

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

IHOP Properties, Inc.
Attn: Legal Department [LSG]
525 N. Brand Blvd., 3rd Floor
Glendale, CA 91203

Inst # 1999-00621

01/06/1999-00621
11:24 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE

SPACED OUT THIS LINE FOR RECORDER'S USE ONLY

**SUBORDINATION, ATTORNMENT, NON-DISTURBANCE, WAIVER
AND PARTIAL RELEASE AGREEMENT**

THIS SUBORDINATION, ATTORNMENT, NON-DISTURBANCE, WAIVER AND PARTIAL RELEASE AGREEMENT (the "Agreement") is made and entered into as of ~~December 4~~ 1, 1999, by and between IHOP PROPERTIES, INC., a California corporation ("Lessee"), whose principal place of business is located at 525 N. Brand Boulevard, 3rd Floor, Glendale, California 91203-1903, and THE BANK, a state banking association ("Lender"), whose principal place of business is located at 17 North 20th Street, Birmingham, Alabama 35203, with reference to and based upon the following:

RECITALS:

A. Lessee entered into that certain Ground Lease dated May 28, 1998 with J. Wilson Dinsmore, an individual ("Lessor"), as amended and supplemented by that certain Addendum to Ground Lease dated November 1, 1998 (the "Lease"), pursuant to which Lessee occupies the land and Improvements (as defined in the Lease) described on Exhibit A attached hereto (the "Premises").

B. Lender is the mortgagee under that certain Mortgage, Assignment of Lease and Rents and Security Agreement dated ~~December 4~~ 1, 1999 made by Lessor as mortgagor, recorded ~~December 4~~ 1, 1999 in Book 1999, Page 00620, of the Official Records of Shelby County, State of Alabama, securing the obligations of Lessor under that certain Promissory Note of even date in the sum of Four Hundred Twenty-Five Thousand Dollars (\$425,000.00) (the "Mortgage").

C. Lender and Lessee have agreed to execute this Agreement to set forth the rights and obligations of each party in connection with the Mortgage and the Lease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and Lessee hereby agree as follows:

1. Subordination. Lessee covenants and agrees with Lender that the Lease is and shall be subject and subordinate to the Mortgage as the same may be extended, renewed or modified from time to time, in the same manner and to the same extent as if the Lease had been executed subsequent to the execution, delivery and recordation of the Mortgage, subject, however, to the terms and conditions of this Agreement.

2. Attornment. If, in the exercise of any rights under the Mortgage, Lender or any other person becomes owner of the Premises and Improvements described in the Lease, or Lessor's leasehold interest therein, Lessee shall attorn to and recognize Lender or such purchaser as Lessor under the Lease. In such event Lender or such purchaser shall have all the rights of Lessor under the Lease, including but not

limited to the right to receive and collect rent from Lessee, and shall assume and perform all obligations of Lessor under the Lease. Lender agrees that it shall not join Lessee in any foreclosure proceedings but will give Lessee notice of the commencement of any foreclosure proceedings; provided, however, failure to give such notice to Lessee shall not invalidate any such foreclosure proceedings. Tenant shall endeavor to notify Lender of any prepayment of monthly rent for more than one (1) month.

3. Assignment. Lessee acknowledges that Lessor's rights and obligations under the Lease are subject to the Mortgage. Lessee agrees that, upon Lessee's receipt of written notice from Lender that Lender has exercised its rights pursuant to the Mortgage to collect and receive rents, Lessee shall pay all rent and additional rent to Lender at the address set forth in the notice.

4. Non-Disturbance. So long as Lessee is not in default beyond any notice and cure period provided in the Lease in the payment of rent or additional rent, or in the performance of any other terms, covenants or conditions of the Lease on Lessee's part to be performed, Lessee's possession of the Premises and Lessee's rights and privileges under the Lease, including any extensions or renewals thereof, whether pursuant to options granted in the Lease or otherwise, shall not be diminished or interfered with by Lender, and Lessee's occupancy of the Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any extensions or renewals thereof. Lender acknowledges that such rights of Lessee under the Lease include, without limitation, Lessee's rights regarding (a) the application of insurance proceeds in the event of damage to or destruction of the Improvements, and (b) the allocation and application of any condemnation award in the event of a partial or total taking of the Premises.

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

6. Lender's Waiver. Lender acknowledges, consents and agrees that all furniture, fixtures, equipment, machinery and other tangible personal property installed or to be installed in, on or at the Premises by or on behalf of Lessee (the "Trade Fixtures"), excluding the heating, ventilating, and air conditioning system and all electrical and mechanical components and systems that form an integral part of the Improvements, shall be and at all times remain the personal property of Lessee (or an equipment lessor, as defined herein) and the same may be removed by Lessee (or such equipment lessor) at any time during the term of the Lease, whether or not such Trade Fixtures may be regarded as property of Lessor by operation of law or otherwise. Lessee may arrange financing for the Trade Fixtures under an equipment lease, conditional sale agreement, security agreement or other security device with an equipment lessor, vendor or lender (collectively referred to herein as "equipment lessor"). Lender hereby waives, disclaims, and releases unto such equipment lessor any rights Lender may have in or 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 the Improvements, 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 non-payment of rent, additional rent, or other charges coming due under the Lease. Lender hereby grants permission to such equipment lessor to remove the Trade Fixtures in the event of a default by Lessee under the equipment lease, conditional sale agreement, security agreement or other security device, provided it repairs any damage to the Premises resulting therefrom. Such equipment lessor 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 such equipment lessor were specifically and expressly named herein. If such equipment lessor requires the execution by Lender of a separate waiver which is not inconsistent with the foregoing, Lender agrees to execute and deliver such waiver, subject to Lender's reasonable approval as to form, within a reasonable period of time after receipt of a written request therefor.

