

UNOFFICIAL COPY

75-45-1618 D2

COOK COUNTY REC. 75-45-1618 D2



STATE OF ILLINOIS
REAL ESTATE TRANSFER TAX
APR-6'95 DEPT. OF REVENUE 512.50

95231407

SPECIAL WARRANTY DEED

95231407

(Illinois)

THIS INDENTURE, made this 31st day of MARCH, 1995, between LUNAN FAMILY RESTAURANTS LIMITED PARTNERSHIP, a limited partnership created and existing under and by virtue of the laws of the State of Illinois and duly authorized to transact business in the State of Illinois, ("Grantor"), and IHOP REALTY CORP., a Delaware corporation, 525 N. Brand Blvd., 3rd Floor, Glendale, California 91203, ("Grantee"), WITNESSETH, that Grantor for and in consideration of the sum of Ten Dollars and no/100 (\$10.00) and other good and valuable consideration, in hand paid by the Grantee, the receipt whereof is hereby acknowledged, and pursuant to authority of Lunan Family Restaurants, Inc., an Illinois corporation, its General Partner, by these presents does SELL, CONVEY and GRANT unto Grantee, and to its successors and assigns, any and all right, title and interest of Grantor in and to the real property described on Exhibit A attached hereto and made a part hereof (the "Property"), situated in the County of Cook, and State of Illinois, subject only to those covenants, conditions, restrictions, easements and other matters listed on Exhibit B attached hereto and made a part hereof.

DEPT-01 RECORDING \$101.00
T#0012 TRAN 3455 04/06/95 11:46:00
#6285 JM *-95-231407
COOK COUNTY RECORDER

Above Space For Recorder's Use Only

10/18

95231407

TO HAVE AND TO HOLD the Property, together with all and singular the rights, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, all of the estate, right, title, interest, claim or demand whatsoever belonging to Grantor, unto Grantee, its successors and assigns FOREVER. Grantor, for itself, and its successors, does covenant, promise and agree, to and with Grantee, that it has not done or suffered to be done, anything whereby the Property hereby granted is, or may be, in any manner encumbered or charged, except as to those covenants, conditions, restrictions easements and other matters set forth on Exhibit B attached hereto, and that Grantor will warrant and defend the Property against all persons lawfully claiming, or to claim the same, by, through or under Grantor, but not otherwise, subject, however, to the matters set forth in Exhibit B attached hereto and made a part hereof. Except for those matters listed on Exhibit B, and pursuant to the Order of the Bankruptcy Court dated March 17, 1995, a true and correct copy of which is attached hereto as Exhibit C and made a part hereof, this conveyance is made free and clear of all liens, encumbrances and other interests pursuant to 11 U.S.C Section 363(f), including, without limitation, any interest of Marriott Family Restaurants, Inc., under a purported Lease and Sublease of the Property, as disclosed by that certain Memorandum dated March 31, 1994, recorded April 6, 1994, as Document No. 94309813.

7545618 D2 2X

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

All representations and warranties herein shall be limited to Grantor's title to the Property for Grantor's period of ownership.

Permanent Real Estate Index Number(s): 27-09-401-019-0000

Address of real estate: 14860 LaGrange Road, Orland Park, Illinois

IN WITNESS WHEREOF, Grantor has caused its name to be signed to these presents by the President of its General Partner, and attested by the Assistant Secretary of its General Partner the day and year first above written.

LUNAN FAMILY RESTAURANTS LIMITED PARTNERSHIP,
an Illinois limited partnership

By: Lunan Family Restaurants, Inc., an Illinois corporation, Its
General Partner

By: Michael Schulson
Michael Schulson, President

COOK
CO. NO. 016
052200

STATE OF ILLINOIS
REAL ESTATE TRANSFER TAX
DEPT. OF REVENUE
512.50

Attest:

Gerald L. Sherman

Gerald L. Sherman, Assistant Secretary Cook County

REAL ESTATE TRANSACTION TAX
512.50

STATE OF ILLINOIS

COUNTY OF COOK

I, LAURA G DURKIN, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that MICHAEL SCHULSON and GERALD SHERMAN personally known to me to be the PRESIDENT and ASSISTANT SECRETARY of Lunan Family Restaurants, Inc., an Illinois corporation, the General Partner of Lunan Family Restaurants Limited Partnership, an Illinois limited partnership, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such PRESIDENT and ASSISTANT SECRETARY, that they signed and delivered the said instrument as the free and voluntary act and deed of said limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 14 day of MARCH, 1995.

Laura G Durkin
Notary Public
Commission expires 9-17-97

OFFICIAL SEAL
LAURA G DURKIN
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 09/17/97

95231407

UNOFFICIAL COPY

Property of Cook County Clerk's Office

10/11/2023

UNOFFICIAL COPY

This instrument was prepared by Robert B. Weil, Esq., Sonnenschein, Nath & Rosenthal, 8000 Sears Tower, Chicago, Illinois 60606-6404.

(NAME AND ADDRESS)

MAIL TO:	SEND SUBSEQUENT TAX BILLS TO:
Joseph J. London, Esq. Warner Center Plaza 21800 Oxnard Street, Suite 1190 Woodland Hills, CA 91367	IHOP Realty Corp. 525 N. Brand Blvd., 3rd Floor Glendale, CA 91203

Property of Cook County Clerk's Office

95231A07

UNOFFICIAL COPY

Property of Cook County Clerk's Office

7/11/2013

UNOFFICIAL COPY

EXHIBIT A

Legal Description

PARCEL 1:

Lot One (1) in Owner's Subdivision of part of the South Half (1/2) of the North Half (1/2) of the East Half (1/2) of the East Half (1/2) of the Southeast Quarter (1/4) of Section 9, Township 36 North, Range 12 East of the Third Principal Meridian, according to the Plat thereof registered in the Office of the Registrar of Titles of Cook County, Illinois on November 25, 1983 as Document Number LR 3342806, in Cook County, Illinois.

PARCEL 2:

Non-exclusive easement and rights appurtenant to and for the benefit of Parcel 1 for, among other things, the purpose of water drainage and outfall, to lay, install, remove, construct, maintain, operate, repair and replace storm and outfall sewers, conduits and pipes, and ditches for the purpose of carrying and transmitting water, as created and existing by Storm Sewer Easement dated November 14, 1983 and registered November 25, 1983 as Document Number LR 3342808, over, under and across the following described premises:

A 20 foot wide strip of land that is legally described as being that part of the South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of Section 9, Township 36 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois, bounded as described as follows:

Commencing at the Southeast corner of said South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of Section 9, and running thence South 89 degrees 45 minutes 41 seconds West along the South line of said South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of Section 9 a distance of 282.50 feet to a point; thence North 0 degrees 15 minutes 10 seconds West, a distance of 215.0 feet to the point of beginning; thence South 89 degrees 45 minutes 41 seconds West, distance 5.0 feet to a point; thence North 0 degrees 15 minutes 10 seconds West along a straight line to a point on the North line of said South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of Section 9 that is 290.20 feet West of the East line of said Southeast 1/4 of Section 9; thence Easterly along said North line of the South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of Section 9, distance of 20.0 feet to a point; thence South 0 degrees 15 minutes 10 seconds East along a straight line to a point that is 215.0 feet North of the South line of said South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of Section 9; thence South 89 degrees 45 minutes 41 seconds West, a distance of 15.0 feet to the point of beginning, in Cook County, Illinois;

