

# UNOFFICIAL COPY

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Cook County Recorder 41.00



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11/13

## SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT

BY AND BETWEEN

BRINKER RESTAURANT CORPORATION (formerly known as CRM  
Restaurant Corporation) a Delaware Corporation (Tenant) and LASALLE BANK,  
NATIONAL ASSOCIATION (Lender)

This Instrument was prepared by and  
After recording return to:

Frederick M. Kaplan, Esq.  
Seyfarth, Shaw, Fairweather & Geraldson  
55 East Monroe St. Suite 4200  
Chicago, Illinois 60603  
Tel: (312) 346-8000

Property Address: 1480 Golf Road, Rolling Meadows, Illinois

Permanent Real Estate Index Number:

BOX 333-CTI

2/18/00

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2 of 2

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## SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT

STATE OF ILLINOIS     )  
  )  
COUNTY OF COOK     )

THIS AGREEMENT is entered into this 14 day of June, 1999, by and between BRINKER RESTAURANT CORPORATION, (formerly known as CRM Restaurant Corporation) a Delaware corporation, hereinafter called "**Tenant**", and LaSalle Bank, National Association, hereinafter called "**Lender**").

### RECITALS:

**WHEREAS**, Tenant is the Tenant under that certain Lease Agreement ("**Lease**") dated February 26, 1991, as amended, between Tenant and Republic Bank of Chicago, not personally but as trustee under a Trust Agreement dated July 22, 1997 and known as Trust No. 1391 as successor in interest to LaSalle National Trust, N.A., Successor Trustee to LA SALLE NATIONAL BANK, not individually but solely as Trustee under Trust Agreement dated October 1, 1988 and known as Trust No. 113782 ("**Borrower**"), as landlord, covering approximately 10,773 square feet in a shopping center located at the northwest corner of Golf Road and Algonquin Road in the City of Rolling Meadows, the County of Cook, State of Illinois (the "**Premises**"), and being part of and located in the shopping center commonly known as Meadows Town Mall and more fully described in Exhibit A attached hereto and made a part hereof.

**WHEREAS**, Lender has made a construction mortgage loan to Borrower and Borrower's beneficiary secured by a Construction Mortgage and Security Agreement from Borrower to Lender (the "**Mortgage**"), covering, among other property, the Premises.

### AGREEMENT:

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and in order for Lender to make the mortgage loan, Tenant and Lender hereby agree and covenant as follows:

1. The Lease and the estate conveyed thereby are and shall at all times continue to be subject and subordinate in all respects to the Mortgage and to all renewals, modifications and extensions thereof, subject to the terms and conditions hereinafter set forth in this Agreement.

2. So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the other terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession under the Lease and Tenant's rights and privileges thereunder or under any extensions or renewals thereof which may be effected in accordance with any option therefor contained in the Lease, shall not be diminished or interfered with by Lender under any circumstances and Tenant's occupancy shall not be disturbed by Lender during the term of the Lease or any extensions or renewals thereof. Lender will be bound by the terms of the Lease, and unless such action is required to preserve Lender's rights and remedies under the Mortgage or as a matter of law, Lender will not join Tenant as a party defendant in any foreclosure proceeding taken by Lender.

3. If the interests of Borrower shall be acquired by Lender by reason of foreclosure of the Mortgage or other proceedings brought to enforce the rights of the holder of the Mortgage, by deed in lieu of foreclosure or by any other method and Lender succeeds to the interests of Borrower under the Lease, the Lease and the rights of Tenant thereunder shall continue in full force and effect and shall not be terminated or disturbed except in accordance with the terms of the Lease. Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor contained in the Lease, with the same force and effect as if Lender were the Landlord under the Lease and Tenant does hereby attorn to Lender, as its Landlord, said attornment to be effective and self-operative without the execution of any other instruments on the part of either party hereto, immediately upon Lender's succeeding to the interest of Borrower under the Lease, provided, however, that Tenant shall be under no obligation to pay rent to Lender until Tenant receives written notice from Lender that it has succeeded to the interests of Borrower under the Lease. The respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the term of the Lease and any extensions or renewals, shall be and are the same as now set forth in the Lease, it being the intention of the parties hereto for this purpose to incorporate the Lease into this Agreement by reference, with the same force and effect as if set forth at length herein. In complying with the provisions of this Paragraph 3 hereof, Tenant shall be entitled to rely solely upon the notices provided by Lender which are referred to herein and Borrower agrees to indemnify and hold Tenant harmless from and against all loss, claim or damage or liability arising out of Tenant's compliance with such notice. Tenant shall be entitled to full credit under the Lease for any rents paid to Lender in accordance with this Agreement to the same extent as if such rents were paid directly to Borrower. Any dispute between Borrower and Lender

