

Box 35

Recording Requested By  
When Recorded Mail To:

GNA CORPORATION  
P. O. Box 490  
Seattle, Washington 9811  
Loan No. 2846



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OCT 2 9 52 AM '97

RICHARD N. TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

**SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT**

FIRST COLONY LIFE INSURANCE COMPANY, a Virginia corporation ("Lender"), has agreed to make a loan ("Loan") to MONTCLAIR INVESTMENT II CO., a Nebraska general partnership ("Landlord"), to be secured by a Deed of Trust, Assignment of Rents and Leases, and Security Agreement (the "Deed of Trust") on the property commonly known as the Montclair Shopping Center, Omaha, Nebraska ("Property"), and more particularly described on attached Exhibit A. The parties acknowledge that the Deed of Trust is being recorded concurrently with or after this instrument on October 2, 1997, at Book 5705, Page 269 of the records of Douglas County. (The parties hereby authorize the title company to insert the appropriate Deed of Trust recording information when available.)

HOMEPLACE STORES TWO, INC. ("Tenant") has a lease on all or a portion of the Property ("Leased Premises") dated February 20, 1996, as amended by Lease Modification Agreement dated March 19, 1996, all of which are collectively referred to herein as the "Lease."

Lender needs assurances from Tenant in order to make the Loan. Tenant is willing to give those assurances if Lender will agree, so long as Tenant is not in default under the Lease, not to disturb Tenant's possession of the Leased Premises in the event of foreclosure of the Deed of Trust. Tenant also understands that, in making the Loan, Lender will rely on the assurances and statements made in this agreement.

NOW, THEREFORE, Lender and Tenant agree as follows:

1. Subordination. Tenant agrees that the Lease, and all rights of Tenant in, to and under the Lease and the Property, are hereby unconditionally subordinated, and shall remain unconditionally subordinate, to the lien of the Deed of Trust and any and all other instruments held by Lender as security for the Loan, and to any and all renewals, modifications and extensions thereof.

2. Tenant Not To Be Disturbed. Lender agrees that, so long as Tenant is not in default under the Lease (beyond any period given Tenant by the terms of the Lease to cure such default):

(a) Tenant's possession of the Leased Premises under the Lease shall not be disturbed by Lender in any foreclosure or other proceedings brought to enforce the Deed of Trust or by any deed in lieu of foreclosure.

(b) Lender will not join Tenant as a party defendant in any action or proceeding foreclosing the Deed of Trust unless such joinder is necessary to foreclose the Deed of Trust, and then only for such purpose and not for the purpose of terminating the Lease.

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FEE 40<sup>50</sup> H FB 61-43580  
CKP \_\_\_\_\_ C/O \_\_\_\_\_ COMP/MB  
DEL \_\_\_\_\_ SCAN DC

3. Tenant To Attorn To Lender. If Lender becomes the owner of the Property by reason of foreclosure or other proceedings brought to enforce the Deed of Trust or by deed in lieu of foreclosure, the Lease shall continue in full force and effect as if Lender were the original Landlord and Tenant hereby attorns to Lender as Tenant's lessor, except Lender shall not be:

(a) Liable for any act or omission of any prior lessor (including Landlord); provided that, upon becoming owner of the Property, Lender shall perform any maintenance, repair or restoration work to the Leased Premises or the Property required of (but unperformed by) any prior lessor under the Lease; in no event, however, shall Lender have any liability under this subparagraph (a) except for failure to perform such obligations after Lender becomes the owner of the Property; or

(b) Subject to any offset or defense which Tenant might have against any such prior lessor, except to the extent Lender fails to perform the maintenance, repair or restoration work as provided in paragraph 3(a) above after becoming owner of the Property; provided that Lender shall have no obligation to reimburse Tenant for any sums owed to Tenant by Landlord; or

(c) Bound by any prepayment of rent by Tenant, except as required by the the Lease; or

(d) Bound by any material amendment, modification or waiver of rent, lease term, option right or any other term of the Lease which materially increases the Landlord's obligations under the Lease or materially decreases the Tenant's obligations under the Lease, unless made with the prior written consent of Lender, which consent shall not be unreasonably withheld.

If Lender becomes the owner of the Property and thereafter sells or otherwise transfers its interest in the Property, Lender shall have no liability with respect to obligations of the lessor under the Lease which arise following the sale or other transfer of the Property by Lender.

4. Third-Party Owner. If someone acquires the Property through Lender, whether at a trustee or foreclosure sale or otherwise, that person shall have the same rights and obligations to continue the Lease with Tenant as Lender would have under this agreement.

5. Purchase Options. Any option to purchase, right of first refusal, or other right that Tenant has to acquire all or any of the Property is set forth in the Lease. Tenant agrees that, under paragraph 1 above, any such option or right is hereby made subject and subordinate to the lien of the Deed of Trust and any and all other instruments held by Lender as security for the Loan, and to any and all renewals, modifications and extensions thereof. Foreclosure of the Deed of Trust or a deed in lieu of foreclosure shall not entitle Tenant to exercise any such option or right, but such option or right shall remain exercisable, upon and subject to the terms of the Lease, after foreclosure of the Deed of Trust or deed given in lieu of foreclosure.