AND

A 20 foot wide strip of land that is legally described as being the North 20.0 feet (except the West 33.0 feet thereof) and (except the East 290.14 feet thereof) of the South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of Section 9, Township 36 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

95231A07

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

PARCEL 3:

Non-exclusive easement and rights appurtenant to and for the benefit of Parcel 1 for driveway purposes for ingress and egress to and from Parcel 1 to and from La Grange Road, as created and existing by Easement dated November 14, 1983 and registered November 25, 1983 as Document Number LR 3342809, over and across the following described premises:

That part of the South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of Section 9, Township 36 North, Range 12 East of the Third Principal Meridian, bounded and described as follows:

Commencing at the Southeast corner of said South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of Section 9, and running thence North 0 degrees 1 minute 10 seconds West along the East line of said Southeast 1/4 of Section 9, a distance of 215.0 feet to the point of beginning; thence continuing along the last described course, a distance of 58.0 feet to a point; thence South 89 degrees 45 minutes 41 seconds West a distance of 58.60 feet to a point on the West right of way line of La Grange Road (according to Document No. 10123561); thence South 0 degrees 15 minutes 10 seconds East along said West right-of-way line, a distance of 15.0 feet to a point; thence South 89 degrees 45 minutes 41 seconds West, a distance 62.0 feet to a point; thence South 0 degrees 15 minutes 10 seconds East, a distance of 43.0 feet to a point; thence North 89 degrees 45 minutes 41 seconds East, a distance of 120.37 feet to the point of beginning, all in Cook County, Illinois.

PIN No. 27-09-401-019-0000

Commonly known as 14860 LaGrange Road, Orland Park, Illinois

95231407

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2025 01 14 10:00 AM

UNOFFICIAL COPY

EXHIBIT B

Permitted Exceptions

1. Taxes for the years 1994 (2nd installment) and 1995 (current taxes only).
2. Public Utility Easement over the East 10 feet and the South 10 feet of the land as shown on the Plat of Owners Subdivision filed November 25, 1983 as Document LR3342806. (Affects Parcel 1)
3. Easement in favor of The Commonwealth Edison Company and The Illinois Bell Telephone Company, and its/their respective successors and assigns, to install, operate and maintain all equipment necessary for the purpose of serving the land and other property, together with the right of access to said equipment, and the provisions relating thereto contained in the Grant recorded/filed as Document No. T3367295, affecting the North 10.5 feet of the South 34.0 feet (except the West 33 feet thereof and except that part lying Easterly of the Westerly line of Owners Subdivision of part of the South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of aforesaid Section 9). (Affects Parcel 2)
4. Storm Sewer Easement filed November 25, 1983, as Document LR 3342808, also as shown on Plat of The Village Green Subdivision recorded November 1, 1988, as Document 88504250 and filed as Document LR 3948254, made by and between Henelco, Inc., an Illinois corporation, and Walgreen Company, an Illinois corporation, granting a perpetual non-exclusive easement over, under and across the land for the purpose of water drainage and outfall. (Affects Parcel 2)
5. Easement made by and between Henelco, Inc., an Illinois corporation, and Walgreen Company, an Illinois corporation, filed November 25, 1983, as Document LR 3342809, and also as shown on Plat of The Village Green Subdivision recorded November 1, 1988, as Document 88504250, and filed as Document LR 3948254, granting an easement for driveway, roadway, curb and etc. (Affects Parcel 3)
6. Easement Agreement made by and between Henelco, Incorporated, an Illinois corporation, and The Commonwealth Edison Company and The Illinois Bell Telephone Company, filed November 25, 1983, as Document LR 3342810, and also as shown on Plat of The Village Green Subdivision filed as Document LR 3948254, and recorded November 1, 1988, as Document 88504250, granting an easement for the purpose of installing and maintaining power and telephone lines, etc. (Affects Parcel 2)

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

7. Perpetual easement in, on, upon, over, through, across or under the North 10 feet of the land to install, construct and otherwise establish and to operate and maintain water mains, fire hydrants, valves and water service facilities incidental thereto, and storm sewer pipes and storm sewer service connections and facilities incidental thereto granted by Walter J. Henely and Marilyn R. Henely, his wife, to Village of Orland Park, a municipal corporation, filed March 25, 1970, as Document LR 2496492. (Affects Parcel 2)
8.
 - (a) Terms, provisions and conditions relating to the easements described as Parcels 2 and 3 contained in the instrument creating said easements.
 - (b) Rights of the adjoining owner or owners to the concurrent use of said easements.

Property of Cook County Clerk's Office

95231407

UNOFFICIAL COPY

Property of Cook County Clerk's Office

EXHIBIT C
UNOFFICIAL COPY

United States Bankruptcy Court

For the NORTHERN District of ILLINOIS

This is to certify that the within and attached document(s) is a full, true and correct copy of the original thereof as the same appears on file in the office of the Clerk of the United States Bankruptcy Court for the Northern District of Illinois.

Wayne E. Nelson
Clerk of Court

By: *Michelle Flann*
Deputy Clerk

Dated: 3-30-95

95231407

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

E C D MAR 21 1995

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:) In a Proceeding for a
) Reorganization Under
LUNAN FAMILY RESTAURANTS, LIMITED) Chapter 11 of the
PARTNERSHIP, an Illinois Limited) Bankruptcy Code
Partnership,)
Employer I.D. 36-3779750)
)
Debtor/Debtor in Possession,) No. 94 B 21227
)
) Hon. Jack B. Schmetterer

**ORDER AUTHORIZING THE SALE OF PROPERTY
OF THE ESTATE OTHER THAN IN THE ORDINARY COURSE OF BUSINESS;
APPROVING THE ASSUMPTION AND ASSIGNMENT OF SUBLEASEHOLD
INTERESTS; AND AUTHORIZING PAYMENT OF BROKER'S COMMISSION**

At Chicago, in said District, this 17th day of March, 1995.

THIS CAUSE coming on to be heard upon the Motion of Lunan Family Restaurants, Ltd., an Illinois limited partnership, debtor herein ("LFR" or the "Debtor") for the entry of an order authorizing the sale of property of the estate pursuant to the Purchase Agreement, First Amendment to Purchase Agreement, and Second Amendment to Purchase Agreement, all attached hereto as Exhibit A and made a part hereof (the "Purchase Agreement"), other than in the ordinary course of business, free and clear of any interest in such property pursuant to Sections 363(b) and 363(f) of the Bankruptcy Code (the "Code"); approving the assumption and assignment of the subleasehold interests which constitute property of the estate pursuant to Section 365 of the Code; and authorizing the payment of brokers' commissions and closing expenses in connection with the foregoing; notice hereof having been given to the parties listed on the Notice of Motion relating hereto, which is incorporated herein by reference, to

3557-1/3-17-95

95231407

210.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

all creditors of this estate, and to other parties that have expressed a serious interest in acquiring the property of the estate described herein; the Court having reviewed the Motion and the exhibits thereto, and heard and considered the testimony of Michael Schulson, president of the Debtor's corporate general partner and statements of counsel present and being otherwise fully advised in the premises, FINDS as follows:

A. On October 25, 1994 (the "Petition Date"), the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code and from and after said date has been operating its business and managing its property under the jurisdiction of this Court as debtor in possession.