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(or any successor or assign) as to the existence or continuance of a default by Borrower under the terms of the Mortgage, or with respect to the extent or nature of such default, or with respect to foreclosure of the Mortgage by Lender, shall be dealt with and adjusted solely between Lender (or any successor or assign) and Borrower, and Tenant shall not be made a party thereto (unless joinder is required by law).

4. If Lender shall succeed to the interests of Borrower under the Lease, Lender shall be bound to Tenant under all of the terms, covenants and conditions of the Lease and Tenant shall have the same remedies against Lender for the breach of any agreement contained in the Lease that Tenant might have had under the Lease against Borrower if Lender had not succeeded to the interests of Borrower; provided further, however, that Lender shall not be:

- a. Liable for any act, omission or breach of any representation or warranty of any prior Landlord (including Borrower); or
- b. Bound by any rent or additional rent which Tenant might have paid for more than one (1) month in advance to any prior Landlord (including Borrower); or
- c. Bound by any amendment or modification of the Lease made without Lender's consent.

5. This Agreement may not be modified orally or in any other manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. Tenant further agrees to send to Lender at the following address copies of those notices given to Landlord pursuant to the terms of the aforesaid Lease which relate to all Landlord's or Tenant's defaults, insurance, casualty and condemnation matters at the same time such notice is given to Landlord:

LaSalle Bank National Association  
135 South LaSalle Street  
Chicago, Illinois 60603  
Attention: Andrea Velthoven

with a copy to:

Terrence E. Budny, Esq.  
Bell, Boyd & Lloyd  
Three First National Plaza  
70 West Madison Street  
Suite 3300  
Chicago, Illinois 60602-4207

This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, successors and assigns, it being expressly understood that all references herein to Lender shall be deemed to include not only Lender, but also its successors and assigns.

6. Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement, the Lease shall be deemed to have been automatically amended to provide that Lender's obligations and liability under the Lease shall never extend beyond Borrower's (or its successors' or assigns') interest, if any, in the Leased Premises from time to time, including insurance and condemnation proceeds and Lender's interest in the Lease (collectively, "**Mortgagee's Interest**"). Lessee shall look exclusively to Mortgagee's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Mortgagee under the Lease as amended or affected by this Agreement. If Lessee obtains any money judgment against Mortgagee with respect to the Lease or the relationship between Mortgagee and Lessee, then Lessee shall look solely to Mortgagee's Interest (or that of its successors and assigns) to collect such judgment. Lessee shall not collect or attempt to collect any such judgment out of any other assets of Lender. By executing this Agreement, Borrower specifically acknowledges and agrees that nothing contained in this Paragraph 6 shall impair, limit, affect, lessen, abrogate or otherwise modify the obligations of Borrower, as Landlord, to Tenant under the Lease.

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

**TENANT:**

Attest:

Barbara P. Mahoney  
Asst. Sec.

**BRINKER RESTAURANT CORPORATION, a Delaware corporation**

By: J. L. Tobin  
Name: JAY L. TOBIN  
Title: VICE PRESIDENT

**LENDER:**

Attest:

Mauro T. Espinoza

**LASALLE BANK NATIONAL ASSOCIATION**

By: [Signature]  
its: AVP

**BORROWER:**

Attest:

\_\_\_\_\_

**REPUBLIC BANK OF CHICAGO**  
not personally, but as trustee aforesaid

By: [Signature]  
Name: FRANK J. MACOCHA  
Title: ETP & CO.

