

# UNOFFICIAL COPY

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2002-08-08 15:02:16  
Cook County Recorder 31.50

This document was prepared by and  
~~after recording return to:~~

D. Albert Daspin  
McBride Baker & Coles  
One Mid America Plaza  
Suite 1000  
Oakbrook Terrace, Illinois 60181

01-10686 A  
2 of 2



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## RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT ("Agreement") is made as of August 1, 2002, by and between Opus North Corporation, an Illinois corporation ("Opus"), and IHOP Realty Corp., a Delaware corporation ("IHOP").

### RECITALS

- A. Opus is the owner of property legally described on Exhibit A attached hereto and made a part hereof (the "Premises").
- B. By that certain Purchase and Sale Agreement dated as of March 27, 2002 (the "Purchase Agreement"), by and between Opus, as seller, and IHOP, as purchaser, Opus has agreed to sell to IHOP and IHOP has agreed to purchase from Opus all of Opus' right, title and interest in and to the Premises.
- C. Pursuant to Article 14 of the Purchase Agreement, and subject to the conditions and limitations more particularly described herein and therein, Opus and IHOP have agreed that, so long as an International House of Pancakes ® restaurant is operated on the Premises, Opus shall not sell or lease that certain property legally described on Exhibit B attached hereto and made a part hereof (the "Restricted Property") for the permitted purpose of the operation of any of the following restaurants: The Village Inn, Bob' Big Boy, Shoney's, Denny's, Denny's Diner, Perkins, Waffle House, Baker's Square, Coco's, JB's, Allie's, Cracker Barrel, Marie Callendar's, Friendly's, or Eob Evan's Farms.
- D. This Agreement constitutes the restrictive covenant contemplated by Article 14 of the Purchase Agreement.
- E. Concurrently herewith, Opus is conveying its interest in the Premises to IHOP by Special Warranty Deed.
- F. Unless otherwise provided herein, all capitalized words and terms used in this Agreement shall have the same meanings ascribed to such words and terms as in the Purchase Agreement.

NOW, THEREFORE, to effect the terms of the Purchase Agreement, and in consideration of the foregoing premises, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Opus and IHOP hereby agree as follows:

1. So long as an International House of Pancakes ® restaurant is operated on the Premises, Opus shall not sell or lease the Restricted Property for the permitted purpose of the operation of any of the following restaurants: The Village Inn, Bob' Big Boy, Shoney's, Denny's, Denny's Diner, Perkins, Waffle House, Baker's Square, Coco's, JB's, Allie's, Cracker Barrel, Marie Callendar's, Friendly's, or Bob Evan's Farms.

2. The restrictions contained in this Agreement shall be effective only to the extent such restrictions are not determined to be unenforceable by a court of competent jurisdiction.

3. If Opus breaches the restrictions contained in this Agreement and such breach is not cured within thirty (30) days after written notice thereof from IHOP to Opus, IHOP shall have the right to pursue all of its rights and remedies available at law or in equity, including a suit for damages and injunctive relief, provided, however, that any claim IHOP may have against Opus for breach of the restrictions contained in this Agreement shall be deemed waived unless IHOP institutes an action at law or in equity within one hundred twenty (120) days from expiration of the thirty (30) day cure period.

4. IHOP agrees to indemnify, defend (with counsel reasonably acceptable to Opus), and hold Opus harmless against any action brought by an unrelated third party seeking a determination that the restrictions contained in this Agreement constitute an unlawful restraint of trade or otherwise violate any antitrust law or statute.

5. The restrictions contained in this Agreement shall automatically expire by their terms and without further act of Opus, IHOP or any other party on July 31, 2052.

6. The restrictions and conditions herein made shall constitute covenants running with the land and shall be binding upon and inure to the benefit of all owners, tenants and occupants of the Premises and the Restricted Property and their respective heirs, personal representatives, successors and assigns.

7. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

[Signature page follows.]

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

OPUS NORTH CORPORATION

IHOP REALTY CORP.

By: John M. Crocker  
Its: President

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ILLINOIS }  
COUNTY OF Cook } ss.

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that John M. Crocker, personally known to me to be the \_\_\_\_\_ President of OPUS NORTH CORPORATION, an Illinois corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such \_\_\_\_\_ President he signed and delivered the said instrument on behalf of said corporation, as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

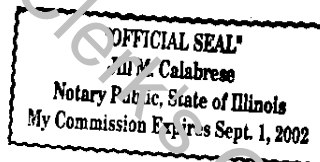
Given under my hand and official seal, this 30<sup>th</sup> day of July, 2002.

[Signature]  
Notary Public

[NOTARIAL SEAL]

My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } ss.



I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of IHOP REALTY CORP., a Delaware corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such \_\_\_\_\_ s/he signed and delivered the said instrument on behalf of said corporation, as his/her free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My Commission Expires: \_\_\_\_\_



EXHIBIT A

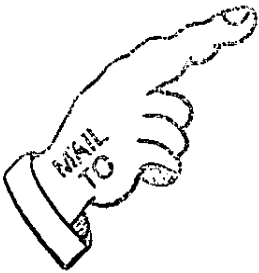
Legal Description of Premises

Outlot 3 of Willow Creek Center, being a resubdivision of Lots R-1, R-2, and R-3 in North Shore Corporate Park, being a resubdivision recorded December 23, 1999, as Document No. 09192216, all in the Southeast 1/4 and the Northeast 1/4 of Section 22, Township 42 North, Range 12 East of the Third Principal Meridian, in the Village of Glenview, Cook County, Illinois, said plat having been amended by Certificate of Revision and Correction recorded December 29, 1999 as Document 09204789, and further amended by Affidavit recorded April 12, 2001 as Document 0010296621

Permanent Index No.: 04-22-202-016

Property Address: Vacant land located South of Willow Road and West of Ravine Way, Glenview, Cook County, Illinois

AFTER RECORDING, RETURN TO:  
Attn: Christine A. Hathaway  
LandAmerica - Nat'l Commercial Svcs.  
10 South LaSalle Street, Suite 2500  
Chicago, IL 60603 CH-29403



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## EXHIBIT B

### Legal Description of Restricted Property

Outlot 1 of Willow Creek Center, being a resubdivision of part of the Northeast 1/4 and the Southeast 1/4 of Section 22, Township 42 North, Range 12 East of the Third Principal Meridian, according to the plat thereof recorded December 23, 1999 as Document No. 09192216, in the Village of Glenview, Cook County, Illinois

Permanent Index No.: 04-22-202-014

Property Address: Vacant land located South of Willow Road and West of Ravine Way, Glenview, Cook County, Illinois

Property of Cook County Clerk's Office