B. The Debtor's business consists of the ownership, leasing and operation of family style restaurants at twenty (20) locations in the Chicago and Chicago metropolitan area, under franchises from Shoney's, Inc.

C. No trustee has been appointed in this case.

D. The notice of hearing on the Motion as reflected in those certain certificates of service filed on February 14, 1995 and February 16, 1995 which are incorporated herein by express reference and made a part hereof, is adequate and sufficient under the circumstances and satisfies the requirements of the Federal Rules of Bankruptcy Procedure and the Bankruptcy Code.

PROPERTY OF THE ESTATE

E. The Fee Interests (as hereinafter defined) and the Subleasehold Interests (as hereinafter defined) including the right to assign such interests constitute valuable property of the Debtor's bankruptcy estate pursuant to Section 541 of the Code.

F. The Debtor is the owner of an estate in fee simple and all improvements, furniture, fixtures and equipment, as more fully described in subparagraphs A(i) and (ii) of the Purchase

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Agreement (collectively the "Fee Interests") at the following locations:

- (i) 14860 LaGrange Road, Orland Park; and
- (ii) 700 N. Milwaukee, Vernon Hills.

G. The Debtor is the owner of leasehold estates, including sublessee's interests in leasehold improvements, furniture, fixtures and equipment, as more fully described in subparagraphs A(iii) through A(viii) of the Purchase Agreement (collectively the "Subleasehold Interests") pursuant to those certain subleases between the Debtor, as subtenant, and Marriott Family Restaurants, Inc. ("Marriott") as sublandlord (collectively the "Subleases"), on the premises commonly known as:

- (i) 1040 Winston Plaza, Melrose Park;
- (ii) 4228 W. Elm, McHenry;
- (iii) 1444 N. Larkin, Joliet;
- (iv) 6606 Northwest Highway, Crystal Lake;
- (v) 167 Danada Square (Naperville Road) Wheaton; and
- (vi) 16851 Torrence Avenue, Lansing;

(the locations of the Fee Interests and the premises of the Subleasehold Interests shall be collectively referred to herein as the "Premises")

H. In addition to Marriott's interests as Sublandlord, Marriott, as lessee, holds certain leasehold interests in the Premises identified in paragraph G herein (the "Marriott Leasehold Interests").

I. Bank of America Illinois (the "Bank") asserts that its pre-Petition Date indebtedness is secured by a valid, perfected and enforceable mortgage and security interest in and to the Fee Interests and the Subleasehold Interests as evidenced by that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement, dated September 30, 1991, as modified by the First Amendment thereto, dated March 30, 1994, by

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/15/2011 10:00 AM

UNOFFICIAL COPY

and between the Debtor, as mortgagor, and the Bank, as mortgagee, and certain other loan documentation.

J. Nancy Schulson holds a valid, perfected and enforceable mortgage lien and security interest in and upon the Subleases pursuant to and in accordance with the Interim and Final Orders Authorizing Debtor to Obtain Secured Credit With Equal Priority Lien, entered by this Court on January 9, 1995 and January 23, 1995, respectively (such orders shall be collectively referred to herein as the "Financing Order").

K. Marriott does not own, and does not have any security interest or other interest whatsoever in, any of the furniture, fixtures or equipment located at the Premises.

L. Each and every Sublease is currently in full force and effect and fully enforceable against Marriott. The Subleases have not been modified, amended, supplemented or otherwise changed, except as provided in this order.

M. All amounts which are due and payable by the Debtor to Marriott under the Subleases have been paid except for certain pre-Petition Date rent, additional rent, real estate taxes (whether paid by Marriott or otherwise) and common area maintenance charges to be mutually determined by Marriott and the Debtor within ten (10) days of the date hereof, but in any event said amounts shall ~~not~~ be deemed to not exceed \$ 155,000 (collectively referred to herein as the "Arrearages"). *All real estate taxes due and owing will be paid or credited to Buyer at closing.*

N. The Debtor is not in default under any of the Subleases and no event has occurred which, with the giving of notice or the passage of time, or both, would constitute a default by the Debtor under any of the Subleases.

OFFERS TO PURCHASE ESTATE PROPERTY

O. The Fee Interests and the Subleasehold Interests have been actively marketed for sale by the Debtor and its listing

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

brokers, Site Location Specialists, Inc. and RCS Realty Resources, Inc.

P. The Debtor has received an offer to purchase the Fee Interests and the Subleasehold Interests, which includes the assignment of the Subleases, from IHOP Realty Corp., IHOP Properties, Inc. and IHOP Restaurants, Inc. (collectively referred to herein as "Buyer") for the sum of \$4,330,000, before deduction of normal and usual costs of closing, attorneys fees, prorations and broker's commissions, and the payment to Marriott provided in paragraph 5 of this order, all as provided and set forth in the Purchase Agreement.

Q. The Purchase Agreement provides that the assumption and assignment of the Subleases by the Debtor to Buyer are inextricably intertwined with, and an integral part of, the sale of the Subleasehold Interests to Buyer.

R. Marriott has consented and agreed to execute the form of Estoppel, Consent and Agreement to Amend Sublease in the same form as the specimen attached hereto as Exhibit B and by express reference made a part hereof in connection with the sale to Buyer of the Subleasehold Interests approved herein.

S. IHOP Corp., an indirect parent of the Buyer, has agreed to guarantee payment of all obligations to Marriott of the subtenant under the Subleases accruing from and after the respective Closing (as defined in the Purchase Agreement) (the "IHOP Guarantee") upon approval and consummation of the Purchase Agreement.

T. The Fee Interests and Subleasehold Interests were offered for sale in open Court as of the date hereof and competitive bidding took place. The offer of Buyer, as reflected in the Purchase Agreement, represents the highest and best offer received at said bidding for the sale of the Fee Interests and the Subleasehold Interests.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

U. The offer of Buyer to purchase the Fee Interests and the Subleasehold Interests, as reflected in the Purchase Agreement, was made in good faith, and Buyer is a good faith purchaser, as required pursuant to Section 363(m) of the Code.

V. The sale of the Fee Interests and the Subleasehold Interests pursuant to the Purchase Agreement is in the best interests of the Debtor's bankruptcy estate and its creditors and the terms and conditions of said Purchase Agreement are fair and reasonable under the circumstances.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The foregoing findings of fact are incorporated herein by reference and shall serve as additional conclusions of law as if fully set forth.

2. The Motion be and hereby is granted and the Purchase Agreement, including all of the terms and conditions thereof, be and hereby is approved.

