

Inst # 1998-21155

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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06/08/1998-21155
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SHELBY COUNTY JUDGE OF PROBATE
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**SUBORDINATION, ATTORNMENT, NONDISTURBANCE,
WAIVER AND PARTIAL RELEASE AGREEMENT**

THIS SUBORDINATION, ATTORNMENT, NONDISTURBANCE, WAIVER AND PARTIAL RELEASE AGREEMENT (the "Agreement") is made and entered into this 2nd day of June, 1998, by and between IHOP PROPERTIES, INC., a California corporation, whose principal place of business is located at 525 N. Brand Boulevard, 3rd Floor, Glendale, California 91203-1903 ("Tenant"), and NATIONAL BANK OF COMMERCE OF BIRMINGHAM, N.A., whose principal place of business is located at 1927 First Avenue North, Birmingham, Alabama 35203 ("Lender"), with reference to and based upon the following:

R E C I T A L S:

A. Tenant entered into that certain Ground Lease dated May 28, 1998 ("Lease"), with J. Wilson Dinsmore, an individual ("Landlord"), which Lease, by this reference, is incorporated herein, pursuant to which Tenant shall be occupying a certain portion, described in **Exhibit A** ("Premises"), of the land described in **Exhibit B** ("Real Estate").

B. Lender is the mortgagee under that certain Mortgage dated June 26, 1997, made by Landlord, recorded June 26, 1997, as Instrument No. 1997-20043, of the Shelby County, Alabama, Records, securing the obligations of Landlord under that certain Promissory Note of even date in the sum of Nine Hundred Thousand Dollars (\$900,000) (the "Mortgage"), secured against the Real Estate.

C. As a condition precedent to the effectiveness of the Lease, Tenant requires that Lender execute this Agreement.

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar (\$1.00), each in hand to the other paid, the receipt and legal sufficiency of which are acknowledged, it is mutually agreed as follows:

1. **Subordination.** The Lease shall at all times be subject and subordinate in all respects to the Mortgage and to all extensions, renewals, consolidations and modifications thereof, replacements therefor and supplements thereto, with the same force and effect as if the Mortgage had been executed, acknowledged, delivered and recorded prior to the execution, acknowledgement and delivery of the Lease; subject, however, to the terms and conditions of this Agreement.
2. **Attornment.** In the event Lender or any other person, in the exercise of any rights under the Mortgage, becomes owner of the Real Estate or the Premises and the Improvements described in the Lease, or Landlord's interest therein, whether by reason of

foreclosure or deed in lieu of foreclosure, Tenant shall, at Lender's or such other person's request, attorn to and recognize such new owner as "Lessor" under the Lease; said new owner to have all the rights, including but not limited to the right to receive and collect rent from the Tenant, granted to, and all the duties imposed upon, the "Lessor" named as such in the Lease. Lender shall give Tenant notice of commencement of any foreclosure proceedings, but failure to give such notice shall not invalidate any such foreclosure proceedings.

3. Collateral Assignment. Tenant acknowledges that Landlord's rights and obligations under the Lease may be subject to a collateral assignment and that, in the event Lender, in exercise of any rights under any collateral assignment, becomes entitled to accept performance under the Lease from Tenant, Tenant shall, at Lender's request, tender such performance, including payment of all rent and additional rent, to Lender.

4. Non-Disturbance. So long as Tenant is not in default (after notice thereof and 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 terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession of the Premises and Tenant's rights and privileges under the Lease or any extensions or renewals of the Lease which may be exercised in accordance with any option(s) in the Lease, including Tenant's rights as provided in the Lease to the application of any insurance proceeds in the event of damage or destruction to the Premises and any condemnation award in the event of a partial or total taking of the Premises, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any such extensions or renewals.

5. Landlord's Default. Notwithstanding anything to the contrary in the Lease, Tenant specifically agrees that it shall give Lender a copy simultaneously of any written notice given to Landlord of any default of Landlord under the Lease, and Lender shall have the right, but shall not be obligated, to cure any default asserted against Landlord within the time provided in the Lease, or, if no time is provided, within a reasonable period of time, before Tenant may take any action against the Landlord and/or the Lease by reason of such default.