6. Covenants of Tenant. Tenant covenants as follows:

(a) Tenant shall pay to Lender all rent and other payments otherwise payable to Landlord under the Lease upon written demand from Lender. By its signature below, Landlord consents to Tenant's payment of rent to Lender upon Landlord's default under the Loan and Lender's written demand, agrees that Tenant may rely solely upon Lender's written demand regardless of any dispute between Landlord and Tenant, and releases and discharges Tenant from all liability to Landlord for any payment of rent made as instructed by Lender in writing.

(b) Tenant shall not subordinate its rights under the Lease to any other mortgage, deed of trust or other security instrument without the prior written consent of Lender.

(c) Tenant shall notify Lender if Landlord is in default under the Lease as required unmdr Section 21.11 of the Lease, and will give Lender thirty (30) days after receipt of such notice in which to cure the default before Tenant invokes any of its remedies under the Lease.

7. Assignment of Lease. Tenant understands that Landlord's interest in the Lease has been assigned to Lender in connection with the Loan. Until Lender becomes owner of the Property, however, Lender assumes no duty, liability or obligation to Tenant under the Lease.

8. Costs and Attorneys' Fees. In the event of any claim or dispute arising out of this agreement, the party that substantially prevails shall be awarded, in addition to all other relief, all attorneys' fees and other costs and expenses incurred in connection with the claim or dispute, including without limitation those fees, costs and expenses incurred before, during or after suit, in any arbitration, in any appeal, in any proceedings under any present or future bankruptcy act or state receivership, and in any post-judgment proceedings.

9. Notices. Any notices under this agreement shall be in writing and shall be personally delivered or mailed, postage prepaid, certified or registered mail, return receipt requested as required under Section 21.3 of the Lease. Any notice sent to a party shall be sent to the party at its address below its signature hereon. Each mailed notice shall be deemed given three (3) days after its postmark. Any party may change its address by notice to the other parties.

10. Miscellaneous. This agreement may not be modified except in a writing executed by the parties or their successors in interest. This agreement shall be binding upon and shall inure to the benefit of the parties and their heirs, administrators, representatives, successors, and assigns. This agreement may be executed in counterparts, in which case all originals together shall constitute a single instrument.

DATED this 29<sup>th</sup> day of September, 1997.

**LENDER:**

FIRST COLONY LIFE INSURANCE COMPANY, a  
Virginia corporation

By:   
Its: Assistant Vice President

Address:

c/o GNA Corporation  
P. O. Box 490  
Seattle, Washington 98111-0490

**TENANT:**

HOMEPLACE STORES TWO, INC.

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

Address:

7887 Hub Parkway  
Valley View, Ohio 44125

CONSENTED AND AGREED TO this 24<sup>th</sup> day of September, 1997.

**LANDLORD:**

MONTCLAIR INVESTMENT II CO., a Nebraska  
general partnership

By: The Silverman Children's Trust dated 1/1/95,  
Partner

By: Theodore M. Seldin  
Theodore M. Seldin, Trustee

STATE OF WASHINGTON )  
 ) ss.  
County of KING )

I certify that I know or have satisfactory evidence that Jamie M. Aaron is the person who appeared before me and acknowledged that he or she signed the foregoing instrument, on oath stated that he or she was authorized to execute the instrument and acknowledged it as a Asst. Vice President of FIRST COLONY LIFE INSURANCE COMPANY to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 16th day of September, 1997.



Sarah F. Zink  
Notary Public in and for Washington State  
Printed Name: Sarah F. ZINK  
Residing at: Bellvue  
Appointment Expires: 10-25-2000

Ohio  
STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF Cuyahoga )

On this 12th day of September 1997, before me, the undersigned, a Notary Public duly commissioned and qualified in and for said County, personally came the above named Robert Hurwitz, the Chairman of HOMEPLACE STORES TWO, INC., a corporation, who is personally known to me to be the identical person whose name is affixed to the above instrument as the Chairman of said corporation, and he or she acknowledged the instrument to be his or her voluntary act and deed and the voluntary act and deed of said corporation.

WITNESS my hand and notarial seal at \_\_\_\_\_ in said county, the date aforesaid.

Annette L. Jacob  
NOTARY PUBLIC  
My commission expires: \_\_\_\_\_

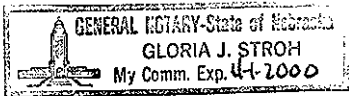
ANNETTE L. JACOB  
NOTARY PUBLIC  
MY COMMISSION EXPIRES  
AUGUST 8, 1998

NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

STATE OF NEBRASKA )  
 ) SS  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of September, 1997, by Theodore M. Seldin, a trustee of The Silverman Children's Trust dated 1/1/95, general partner on behalf of MONTCLAIR INVESTMENT II CO., a partnership, and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said trust and said partnership.

