store #1083

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1638 2/14/97

Prepared by:

STEVEN CHERIN  
PYES & CHERIN  
29 South LaSalle Street  
Suite 430  
Chicago, Illinois 60603

Mail to:

PYES & CHERIN  
29 South LaSalle Street  
Suite 430  
Chicago, Illinois 60603  
Attention: Steven Cherin

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, made as of May 9, 1995 (this "Agreement") among FIRST COLONIAL BANK/MUNDELEIN formerly known as NEW CENTURY BANK (the "Bank"), a banking corporation organized under the laws of the State of Illinois, with a place of business at 2000 S. Lake Street, Mundelein, Illinois 60060, Attention: Shari Reiches and S. F. MANAGEMENT COMPANY, an Illinois corporation, having an address at 1020 North Milwaukee Avenue, Suite 360, Deerfield, Illinois 60015, Attention: Sheldon Friedman (hereinafter called the "Lessor") and NATIONAL RESTAURANT ENTERPRISES, INC., a Delaware corporation, having an address c/o The Jordan Company, 9 West 57th Street, New York, New York 10019, Attention: A. Richard Caputo, Jr. (hereinafter called the "Lessee").

WITNESSETH:

WHEREAS, Lessor is the fee owner of the land located at 1540 E. Northwest Highway, Palatine, Illinois and more particularly described on Exhibit A attached hereto and made a part hereof, together with the improvements thereon (such real property and improvements and all improvements to be constructed thereon are collectively referred to herein as the "Property"); and

WHEREAS, the Lessor has issued to the Bank that certain Note in the principal amount of Eight Hundred Thousand and 00/100, (\$800,000.00) Dollars, evidencing a loan in such amount (the "Loan"), which Loan is secured by, among other things, that certain Mortgage, [Assignment of Leases and Rents] and Security Agreement, dated as of May 9, 1995, among the Lessor, as mortgagor, and the Bank, as mortgagee (as the same may be further amended or modified, the "Mortgage"); and

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DEPT-01 FELDROING \$37.00  
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4961 JH \*-95-339893  
COOK COUNTY RECORDER  
DEPT-10 PENALTY \$34.00

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WHEREAS, the Lessor and the Lessee have entered into a certain Lease Agreement covering the Property (as such lease may hereafter be amended, modified or supplemented from time to time, the "Lease"); and

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained, and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Lessee, the Bank and the Lessor, intending to be legally bound hereby, covenant and agree as follows:

1. Lessee covenants and agrees that the Lease now is and shall at all times continue to be subject and subordinate in each and every respect to the Mortgage and to any other mortgage or deed of trust (each, an "Additional Mortgage") held by the Bank in connection with the financing of the Property and all of the documents (collectively, the "Loan Documents") evidencing and/or securing the loan and the obligations secured by each Additional Mortgage, and to all renewals, modifications, consolidations, replacements, increases and extensions thereof, to the full extent of the principal, interest and other sums evidenced and/or secured thereby. Lessee, upon receipt thereof, shall execute and deliver any certificate or other instrument, whether or not in recordable form, which the Bank may reasonably request to confirm said subordination.

2. The Lessor and Lessee certify that: (i) the Lease is the entire agreement between the Lessor and the Lessee relating to the Property, (ii) the Lease is presently in full force and effect and unmodified, (iii) no rent payable thereunder has been paid more than one (1) month in advance of its due date, and (iv) no default by Lessee exists under the Lease which has continued beyond the expiration of any applicable grace, notice or cure period (and no event has occurred and no condition exists which, with the giving of notice and/or passage of time, would constitute a default by Lessee under the Lease).

3. As long as Lessee has performed its obligations under the Lease and is not in default beyond the expiration of any applicable grace notice or cure period under this Agreement, the Bank shall not name Lessee as a party defendant to any action for foreclosure or other enforcement of the Mortgage and/or any Additional Mortgage (unless required by law), nor shall the Lease be terminated by the Bank in connection with, or by reason of, foreclosure or other proceedings for the enforcement thereof, or by reason of a transfer of the landlord's interest under the Lease pursuant to the taking of a deed in lieu of foreclosure (or similar device), nor shall Lessee's use or possession of the Property be interfered with by the Bank, except that the person acquiring, or succeeding to, the interests of the landlord as a result of any such notice or proceeding, and such person's

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successors and assigns (any of the foregoing being hereinafter referred to as the "Successor"), shall not be:

- a. subject to any credits, offsets, prior defenses or claims which Lessee might have against any prior landlord; or
- b. bound by any prepayment of more than one (1) month's rent; or
- c. liable for any act or omission of any prior landlord; or
- d. bound by any covenant to undertake or complete any improvement to the Property or any other portion of the Property or any other incentives granted to Lessee to induce it to enter into the Lease, except as specifically set forth in the Lease; or
- e. required to account for any security deposit other than any security deposit actually delivered to the Successor; or
- f. liable for any payment to Lessee of any sums, or the granting to Lessee of any credit in the nature of a contribution or other monetary incentive toward the cost of preparing, furnishing, or moving into the Property or any portion thereof, except as specifically set forth in the Lease.