6. Lender's Trade Fixture Waiver. Lender acknowledges, consents and agrees that certain furniture, fixtures, equipment, machinery and other tangible personal property (excluding the heating, ventilation, air conditioning and all electrical and mechanical components and systems that are an integral part of the Improvements) (collectively, the "Trade Fixtures") to be installed in, on or at the Premises by or on behalf of Tenant, shall be and at all times shall remain the personal property of Tenant (or any equipment lessor as herein provided) and the same may be removed by Tenant (or any equipment lessor or lender as herein provided) at any time during the term of the Lease, whether or not such Trade Fixtures may be regarded as property of Landlord by operation of law or otherwise. The financing for the Trade Fixtures will be arranged by Tenant under a certain equipment lease, conditional sale agreement, security agreement and/or other similar security device from a certain equipment lessor or lender. Lender hereby waives, disclaims, and releases unto said equipment lessor or lender any rights Lender may have to the Trade Fixtures by reason of (a) the manner or method in which the Trade Fixtures are attached or affixed to the Premises or any Improvements contained thereon, or (b) any statute or rule of law of the State in which the Premises are located which would, but for this Agreement, permit Lender to distrain against the Trade Fixtures for the nonpayment of any rent or other charges coming due under the Lease. Lender hereby grants permission to said equipment lessor or lender to remove the Trade Fixtures in the event of a default by Tenant

under said equipment lease, conditional sale agreement, security agreement and/or similar security device, provided it repairs any damage to the Premises resulting therefrom. Said equipment lessor or lender shall be deemed an intended direct beneficiary of the provisions of this Section 6 to the same extent and with the same force as if said equipment lessor or lender was specifically and expressly named herein. In the event said equipment lessor or lender requires the execution by Lender of a form of waiver that is not inconsistent with the foregoing provisions, Lender shall execute same, subject to its reasonable approval as to the form of same, within a reasonable period of time after receiving a written request to do so from Tenant. Lender hereby releases its security interest, if any, in the Trade Fixtures arising under any security agreement and perfected by any financing statement; such release, at the request of Tenant, to be released of record by Lender's execution and delivery of an appropriate UCC form and Tenant's filing and/or recordation of same.


7. Tenant's Title to Improvements. Notwithstanding anything to the contrary contained herein, Tenant's right, title and interest in and to the Improvements (as defined in the Lease), other than Landlord's reversionary interest therein, shall not be subject and subordinate to the Deed of Trust and shall be superior to the rights of Lender under the Deed of Trust.

8. Binding Effect. This Agreement shall inure to and be binding upon the heirs, successors and assigns of the parties hereto and the equipment lessor or lender referenced in Section 6 above.

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

TENANT:

IHOP PROPERTIES, INC.

By: 
Richard K. Herzer
Its: President

LENDER:

NATIONAL BANK OF COMMERCE
OF BIRMINGHAM, N.A.

By: 
Its: Vice President

[ACKNOWLEDGMENT OF TENANT]

State of California)
) S.S.
County of Los Angeles)

On June 2, 1998, before me, Jeanne V. Martinez, a Notary Public in and for said County and State, personally appeared Richard K. Herzer, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Jeanne V. Martinez



(Seal)

[ACKNOWLEDGMENT OF LENDER]

State of Alabama)
) S.S.
County of Jefferson)

I, Rebecca B. Paterson, a Notary Public in and for said County in said State, hereby certify that James A. Powell, whose name as Vice President of National Bank of Commerce of Birmingham, N.A., is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 29 day of May, 1998.

Rebecca B. Paterson
Notary Public

(Seal)