3. The assumption and assignment of the Subleasehold Interests and the sale of the Fee Interests pursuant to the Purchase Agreement be and hereby are authorized and approved. Such sale and assignment shall be free and clear of any and all interests or claims with respect to the Fee Interests and the Subleasehold Interests pursuant to Section 363(f) of the Code including but not limited to mortgages, security interests, liens and encumbrances thereon, any interest of Marriott under its lease and sublease of the Fee Interest located at 14860 LaGrange Road, Orland Park, Illinois and any interest of Shoney's, Inc. under any franchise or license agreements or Market Development Agreement, including but not limited to any right of first refusal. All such interests, including the security interests, liens and encumbrances of the Bank and Nancy Schulson shall be released from the Subleasehold Interests and Fee Interests and shall attach to the proceeds of the sale without further act,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2025 11 13 10:00 AM

UNOFFICIAL COPY ^{7/10/95}

[Handwritten initials]
PK
TSK

notice or deed or order of Court. The Marriott Lease ^{held} Interests shall not be affected by the terms hereof.

4. The State of Illinois, Departments of Revenue ("IDR") and Employment Security ("IDES") have asserted that they may have a right to impose transferee liability against Buyer pursuant to 820 ILCS 405/2600, 35 ILCS 120/5j and/or 35 ILCS 5/902(d) and that a sale "free and clear" pursuant to Section 363(f) of the Code does not bar the IDR or IDES from asserting such transferee liability against Buyer. In order to facilitate this sale without prejudicing the rights of the parties and by agreement of the IDR, IDES, the Bank and Debtor, the sum of \$244,925.00 (the "Fund") of the total amount to be paid by Buyer for the Fee Interests and the Subleasehold Interests and provisionally remitted to the Bank pursuant to this order shall be deemed to be held as a set aside by Buyer to immunize Buyer, and any successors or assigns thereof, from any potential liability under the above cited Illinois statutes. IDR and IDES have waived the filing of an adversary complaint pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure with respect to their waiver of any claims of transferee liability against Buyer in excess of the amount in the Fund as set forth herein. IDR and IDES, having agreed that the Fund represents the full amount they would assert against Buyer as transferee, shall assert no further claims against Buyer, and any successors or assigns thereof, as transferee of Debtor's assets but shall limit any assertion of transferee liability that they may have with respect to Buyer against the Fund held by the Bank. Within thirty (30) days of the date of this order, IDR and IDES shall advise the Debtor, Buyer and the Bank by written notice whether IDR and IDES intend to assert a claim against the Fund for transferee liability against Buyer pursuant to the above cited Illinois statutes by seeking recovery from the Fund held by the Bank. If IDR and IDES

95231407

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

decide to assert such a claim for transferee liability, they shall file an adversary proceeding seeking a declaratory judgment that their right to assert transferee liability against Buyer for the amount of the Fund is not barred by Section 363(f) of the Code. Said adversary proceeding shall be filed within forty-five (45) days of this order. If the Bankruptcy Court determines that the Bankruptcy Court does not have jurisdiction to determine any issues raised in the adversary proceeding filed by IDR and IDES as contemplated in this paragraph 4, IDR and IDES shall have the right to file a complaint and seek adjudication of the issues in any other court of competent jurisdiction, provided such complaint is filed within thirty (30) days after the entry of an order determining that the Bankruptcy Court lacks jurisdiction, but subject to the stipulation contained herein with respect to the non-personal liability of Buyer and the absence of any obligations to defend such claim. If Buyer is named as a defendant in any such proceeding, Buyer may only be named nominally and Buyer shall have no obligation to defend such claim or incur any expense with respect thereto and in no event will any judgment or order imposing any personal liability on Buyer be entered. In such a proceeding, the Bank and/or the Debtor may raise any appropriate defense including asserting that the sale to Buyer "free and clear" pursuant to Section 363(f) of the Code, precludes IDR and IDES from asserting transferee liability against Buyer. If the Bank or the Debtor prevails in such action, the IDR and IDES shall be deemed to have no further interest in the Fund. If IDR and IDES prevails in such action, the Bank shall pay from the Fund (only to the extent of the amount of the Fund) the amount determined to be due to IDR and IDES. If IDR and IDES do not provide written notice to Buyer, the Bank and the Debtor within said thirty (30) days of the entry of this order that IDR and IDES intend to assert transferee

3557-1/3-17-95

8

under the Purchase Agreement, the Debtor shall pay to Marriott upon Marriott's compliance with the terms of this order and the closing of the sale of each of the Subleasehold Interests, the following:

- (a) the sum equal to the amount of the Arrearages on each of the Subleasehold Interests sold; and
- (b) the sum of \$16,667.00 per each Sublease sold and assigned to Buyer at closing, which, in any event, shall not exceed a total sum of \$100,000.00.

6. The Debtor is authorized and directed to do and perform all other acts and to make, execute and deliver all of the documents and instruments which may be reasonably required to effectuate and consummate the transactions set forth in the Purchase Agreement and the sale and assignment of the Fee Interests and the Subleasehold Interests to Buyer.

7. Marriott shall execute and deliver the form Estoppel,

95231407

95231407

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

75-45-18 D2

COOK COUNTY REC'D
APR 11 1995



STATE OF ILLINOIS
REAL ESTATE TRANSFER TAX

DEPT. OF REVENUE
512.50

95231407

SPECIAL WARRANTY DEED

95231407

(Illinois)

THIS INDENTURE, made this 31st day of MARCH, 1995, between LUNAN FAMILY RESTAURANTS LIMITED PARTNERSHIP, a limited partnership created and existing under and by virtue of the laws of the State of Illinois and duly authorized to transact business in the State of Illinois, ("Grantor"), and IHOP REALTY CORP., a Delaware corporation, 525 N. Brand Blvd., 3rd Floor, Glendale, California 91203, ("Grantee"), WITNESSETH, that Grantor, for and in consideration of the sum of Ten Dollars and no/100 (\$10.00) and other good and valuable consideration, in hand paid by the Grantee, the receipt whereof is hereby acknowledged, and pursuant to authority of Lunan Family Restaurants, Inc., an Illinois corporation, its General Partner, by these presents does SELL, CONVEY and GRANT unto Grantee, and to its successors and assigns, any and all right, title and interest of Grantor in and to the real property described on Exhibit A attached hereto and made a part hereof (the "Property"), situated in the County of Cook, and State of Illinois, subject only to those covenants, conditions, restrictions, easements and other matters listed on Exhibit B attached hereto and made a part hereof.

DEPT-01 RECORDING \$101.00
 T#0012 TRAN 3455 04/06/95 11:46:00
 #6285 JM *-95-231407
 COOK COUNTY RECORDER

Above Space For Recorder's Use Only

10/1

95231407

TO HAVE AND TO HOLD the Property, together with all and singular the rights, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, all of the estate, right, title, interest, claim or demand whatsoever belonging to Grantor, unto Grantee, its successors and assigns FOREVER. Grantor, for itself, and its successors, does covenant, promise and agree, to and with Grantee, that it has not done or suffered to be done, anything whereby the Property hereby granted is, or may be, in any manner encumbered or charged, except as to those covenants, conditions, restrictions easements and other matters set forth on Exhibit B attached hereto, and that Grantor will warrant and defend the Property against all persons lawfully claiming, or to claim the same, by, through or under Grantor, but not otherwise, subject, however, to the matters set forth in Exhibit B attached hereto and made a part hereof. Except for those matters listed on Exhibit B, and pursuant to the Order of the Bankruptcy Court dated March 17, 1995, a true and correct copy of which is attached hereto as Exhibit C and made a part hereof, this conveyance is made free and clear of all liens, encumbrances and other interests pursuant to 11 U.S.C Section 363(f), including, without limitation, any interest of Marriott Family Restaurants, Inc., under a purported Lease and Sublease of the Property, as disclosed by that certain Memorandum dated March 31, 1994, recorded April 6, 1994, as Document No. 94309813.