This instrument is executed by Republic Bank of Chicago, not personally or individually, but solely as trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such trustee. All of the statements, warranties and representations set forth herein are made solely on information and belief without any independent inquiry or investigation by Republic Bank of Chicago and should be construed accordingly. Notwithstanding any provision to the contrary set forth in this instrument, any recourse against Republic Bank of Chicago shall be limited to the assets comprising the trust estate and no personal liability shall be asserted or be enforceable against Republic Bank of Chicago by reason of the terms, promises, agreements, covenants, warranties, representations, indemnifications, or other matters herein set forth, all such personal liability of Republic Bank of Chicago being expressly waived.

**ACKNOWLEDGMENT**

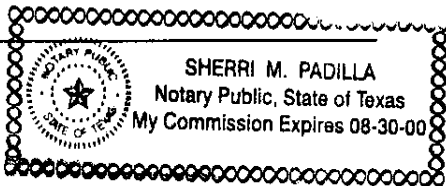
STATE OF TEXAS        )  
                                  ) SS  
COUNTY OF DALLAS    )

I hereby certify that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared JAY L. TOBIN, Vice President of BRINKER RESTAURANT CORPORATION, a Delaware corporation, to me known to be the person described in and who executed the foregoing instrument and who acknowledged before me that he executed the same on behalf of said corporation.

WITNESS my hand and official seal in the County and State last aforesaid on this 14 day of June, 1999.

*Sherrie M Padilla*  
\_\_\_\_\_  
Notary Public

My Commission Expires:



Property of Cook County Clerk's Office

**ACKNOWLEDGMENT**

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF WILL )

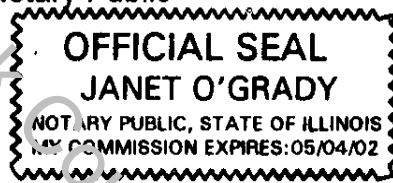
I hereby certify that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Andrea Velthoven, AVP of LaSalle Bank, NA, to me known to be the person described in and who executed the foregoing instrument and who acknowledged before me that he executed the same on behalf of said corporation.

WITNESS my hand and official seal in the County and State last aforesaid on this 20th day of June, 1999.

Janet O'Grady  
Notary Public

My Commission Expires:

5-4-02





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## ACKNOWLEDGMENT

STATE OF Illinois )  
 ) SS  
COUNTY OF Cook )

I hereby certify that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Thomas Procha, EMP/ TRUST OFFICER of REPUBLIC BK. OF CHICAGO, to me known to be the person described in and who executed the foregoing instrument and who acknowledged before me that he executed the same on behalf of said corporation.

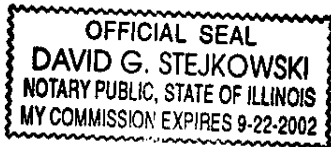
WITNESS my hand and official seal in the County and State last aforesaid on this 21 day of June, 1999.

David G. Stejkowski

Notary Public

My Commission Expires:

\_\_\_\_\_



### AFTER RECORDING RETURN TO:

Ms. Denise Moore  
Brinker Restaurant Corporation  
6820 LBJ Freeway  
Dallas, Texas 75240

EXHIBIT AThe Center

## LEGAL DESCRIPTION

## PARCEL 1:

LOTS 1 TO 3 AND OUTLOT "A" IN J C P MEADOWS P. U. D., BEING A RESUBDIVISION OF LOT 1 IN J C P MEADOWS SUBDIVISION, IN THE SOUTH WEST 1/4 OF SECTION 9 AND THE SOUTH EAST 1/4 OF SECTION 8, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 18, 1985 AS DOCUMENT 85329240, IN COOK COUNTY, ILLINOIS;

## PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AFORESAID AND OTHER PROPERTY AS CREATED BY AGREEMENT DATED OCTOBER 18, 1984 AND RECORDED APRIL 30, 1986 AS DOCUMENT 8617068 MADE BY AND BETWEEN CHICAGO TITLE AND TRUST COMPANY, A CORPORATION OF ILLINOIS, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 2, 1970 AND KNOWN AS TRUST NUMBER 56088 TO AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED JULY 19, 1984 AND KNOWN AS TRUST NUMBER 61717, MEADOW LANDS ASSOCIATES, AN ILLINOIS LIMITED PARTNERSHIP, AND THE CITY OF ROLLING MEADOWS FOR THE CONSTRUCTION, OPERATION, USE, REPAIR, REMOVAL, REPLACEMENT AND MAINTENANCE OF A WATER LINE OR LINES AND A SANITARY SEWER SYSTEM AND APPURTENANCES THERETO, TOGETHER WITH THE RIGHT OF ACCESS THERETO IN, UPON, ACROSS, OVER AND UNDER A STRIP OF LAND 20.00 FEET IN WIDTH LYING ENTIRELY IN LOT 4 OF 58-62 VENTURE SUBDIVISION, BEING A SUBDIVISION OF PART OF SECTIONS 8 AND 9, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS;

## PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AFORESAID AND OTHER PROPERTY AS CREATED BY EASEMENT AGREEMENT BETWEEN CHICAGO TITLE AND TRUST COMPANY, A CORPORATION OF ILLINOIS, AS TRUSTEE UNDER TRUST NO. 56088, TO J. C. PENNEY PROPERTIES, INC., A DELAWARE CORPORATION, DATED DECEMBER 10, 1971 AND RECORDED JANUARY 6, 1972 AS DOCUMENT 21769213 FOR INGRESS AND EGRESS OVER, UPON, AND ACROSS THAT PART OF LOT 4 IN 58-62 VENTURE SUBDIVISION, A SUBDIVISION IN SECTIONS 8 AND 9, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, SHOWN AS "HATCHED" ON EXHIBIT "B" TO THE AFORESAID EASEMENT AGREEMENT AND DESIGNATED AS "TRUST SITE EASEMENT AREA", ALL IN COOK COUNTY, ILLINOIS;

## PARCEL 4:

RECIPROCAL EASEMENTS MADE FOR THE BENEFIT OF THE OWNERS OF LAND OVER THE OTHER PARCELS FOR EASEMENTS FOR UTILITIES, AND FOR THE PURPOSE OF MAINTAINING, REPAIRING, REPLACING, RELOCATING, AND CONSTRUCTING UTILITIES AS CONTAINED IN DECLARATION MADE BY J. C. PENNEY PROPERTIES, INC. DATED JUNE 1, 1976 AND RECORDED JULY 7, 1976 AS DOCUMENT 23549143, AND THE CONDITIONS, PRIVILEGES AND OBLIGATIONS THEREIN CONTAINED;

EXHIBIT A

The Center

PARCEL 5:

EASEMENT FOR INGRESS AND EGRESS FOR VEHICULAR AND PEDESTRIAN TRAFFIC IN AND UPON AND THROUGH THE EASTERLY 15 FEET OF THE ROADWAY DESCRIBED AS EXHIBIT 'A' TO THE ROAD WAY CROSS EASEMENT AND MAINTENANCE AND INDEMNITY AGREEMENT RECORDED JULY 7, 1976 AS DOCUMENT NO. 23549145 FOR THE BENEFIT OF A PORTION OF PARCEL 1 AFORESAID, WHICH PORTION IS DESCRIBED IN EXHIBIT 'C' THERETO ATTACHED TO THE AFOREMENTIONED AGREEMENT, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NOS.:

08-08-403-023; 08-08-403-024; 08-08-403-025; 08-08-403-026;  
08-09-302-015; 08-09-302-016; 08-09-302-017; 08-09-302-018;  
and 08-09-302-019.

ADDRESS:

NORTHWEST CORNER OF GOLF AND ALGONQUIN ROADS  
ROLLING MEADOWS, ILLINOIS