Exhibit A

Legal Description of Premises

Parcel 1

A parcel of land situated in the northeast 1/4 of Section 36, Township 19 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the northeast corner of said Section 36; thence run South along the east line of said Section 36 a distance of 266.80 feet; thence turn 117°40'00" right and run Northwesterly 165.21 feet to a point on the westerly right of way line of U.S. Highway 31; thence turn 110°54'05" left to the tangent of a curve to the left, said curve having a radius of 1,752.68 feet, run along the arc of said curve and said road right of way for 16.26 feet to the southeast corner of Lot 1 according the survey of Walgreens-Pelham, as recorded in Map Book 23, Page 88, in the Office of Probate of Shelby County, Alabama, and the point of beginning; thence continue along said curve and said road right of way for 70.67 feet to a point; thence turn 90°00'00" left from the tangent to said curve at said point and run Easterly along said road right of way for 15.00 feet; thence turn 90°00'00" right to the tangent of a curve to the left, said curve having a radius of 1,737.68 feet, and run along the arc of said curve and said road right of way for 189.15 feet to a point; thence turn 94°22'17" right from the tangent to said curve at said point and run Westerly for 239.68 feet; thence turn 95°24'00" right and run Northeasterly for 116.68 feet to a point on the southeast line of said Lot 1; thence turn 50°36'53" right and run Northeasterly along said lot line for 257.43 feet to the point of beginning. Containing 0.98 acres.

Parcel 2

Perpetual, non-exclusive easements, appurtenant to Parcel 1, for access, drainage, sanitary sewer, and retaining wall, over, under and across that certain adjoining property, as set forth and described in (a) that certain Declaration of Easements for Joint Access, Drainage Pipe, Sewer Pipe, and Construction/Maintenance/Repair of Retaining Wall, dated August 29, 1997, between J. Wilson Dinsmore and R.K.M. 'Bama, Inc., recorded August 29, 1997, as Instrument No. 1997-27813, Shelby County, Alabama, Records; and (b) that certain Declaration of Easements for Joint Access, Drainage Pipe, Sewer Pipe, and Construction/Maintenance/Repair, dated September 5, 1997, between J. Wilson Dinsmore and North Pelham, L.L.C., recorded September 11, 1997, as Instrument No. 1997-29355, Shelby County, Alabama, Records.

Parcel 3

Perpetual, non-exclusive easements, appurtenant to Parcel 1, for ingress, egress, parking, utility lines and drainage, over, under and across that certain adjoining property, as set forth and described in that certain Declaration of Easements and Restrictions and Joint Maintenance Agreement dated May 21st, 1998, made by J. Wilson Dinsmore, recorded May 6th, 1998, as Instrument No. 1998-20066, Shelby County, Alabama, Records.

EXHIBIT B

DESCRIPTION PARCEL 1

A PARCEL OF LAND SITUATED IN THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP 19 SOUTH, RANGE 3 WEST, SHELBY COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHEAST CORNER OF SAID SECTION 36; THENCE RUN SOUTH ALONG THE EAST LINE OF SAID SECTION 36 A DISTANCE OF 266.80 FEET, THENCE TURN 117°40'00" RIGHT AND RUN NORTHWESTERLY 165.21 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY #31; THENCE TURN 110°54'05" LEFT TO THE TANGENT OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 1,752.68 FEET, RUN ALONG THE ARC OF SAID CURVE AND SAID ROAD RIGHT OF WAY FOR 16.26 FEET TO THE SOUTHEAST CORNER OF LOT 1 ACCORDING THE SURVEY OF WALGREENS-PELHAM, AS RECORDED IN MAP BOOK 23, PAGE 88 IN THE OFFICE OF PROBATE OF SHELBY COUNTY, ALABAMA AND THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID CURVE AND SAID ROAD RIGHT OF WAY FOR 70.67 FEET TO A POINT; THENCE TURN 90°00'00" LEFT FROM THE TANGENT TO SAID CURVE AT SAID POINT AND RUN EASTERLY ALONG SAID ROAD RIGHT OF WAY FOR 15.00 FEET; THENCE TURN 90°00'00" RIGHT TO THE TANGENT OF A CURVE TO THE LEFT SAID CURVE HAVING A RADIUS OF 1,737.68 FEET AND RUN ALONG THE ARC OF SAID CURVE AND SAID ROAD RIGHT OF WAY FOR 189.15 FEET TO A POINT; THENCE TURN 94°22'17" RIGHT FROM THE TANGENT TO SAID CURVE AT SAID POINT AND RUN WESTERLY FOR 239.84 FEET; THENCE TURN 95°24'00" RIGHT AND RUN NORTHEASTERLY FOR 116.68 FEET TO A POINT ON THE SOUTHEAST LINE OF SAID LOT 1, THENCE TURN 50°36'53" RIGHT AND RUN NORTHEASTERLY ALONG SAID LOT LINE FOR 257.43 FEET TO THE POINT OF BEGINNING. CONTAINING 0.98 ACRES.