7545618 D2 2X

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

MORTGAGE AMENDMENT

1. First Amendment to Mortgage, Assignment of Lease, Assignment of Rents, Security Agreement and Financing Statement recorded April 22, 1994 as Document 94361947.

Property of Cook County Clerk's Office

95231406

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

All representations and warranties herein shall be limited to Grantor's title to the Property for Grantor's period of ownership.

Permanent Real Estate Index Number(s): 27-09-401-019-0000

Address of real estate: 14860 LaGrange Road, Orland Park, Illinois

IN WITNESS WHEREOF, Grantor has caused its name to be signed to these presents by the President of its General Partner, and attested by the Assistant Secretary of its General Partner the day and year first above written.

LUNAN FAMILY RESTAURANTS LIMITED PARTNERSHIP,
an Illinois limited partnership

By: Lunan Family Restaurants, Inc., an Illinois corporation, Its
General Partner

By: *Michael Schulson*
Michael Schulson, President

COOK
CG NO. 018
0 5 2 2 0 9

STATE OF ILLINOIS
REAL ESTATE TRANSFER TAX
DEPT. OF REVENUE
5 1 2.50

Attest:

Gerald Sherman
Gerald L. Sherman, Assistant Secretary

STATE OF ILLINOIS
COUNTY OF COOK
REAL ESTATE TRANSACTION TAX
5 1 2.50

I, Laura G Durkin, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that MICHAEL SCHULSON and GERALD SHERMAN personally known to me to be the PRESIDENT and ASSISTANT SECRETARY of Lunan Family Restaurants, Inc., an Illinois corporation, the General Partner of Lunan Family Restaurants Limited Partnership, an Illinois limited partnership, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such PRESIDENT and ASSISTANT SECRETARY, that they signed and delivered the said instrument as the free and voluntary act and deed of said limited partnership, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 24 day of MARCH, 1995.

Laura G Durkin
Notary Public
Commission expires 9-17-97

OFFICIAL SEAL
LAURA G DURKIN
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 09/17/97

95231407

UNOFFICIAL COPY

Property of Cook County Clerk's Office

02/11/2020

UNOFFICIAL COPY

This instrument was prepared by Robert B. Weil, Esq., Sonnenschein, Nath & Rosenthal, 8000 Sears Tower, Chicago, Illinois 60606-6404.

(NAME AND ADDRESS)

MAIL TO:	SEND SUBSEQUENT TAX BILLS TO:
Joseph J. London, Esq. Warner Center Plaza 21800 Oxnard Street, Suite 1190 Woodland Hills, CA 91367	IHOP Realty Corp. 525 N. Brand Blvd., 3rd Floor Glendale, CA 91203

Property of Cook County Clerk's Office

95231407

UNOFFICIAL COPY

Property of Cook County Clerk's Office

2016-11-15 10:10:10

UNOFFICIAL COPY

EXHIBIT A

Legal Description

PARCEL 1:

Lot One (1) in Owner's Subdivision of part of the South Half (1/2) of the North Half (1/2) of the East Half (1/2) of the East Half (1/2) of the Southeast Quarter (1/4) of Section 9, Township 36 North, Range 12 East of the Third Principal Meridian, according to the Plat thereof registered in the Office of the Registrar of Titles of Cook County, Illinois on November 25, 1983 as Document Number LR 3342806, in Cook County, Illinois.

PARCEL 2:

Non-exclusive easement and rights appurtenant to and for the benefit of Parcel 1 for, among other things, the purpose of water drainage and outfall, to lay, install, remove, construct, maintain, operate, repair and replace storm and outfall sewers, conduits and pipes, and ditches for the purpose of carrying and transmitting water, as created and existing by Storm Sewer Easement dated November 14, 1983 and registered November 25, 1983 as Document Number LR 3342808, over, under and across the following described premises:

A 20 foot wide strip of land that is legally described as being that part of the South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of Section 9, Township 36 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois, bounded as described as follows:

Commencing at the Southeast corner of said South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of Section 9, and running thence South 89 degrees 45 minutes 41 seconds West along the South line of said South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of Section 9 a distance of 282.50 feet to a point; thence North 0 degrees 15 minutes 10 seconds West, a distance of 215.0 feet to the point of beginning; thence South 89 degrees 45 minutes 41 seconds West, distance 5.0 feet to a point; thence North 0 degrees 15 minutes 10 seconds West along a straight line to a point on the North line of said South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of Section 9 that is 290.20 feet West of the East line of said Southeast 1/4 of Section 9; thence Easterly along said North line of the South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of Section 9, distance of 20.0 feet to a point; thence South 0 degrees 15 minutes 10 seconds East along a straight line to a point that is 215.0 feet North of the South line of said South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of Section 9; thence South 89 degrees 45 minutes 41 seconds West, a distance of 15.0 feet to the point of beginning, in Cook County, Illinois;

AND

A 20 foot wide strip of land that is legally described as being the North 20.0 feet (except the West 33.0 feet thereof) and (except the East 290.14 feet thereof) of the South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of Section 9, Township 36 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

95231407

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

Permitted Exceptions

1. Taxes for the years 1994 (2nd installment) and 1995 (current taxes only).
2. Public Utility Easement over the East 10 feet and the South 10 feet of the land as shown on the Plat of Owners Subdivision filed November 25, 1983 as Document LR3342806. (Affects Parcel 1)
3. Easement in favor of The Commonwealth Edison Company and The Illinois Bell Telephone Company, and its/their respective successors and assigns, to install, operate and maintain all equipment necessary for the purpose of serving the land and other property, together with the right of access to said equipment, and the provisions relating thereto contained in the Grant recorded/filed as Document No. T3367295, affecting the North 10.5 feet of the South 34.0 feet (except the West 33 feet thereof and except that part lying Easterly of the Westerly line of Owners Subdivision of part of the South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of aforesaid Section 9). (Affects Parcel 2)
4. Storm Sewer Easement filed November 25, 1983, as Document LR 3342808, also as shown on Plat of The Village Green Subdivision recorded November 1, 1988, as Document 88504250 and filed as Document LR 3948254, made by and between Hencelo, Inc., an Illinois corporation, and Walgreen Company, an Illinois corporation, granting a perpetual non-exclusive easement over, under and across the land for the purpose of water drainage and outfall. (Affects Parcel 2)
5. Easement made by and between Hencelo, Inc., an Illinois corporation, and Walgreen Company, an Illinois corporation, filed November 25, 1983, as Document LR 3342809, and also as shown on Plat of The Village Green Subdivision recorded November 1, 1988, as Document 88504250, and filed as Document LR 3948254, granting an easement for driveway, roadway, curb and etc. (Affects Parcel 3)
6. Easement Agreement made by and between Hencelo, Incorporated, an Illinois corporation, and The Commonwealth Edison Company and The Illinois Bell Telephone Company, filed November 25, 1983, as Document LR 3342810, and also as shown on Plat of The Village Green Subdivision filed as Document LR 3948254, and recorded November 1, 1988, as Document 88504250, granting an easement for the purpose of installing and maintaining power and telephone lines, etc. (Affects Parcel 2)