4. Lessee covenants and agrees not to subordinate or permit the subordination of the Lease to any Mortgage or deed of trust other than the Mortgage and each Additional Mortgage.

5. If the interest of the landlord under the Lease shall be transferred by reason of foreclosure or other proceedings for enforcement of the Mortgage and/or an Additional Mortgage and the obligations secured thereby or pursuant to a taking or deed in lieu of foreclosure (or similar device), Lessee shall be bound to the Successor and, except as provided in Section 3 of this Agreement, the Successor shall be bound to Lessee under all of the terms, covenants and conditions of the Lease, for the unexpired balance of the term thereof remaining (and any extensions, if and when exercised), with the same force and effect as if the Successor were the landlord, and Lessee does hereby (i) agree to attorn to the Successor, including the Bank, if it be the Successor, as its landlord, (ii) ratify and affirm its obligations under the lease or if the Successor shall so request, enter into a new lease with the Successor on the same terms and conditions as the Lease, and (iii) agree to make

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payments of all sums due under the Lease to the Successor, said attornment ratification, reaffirmation and agreement to be effective and self-operative without the execution of any further instruments, upon the Successor succeeding to the interest of the landlord under the Lease.

6. Lessee acknowledges that it has notice that the landlord's interest under the Lease and the rent and all other sums due thereunder have been assigned to the Bank as part of the security for the indebtedness secured by the Mortgage. In the event that the Bank notified Lessee of any default under the Mortgage, an Additional Mortgage or any of the other Loan Documents and demands that Lessee pay rent and all other sums due under the Lease to the Bank, Lessee agrees that it shall pay rent and all other sums due under the Lease directly to the Bank.

7. This Agreement may not be modified except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns, including without limitation, any Successor.

8. Nothing contained in this Agreement shall in any way impair or affect the liens and security interest created by the Mortgage, each Additional Mortgage and/or the Loan Documents, as the case may be.

9. All notices, demands or requests made pursuant to, under, or by virtue of this Agreement must be in writing and delivered by hand, sent by any overnight courier service providing dated evidence of delivery or mailed by certified mail or registered mail, return receipt requested, to the person to whom the notice, demand or request is being made at its address set forth in the Lease, and, if to the Bank, at the address set forth above. Any person may change the place to which notices and demands are to be sent by written notice delivered in accordance with this Agreement.

10. This Agreement shall be governed by the Laws of the State of Illinois. If any of the terms of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of any such terms to any person or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.





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

**Lessee:**

**NATIONAL RESTAURANT ENTERPRISES, INC.,**  
a Delaware corporation

By: *[Signature]* Authorized Officer  
Name:  
Title:

**Lessor:**

**S. F. MANAGEMENT COMPANY, an Illinois**  
corporation

By: *Sheldon T. Friedman*  
Sheldon Friedman  
President

**Bank:**

**FIRST COLONIAL BANK/MUNDELEIN formerly**  
known as NEW CENTURY BANK

By: *Mark Reinertsen* Authorized Officer  
Name: Mark Reinertsen  
Title: Vice President

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Exhibit A

## PROPERTY

### PARCEL 1:

Lot 76 in Robert Bartlett's Arlington Crest Estate, a Subdivision of Part of the South East 1/4 of Section 24 and Part of the Northeast 1/4 of Section 25, Township 42 North, Range 10 East of the Third Principal Meridian, in Cook County, Illinois.

### PARCEL 2:

Lots 77 and 78 in Robert Bartlett's Arlington Crest Estates Subdivision of Part of South East 1/4 of Section 24 and Part of the Northeast 1/4 of Section 25, Township 42 North, Range 10 East of the Third Principal Meridian, in Cook County, Illinois.

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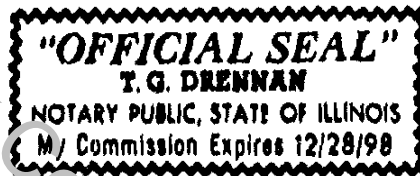
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STATE OF ILLINOIS )  
                          ) ss  
COUNTY OF C O O K )

Personally appeared Mark Reinertson, Vice President of First Colonial Bank/Mundelein formerly known as New Century Bank, which is a banking corporation organized under the laws of Illinois, signer of the foregoing instrument and acknowledged the same to be his free act and deed in such capacity and the free act and deed of said corporation, before me.

T. G. Drennan  
Notary Public

My Commission expires: 12-28-98



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10/10/03