DESCRIPTION PARCEL 2

A PARCEL OF LAND SITUATED IN THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP 19 SOUTH, RANGE 3 WEST, SHELBY COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHEAST CORNER OF SAID SECTION 36; AND RUN SOUTH ALONG THE EAST LINE OF SAID SECTION 36 A DISTANCE OF 266.80 FEET, THENCE TURN 117°40'00" RIGHT AND RUN NORTHWESTERLY 165.21 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 31; THENCE TURN 110°54' 05" LEFT TO THE TANGENT OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 1,752.68 FEET , AND RUN ALONG THE ARC OF SAID CURVE AND SAID ROAD RIGHT OF WAY 86.93 FEET TO A POINT; THENCE TURN 90°00'00" LEFT FROM THE TANGENT TO SAID CURVE AT SAID POINT AND RUN EASTERLY ALONG SAID ROAD RIGHT OF WAY 15.00 FEET; THENCE TURN 90°00'00" RIGHT TO THE TANGENT OF A CURVE TO THE LEFT SAID CURVE HAVING A RADIUS OF 1,737.68 FEET AND RUN ALONG THE ARC OF SAID CURVE AND SAID ROAD RIGHT OF WAY 189.15 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG THE LAST DESCRIBED COURSE AND ALONG SAID ROAD RIGHT OF WAY 113.00 FEET TO A POINT; THENCE TURN 82°08'35" RIGHT FROM THE TANGENT TO SAID CURVE AT SAID POINT AND RUN SOUTHWESTERLY 211.53 FEET; THENCE TURN 90°00'00" RIGHT AND RUN NORTHWESTERLY 177.28 FEET; THENCE TURN 105°57'15" RIGHT AND RUN 239.84 FEET TO THE POINT OF BEGINNING.

DESCRIPTION PARCEL 3

A PARCEL OF LAND SITUATED IN THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP 19 SOUTH, RANGE 3 WEST, SHELBY COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHEAST CORNER OF SAID SECTION 36; AND RUN SOUTH ALONG THE EAST LINE OF SAID SECTION 36 A DISTANCE OF 266.80 FEET, THENCE TURN 117°40'00" RIGHT AND RUN NORTHWESTERLY 165.21 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 31; THENCE TURN 110°54' 05" LEFT TO THE TANGENT OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 1,752.68 FEET , AND RUN ALONG THE ARC OF SAID CURVE AND SAID ROAD RIGHT OF WAY 86.93 FEET TO A POINT; THENCE TURN 90°00'00" LEFT FROM THE TANGENT TO SAID CURVE AT SAID POINT AND RUN EASTERLY ALONG SAID ROAD RIGHT OF WAY 15.00 FEET; THENCE TURN 90°00'00" RIGHT TO THE TANGENT OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 1,737.68 FEET AND RUN ALONG THE ARC OF SAID CURVE AND SAID ROAD RIGHT OF WAY 302.15; THENCE TURN 82°08'35" RIGHT FROM THE TANGENT TO SAID CURVE AT SAID POINT AND RUN SOUTHWESTERLY 211.53 FEET; TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG THE LAST DESCRIBED COURSE 326.38 FEET TO A POINT ON THE NORTHEAST RIGHT OF WAY LINE OF OLD MONTGOMERY HIGHWAY; THENCE TURN 67°22'28" RIGHT AND RUN NORTHWESTERLY ALONG SAID RIGHT OF WAY LINE 159.18 FEET; THENCE TURN 92°26'33" RIGHT AND RUN NORTHEASTERLY 60.75 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 72.00 FEET, AND RUN ALONG THE ARC OF SAID CURVE 18.96 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN NORTHEASTERLY ALONG SAID TANGENT TO SAID CURVE 87.46 FEET; THENCE TURN 45°00'00" LEFT AND RUN 42.43 FEET; THENCE TURN 45°00'00" RIGHT AND RUN 66.56 FEET; THENCE TURN 16°09'56" LEFT AND RUN 186.72 FEET; THENCE TURN 132°36'48" RIGHT AND RUN SOUTHERLY 116.68 FEET; THENCE TURN 21°21'15" LEFT AND RUN 177.28 FEET TO THE POINT OF BEGINNING.

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