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

PARCEL 3:

Non-exclusive easement and rights appurtenant to and for the benefit of Parcel 1 for driveway purposes for ingress and egress to and from Parcel 1 to and from La Grange Road, as created and existing by Easement dated November 14, 1983 and registered November 25, 1983 as Document Number LR 3342809, over and across the following described premises:

That part of the South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of Section 9, Township 36 North, Range 12 East of the Third Principal Meridian, bounded and described as follows:

Commencing at the Southeast corner of said South 1/2 of the North 1/2 of the East 1/2 of the East 1/2 of the Southeast 1/4 of Section 9, and running thence North 0 degrees 1 minute 10 seconds West along the East line of said Southeast 1/4 of Section 9, a distance of 215.0 feet to the point of beginning; thence continuing along the last described course, a distance of 58.0 feet to a point; thence South 89 degrees 45 minutes 41 seconds West a distance of 58.60 feet to a point on the West right of way line of La Grange Road (according to Document No. 10123561); thence South 0 degrees 15 minutes 10 seconds East along said West right-of-way line, a distance of 15.0 feet to a point; thence South 89 degrees 45 minutes 41 seconds West, a distance 62.0 feet to a point; thence South 0 degrees 15 minutes 10 seconds East, a distance of 43.0 feet to a point; thence North 89 degrees 45 minutes 41 seconds East, a distance of 120.37 feet to the point of beginning, all in Cook County, Illinois.

PIN No. 27-09-401-019-0000

Commonly known as 14860 LaGrange Road, Orland Park, Illinois

95231407

UNOFFICIAL COPY

Property of Cook County Clerk's Office

0000000000

UNOFFICIAL COPY

7. *Perpetual easement in, on, upon, over, through, across or under the North 10 feet of the land to install, construct and otherwise establish and to operate and maintain water mains, fire hydrants, valves and water service facilities incidental thereto, and storm sewer pipes and storm sewer service connections and facilities incidental thereto granted by Walter J. Henely and Marilyn R. Henely, his wife, to Village of Orland Park, a municipal corporation, filed March 25, 1970, as Document LR 2496492. (Affects Parcel 2)*
8.
 - (a) *Terms, provisions and conditions relating to the easements described as Parcels 2 and 3 contained in the instrument creating said easements.*
 - (b) *Rights of the adjoining owner or owners to the concurrent use of said easements.*

Property of Cook County Clerk's Office

95231A07

UNOFFICIAL COPY

Property of Cook County Clerk's Office

EXHIBIT C
UNOFFICIAL COPY

United States Bankruptcy Court

For the NORTHERN District of ILLINOIS

This is to certify that the within and attached document(s) is a full, true and correct copy of the original thereof as the same appears on file in the office of the Clerk of the United States Bankruptcy Court for the Northern District of Illinois.

Wayne E. Nelson
Clerk of Court

By: Michelle Hawes
Deputy Clerk

Dated: 3-30-95

95231A07

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ECE MAR 21 1995

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	In a Proceeding for a
)	Reorganization Under
LUNAN FAMILY RESTAURANTS, LIMITED)	Chapter 11 of the
PARTNERSHIP, an Illinois Limited)	Bankruptcy Code
Partnership,)	
Employer I.D. 36-3779750)	
)	
Debtor/Debtor in Possession,)	No. 94 B 21227
)	
)	Hon. Jack B. Schmetterer

**ORDER AUTHORIZING THE SALE OF PROPERTY
OF THE ESTATE OTHER THAN IN THE ORDINARY COURSE OF BUSINESS;
APPROVING THE ASSUMPTION AND ASSIGNMENT OF SUBLEASEHOLD
INTERESTS; AND AUTHORIZING PAYMENT OF BROKER'S COMMISSION**

At Chicago, in said District, this 17th day of March, 1995.

THIS CAUSE coming on to be heard upon the Motion of Lunan Family Restaurants, Ltd., an Illinois limited partnership, debtor herein ("LFR" or the "Debtor") for the entry of an order authorizing the sale of property of the estate pursuant to the Purchase Agreement, First Amendment to Purchase Agreement, and Second Amendment to Purchase Agreement, all attached hereto as Exhibit A and made a part hereof (the "Purchase Agreement"), other than in the ordinary course of business, free and clear of any interest in such property pursuant to Sections 363(b) and 363(f) of the Bankruptcy Code (the "Code"); approving the assumption and assignment of the subleasehold interests which constitute property of the estate pursuant to Section 365 of the Code; and authorizing the payment of brokers' commissions and closing expenses in connection with the foregoing; notice hereof having been given to the parties listed on the Notice of Motion relating hereto, which is incorporated herein by reference, to

95221407

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

all creditors of this estate, and to other parties that have expressed a serious interest in acquiring the property of the estate described herein; the Court having reviewed the Motion and the exhibits thereto, and heard and considered the testimony of Michael Schulson, president of the Debtor's corporate general partner and statements of counsel present and being otherwise fully advised in the premises, FINDS as follows:

A. On October 25, 1994 (the "Petition Date"), the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code and from and after said date has been operating its business and managing its property under the jurisdiction of this Court as debtor in possession.

B. The Debtor's business consists of the ownership, leasing and operation of family style restaurants at twenty (20) locations in the Chicago and Chicago metropolitan area, under franchises from Shoney's, Inc.

C. No trustee has been appointed in this case.

D. The notice of hearing on the Motion as reflected in those certain certificates of service filed on February 14, 1995 and February 16, 1995 which are incorporated herein by express reference and made a part hereof, is adequate and sufficient under the circumstances and satisfies the requirements of the Federal Rules of Bankruptcy Procedure and the Bankruptcy Code.

PROPERTY OF THE ESTATE

E. The Fee Interests (as hereinafter defined) and the Subleasehold Interests (as hereinafter defined) including the right to assign such interests constitute valuable property of the Debtor's bankruptcy estate pursuant to Section 541 of the Code.

F. The Debtor is the owner of an estate in fee simple and all improvements, furniture, fixtures and equipment, as more fully described in subparagraphs A(i) and (ii) of the Purchase

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Agreement (collectively the "Fee Interests") at the following locations:

- (i) 14860 LaGrange Road, Orland Park; and
- (ii) 700 N. Milwaukee, Vernon Hills.