7. **Lender's Partial UCC Release.** Lender hereby releases its security interest, if any, in the Trade Fixtures arising under the Mortgage, security agreement, and Financing Statement, each and all, and agrees that, if requested by Lessee, Lender shall execute and deliver to Lessee releases in the form appropriate for recording in the real estate records and filing under the Uniform Commercial Code, and such releases shall be recorded and/or filed by Lessee as required to give effect thereto.

8. **Lessee's Title to Improvements.** Notwithstanding anything to the contrary contained herein, Lessee's right, title and interest in and to the Improvements (as defined in the Lease), other than Lessor's reversionary interest therein, shall not be subject and subordinate to the Mortgage but shall be superior to the rights of Lender under the Mortgage.

9. **Binding Effect.** This Agreement shall inure to and be binding upon the heirs, successors and assigns of the parties hereto and the equipment lessor referred to in Section 6 above.

10. **Incorporation of Exhibits.** The Lease and all exhibits attached to this Agreement are hereby incorporated herein as though set forth in full in this Agreement itself.

11. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

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

LESSEE:

IHOP PROPERTIES, INC.,
a California corporation

By: 
Richard K. Herzer, President

LENDER:

THE BANK, a state banking association

By: 
W. Paul Fuchs

Its: Vice President

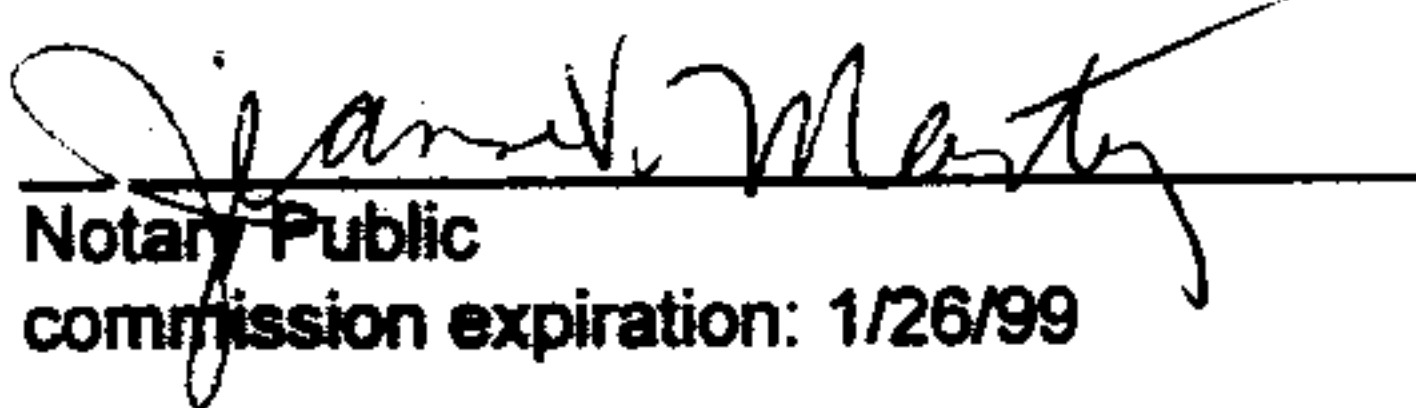
[ACKNOWLEDGMENT OF LESSEE]

State of California

County of Los Angeles

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Richard K. Herzer, whose name as President of IHOP PROPERTIES, INC., a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer, and with full authority, executed the same voluntarily, as an act of said corporation, acting in his capacity as aforesaid.

Given under my hand and official seal, this the 23rd day of December, 1998


Notary Public
commission expiration: 1/26/99



[ACKNOWLEDGMENT OF LENDER]

[ACKNOWLEDGEMENT OF LENDER]

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that W. Paul Huckeba, whose name as Vice President of THE BANK, a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer, and with full authority, executed the same voluntarily, as an act of said corporation, acting in his capacity as aforesaid.

Given under my hand and official seal, this the 4 day of January, 1999.


NOTARY PUBLIC

My Commission Expires: 6/17/99

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 $117^{\circ}40'00''$ right and run Northwesterly 165.21 feet to a point on the westerly right of way line of U.S. Highway 31; thence turn $110^{\circ}54'05''$ 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 $90^{\circ}00'00''$ 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 $90^{\circ}00'00''$ 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 $94^{\circ}22'17''$ right from the tangent to said curve at said point and run Westerly for 239.68 feet; thence turn $95^{\circ}24'00''$ right and run Northeasterly for 116.68 feet to a point on the southeast line of said Lot 1; thence turn $50^{\circ}36'53''$ right and run Northeasterly along said lot line for 257.43 feet to the point of beginning. Containing 0.98 acres.

Inst # 1999-00621

43895

01/06/1999
11:24 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 CRH 21.00