G. The Debtor is the owner of leasehold estates, including sublessee's interests in leasehold improvements, furniture, fixtures and equipment, as more fully described in subparagraphs A(iii) through A(viii) of the Purchase Agreement (collectively the "Subleasehold Interests") pursuant to those certain subleases between the Debtor, as subtenant, and Marriott Family Restaurants, Inc. ("Marriott") as sublandlord (collectively the "Subleases"), on the premises commonly known as:

- (i) 1040 Winston Plaza, Melrose Park;
- (ii) 4228 W. Elm, McHenry;
- (iii) 1444 N. Larkin, Joliet;
- (iv) 6606 Northwest Highway, Crystal Lake;
- (v) 167 Danada Square (Naperville Road) Wheaton; and
- (vi) 16851 Torrence Avenue, Lansing;

(the locations of the Fee Interests and the premises of the Subleasehold Interests shall be collectively referred to herein as the "Premises")

H. In addition to Marriott's interests as Sublandlord, Marriott, as lessee, holds certain leasehold interests in the Premises identified in paragraph G herein (the "Marriott Leasehold Interests").

I. Bank of America Illinois (the "Bank") asserts that its pre-Petition Date indebtedness is secured by a valid, perfected and enforceable mortgage and security interest in and to the Fee Interests and the Subleasehold Interests as evidenced by that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement, dated September 30, 1991, as modified by the First Amendment thereto, dated March 30, 1994, by

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

and between the Debtor, as mortgagor, and the Bank, as mortgagee, and certain other loan documentation.

J. Nancy Schulson holds a valid, perfected and enforceable mortgage lien and security interest in and upon the Subleases pursuant to and in accordance with the Interim and Final Orders Authorizing Debtor to Obtain Secured Credit With Equal Priority Lien, entered by this Court on January 9, 1995 and January 23, 1995, respectively (such orders shall be collectively referred to herein as the "Financing Order").

K. Marriott does not own, and does not have any security interest or other interest whatsoever in, any of the furniture, fixtures or equipment located at the Premises.

L. Each and every Sublease is currently in full force and effect and fully enforceable against Marriott. The Subleases have not been modified, amended, supplemented or otherwise changed, except as provided in this order.

M. All amounts which are due and payable by the Debtor to Marriott under the Subleases have been paid except for certain pre-Petition Date rent, additional rent, real estate taxes (whether paid by Marriott or otherwise) and common area maintenance charges to be mutually determined by Marriott and the Debtor within ten (10) days of the date hereof, but in any event said amounts shall ~~not~~ be deemed to not exceed \$ 155,000 (collectively referred to herein as the "Arrearages"). *All real estate taxes due and owing will be paid or credited to Buyer at closing.* *TSR*

N. The Debtor is not in default under any of the Subleases and no event has occurred which, with the giving of notice or the passage of time, or both, would constitute a default by the Debtor under any of the Subleases.

OFFERS TO PURCHASE ESTATE PROPERTY

O. The Fee Interests and the Subleasehold Interests have been actively marketed for sale by the Debtor and its listing

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

brokers, Site Location Specialists, Inc. and RCS Realty Resources, Inc.

P. The Debtor has received an offer to purchase the Fee Interests and the Subleasehold Interests, which includes the assignment of the Subleases, from IHOP Realty Corp., IHOP Properties, Inc. and IHOP Restaurants, Inc. (collectively referred to herein as "Buyer") for the sum of \$4,330,000, before deduction of normal and usual costs of closing, attorneys fees, prorations and broker's commissions, and the payment to Marriott provided in paragraph 5 of this order, all as provided and set forth in the Purchase Agreement.

Q. The Purchase Agreement provides that the assumption and assignment of the Subleases by the Debtor to Buyer are inextricably intertwined with, and an integral part of, the sale of the Subleasehold Interests to Buyer.

R. Marriott has consented and agreed to execute the form of Estoppel, Consent and Agreement to Amend Sublease in the same form as the specimen attached hereto as Exhibit B and by express reference made a part hereof in connection with the sale to Buyer of the Subleasehold Interests approved herein.

S. IHOP Corp., an indirect parent of the Buyer, has agreed to guarantee payment of all obligations to Marriott of the subtenant under the Subleases accruing from and after the respective Closing (as defined in the Purchase Agreement) (the "IHOP Guarantee") upon approval and consummation of the Purchase Agreement.

T. The Fee Interests and Subleasehold Interests were offered for sale in open Court as of the date hereof and competitive bidding took place. The offer of Buyer, as reflected in the Purchase Agreement, represents the highest and best offer received at said bidding for the sale of the Fee Interests and the Subleasehold Interests.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

U. The offer of Buyer to purchase the Fee Interests and the Subleasehold Interests, as reflected in the Purchase Agreement, was made in good faith, and Buyer is a good faith purchaser, as required pursuant to Section 363(m) of the Code.

V. The sale of the Fee Interests and the Subleasehold Interests pursuant to the Purchase Agreement is in the best interests of the Debtor's bankruptcy estate and its creditors and the terms and conditions of said Purchase Agreement are fair and reasonable under the circumstances.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The foregoing findings of fact are incorporated herein by reference and shall serve as additional conclusions of law as if fully set forth.

2. The Motion be and hereby is granted and the Purchase Agreement, including all of the terms and conditions thereof, be and hereby is approved.

3. The assumption and assignment of the Subleasehold Interests and the sale of the Fee Interests pursuant to the Purchase Agreement be and hereby are authorized and approved. Such sale and assignment shall be free and clear of any and all interests or claims with respect to the Fee Interests and the Subleasehold Interests pursuant to Section 363(f) of the Code including but not limited to mortgages, security interests, liens and encumbrances thereon, any interest of Marriott under its lease and sublease of the Fee Interest located at 14860 LaGrange Road, Orland Park, Illinois and any interest of Shoney's, Inc. under any franchise or license agreements or Market Development Agreement, including but not limited to any right of first refusal. All such interests, including the security interests, liens and encumbrances of the Bank and Nancy Schulson shall be released from the Subleasehold Interests and Fee Interests and shall attach to the proceeds of the sale without further act,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

MOR

PH
TSM

notice or deed or order of Court. The Marriott Lease^{held} Interests shall not be affected by the terms hereof.

4. The State of Illinois, Departments of Revenue ("IDR") and Employment Security ("IDES") have asserted that they may have a right to impose transferee liability against Buyer pursuant to 820 ILCS 405/2600, 35 ILCS 120/5j and/or 35 ILCS 5/902(d) and that a sale "free and clear" pursuant to Section 363(f) of the Code does not bar the IDR or IDES from asserting such transferee liability against Buyer. In order to facilitate this sale without prejudicing the rights of the parties and by agreement of the IDR, IDES, the Bank and Debtor, the sum of \$244,925.00 (the "Fund") of the total amount to be paid by Buyer for the Fee Interests and the Subleasehold Interests and provisionally remitted to the Bank pursuant to this order shall be deemed to be held as a set aside by Buyer to immunize Buyer, and any successors or assigns thereof, from any potential liability under the above cited Illinois statutes. IDR and IDES have waived the filing of an adversary complaint pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure with respect to their waiver of any claims of transferee liability against Buyer in excess of the amount in the Fund as set forth herein. IDR and IDES, having agreed that the Fund represents the full amount they would assert against Buyer as transferee, shall assert no further claims against Buyer, and any successors or assigns thereof, as transferee of Debtor's assets but shall limit any assertion of transferee liability that they may have with respect to Buyer against the Fund held by the Bank. Within thirty (30) days of the date of this order, IDR and IDES shall advise the Debtor, Buyer and the Bank by written notice whether IDR and IDES intend to assert a claim against the Fund for transferee liability against Buyer pursuant to the above cited Illinois statutes by seeking recovery from the Fund held by the Bank. If IDR and IDES

95231A07

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

decide to assert such a claim for transferee liability, they shall file an adversary proceeding seeking a declaratory judgment that their right to assert transferee liability against Buyer for the amount of the Fund is not barred by Section 363(f) of the Code. Said adversary proceeding shall be filed within forty-five (45) days of this order. If the Bankruptcy Court determines that the Bankruptcy Court does not have jurisdiction to determine any issues raised in the adversary proceeding filed by IDR and IDES as contemplated in this paragraph 4, IDR and IDES shall have the right to file a complaint and seek adjudication of the issues in any other court of competent jurisdiction, provided such complaint is filed within thirty (30) days after the entry of an order determining that the Bankruptcy Court lacks jurisdiction, but subject to the stipulation contained herein with respect to the non-personal liability of Buyer and the absence of any obligations to defend such claim. If Buyer is named as a defendant in any such proceeding, Buyer may only be named nominally and Buyer shall have no obligation to defend such claim or incur any expense with respect thereto and in no event will any judgment or order imposing any personal liability on Buyer be entered. In such a proceeding, the Bank and/or the Debtor may raise any appropriate defense including asserting that the sale to Buyer "free and clear" pursuant to Section 363(f) of the Code, precludes IDR and IDES from asserting transferee liability against Buyer. If the Bank or the Debtor prevails in such action, the IDR and IDES shall be deemed to have no further interest in the Fund. If IDR and IDES prevails in such action, the Bank shall pay from the Fund (only to the extent of the amount of the Fund) the amount determined to be due to IDR and IDES. If IDR and IDES do not provide written notice to Buyer, the Bank and the Debtor within said thirty (30) days of the entry of this order that IDR and IDES intend to assert transferee

95231A07

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

liability, IDR and IDES shall be deemed to have waived said liability and any rights IDR and IDES may claim in the Fund shall automatically, without further act, deed or order of Court, terminate. The Bank shall not be required to hold the Fund in escrow or separate account but shall be liable, solely to the extent of the amount in the Fund, for any amounts determined to be due IDR or IDES by the Court. The proceeds to be distributed to Nancy Schulson pursuant to paragraph 10 of this order shall not be set aside as part of the Fund and distributions so made shall be free of any interest of IDR and IDES.

5. In addition to any of the obligations of the Debtor under the Purchase Agreement, the Debtor shall pay to Marriott upon Marriott's compliance with the terms of this order and the closing of the sale of each of the Subleasehold Interests, the following:

- (a) the sum equal to the amount of the Arrearages on each of the Subleasehold Interests sold; and
- (b) the sum of \$16,667.00 per each Sublease sold and assigned to Buyer at closing, which, in any event, shall not exceed a total sum of \$100,000.00.

6. The Debtor is authorized and directed to do and perform all other acts and to make, execute and deliver all of the documents and instruments which may be reasonably required to effectuate and consummate the transactions set forth in the Purchase Agreement and the sale and assignment of the Fee Interests and the Subleasehold Interests to Buyer.

7. Marriott shall execute and deliver the form Estoppel, Consent, and Agreement to Amend Sublease attached hereto as Exhibit B for each Subleasehold Interest sold hereunder and all other documents and instruments which may be reasonably requested by the Debtor or Buyer to effectuate and consummate the transactions set forth in Purchase Agreement.

95231407

UNOFFICIAL COPY

8. Upon the entry of this order and the payment of the sums provided in paragraph 5 herein, any and all defaults of the Debtor under the Subleases shall be deemed cured and fully satisfied and may not be asserted against Buyer, or any successor or assign thereof, as a basis, in whole or in part, for attempting to terminate any Subleases.

9. Upon the entry of this order, the Debtor shall be deemed to have provided Marriott with adequate assurance of future performance of the Subleases pursuant to Section 365 of the Code through the sale and assignment of the Subleasehold Interests to Buyer, the Buyer's assumption of the Subleases and the guarantee of obligations owed to Marriott pursuant to the IHOP Guarantee.

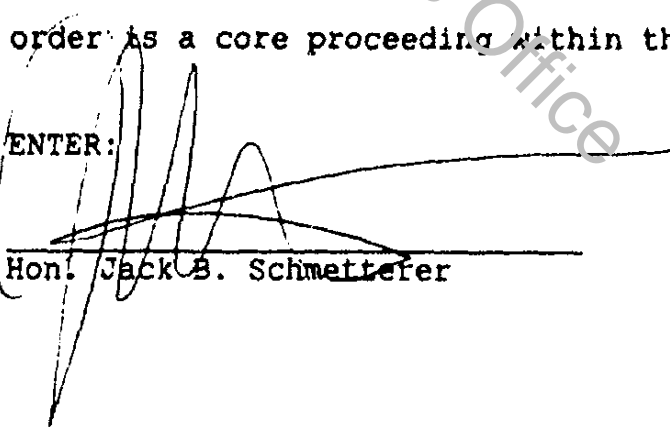
10. Site Location Specialist, Inc. and RCS Realty Resources are entitled to an aggregate commission pursuant to the order entered on January 13, 1995 and the terms and conditions of that certain Exclusive Right To Sell Agreement, dated December 6, 1994, as amended, payable at closing, providing the transactions authorized herein are closed and after reduction for all other seller costs of sale, including without limitation, title charges, transfer taxes, and attorneys' fees. The remaining net proceeds shall be distributed at closing to Nancy Schuisson pursuant to the terms and conditions of the Financing Order and the Bank for provisional application against the indebtedness owing to the Bank by the Debtor.

11. The subject of this order is a core proceeding within the meaning of 28 U.S.C. §157.

DATE:

3/16/95

ENTER:



Hon. Jack B. Schmettefer

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

AGREED and STIPULATED TO THIS 16th DAY OF MARCH, 1995

IHOP REALTY CORP., IHOP
PROPERTIES, INC. and IHOP
RESTAURANTS, INC.

By: Man O. Ben
Its: Attorney

LUNAN FAMILY RESTAURANTS
LIMITED PARTNERSHIP, an
Illinois limited partnership

By: Bl Helms
Its: Attorney

MARRIOTT FAMILY RESTAURANTS,
INC.

By: [Signature]
Its: Attorney

ILLINOIS DEPARTMENT OF
REVENUE/ILLINOIS DEPARTMENT OF
EMPLOYMENT SECURITY,

By: Cap. D. A. Gold
Its: Assistant Attorney General

BANK OF AMERICA ILLINOIS

By: Thomas S. Quaker
Its: Attorney

Property of Cook County Clerk's Office

95231407

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/18/2019