WITNESS my hand and notarial seal at Omaha in said county, the date aforesaid.



Gloria J. Stroh  
NOTARY PUBLIC  
My commission expires: \_\_\_\_\_

NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

**EXHIBIT A  
TO  
SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT**

**Legal Description**

Lot 1, Block 1, in WESTWOOD HEIGHTS 15th ADDITION, an Addition to the City of Omaha, Douglas County, Nebraska, except that part described in Plat and Dedication filed July 10, 1969 in Book 478 at Page 265 of the Miscellaneous Records of Douglas County, Nebraska, together with those parts of vacated 132nd Street frontage road and vacated West Center Road frontage road adjacent to said Lot 1, all except those parcels described as follows:

Commencing at the Southeast corner of said Lot 1, Block 1, said point being on the Northerly right of way line of Augusta Avenue; thence Northwesterly along the Northerly right of way line of said Augusta Avenue on a curve to the left (having a radius of 530.00 feet) for an arc distance of 160.34 feet; thence South 89°54'16" West on the Northerly right of way line of said Augusta Avenue for 675.54 feet; thence continuing on said Northerly right of way line of Augusta Avenue along a curve to the left (having a radius of 240.00 feet) for an arc distance of 107.98 feet to the True Point of Beginning; thence North 30°57'06" West for 46.77 feet; thence North 89°59'16" West for 166.18 feet to the East right of way line of the frontage road; thence South 00°00'44" West along said East right of way line for 15.30 feet; thence continuing on said East right of way line along a curve to the left (having a radius of 83.50 feet and long chord bearing South 16°48'55" East for 48.34 feet) an arc distance of 49.05 feet; thence continuing on said East right of way line along a curve to the right (having a radius of 116.50 feet and long chord bearing South 20°31'04" East for 52.91 feet) an arc distance of 53.37 feet; thence continuing on said East right of way line South 32°31'47" East for 20.09 feet to the Northerly right of way line of Augusta Avenue; thence Easterly on said Northerly right of way line along a curve to the left (having a radius of 190.00 feet and a long chord bearing North 61°45'39" East for 98.73 feet) an arc distance of 99.88 feet; thence continuing on said Northerly right of way line along a curve to the right (having a radius of 240.00 feet and long chord bearing North 55°24'50" East for 72.71 feet) an arc distance of 72.99 feet to the True Point of Beginning;

and except;

Commencing at the Southeast corner of said Lot 1, Block 1, said point being on the Northerly right-of-way line of Augusta Avenue; thence Northwesterly on the Northerly right-of-way line of Augusta Avenue on a curve to the left (radius being 530.00 feet), 160.34 feet to a point of tangency; thence South 89°54'16" West on the Northerly right-of-way line of said Augusta Avenue, 675.54 feet to a point of curve; thence Southwesterly on the Northerly right-of-way line of said Augusta Avenue on a curve to the left (radius being 240.00 feet), 107.98 feet; thence North 30°57'06" West, 46.77 feet to the True Point of Beginning; thence continuing North 30°57'06" West, 4.64 feet; thence North 89°59'16" West, 163.76 feet to the East right-of-way line of the frontage road; thence South 00°00'44" West along said East right-of-way line for 3.98 feet; thence South 89°59'16" East for 166.18 feet to the Point of Beginning;

and further except;

Commencing at the Southeast corner of said Lot 1, Block 1, said point being on the Northerly right of way line of Augusta Avenue; thence Northwesterly on the Northerly right of way line of said Augusta Avenue on a curve to the left (radius being 530.00 feet), 160.34 feet to a point of tangency;

thence South  $89^{\circ}54'16''$  West on the Northerly right of way line of said Augusta Avenue, 675.54 feet to a point of curve; thence Southwesterly on the Northerly right of way line of said Augusta Avenue on a curve to the left (radius being 240.00 feet), 107.98 feet; thence North  $30^{\circ}57'06''$  West, 54.36 feet to the point of beginning; thence continuing North  $30^{\circ}57'06''$  West, 82.05 feet; thence North  $89^{\circ}59'16''$  West, 120.00 feet; thence South  $0^{\circ}0'44''$  West, 70.36 feet; thence South  $89^{\circ}59'16''$  East, 162.22 feet to the point of beginning;

and further except;

Commencing at the Southeast corner of said Lot 1, Block 1, said point being on the Northerly R.O.W. line of Augusta Avenue; thence Northwesterly along said Northerly R.O.W. line of Augusta Avenue on a curve to the left (having a radius of 530.00 feet) for an arc distance of 160.34 feet; thence S  $89^{\circ}54'16''$  W on the Northerly R.O.W. line of said Augusta Avenue for 675.54 feet; thence continuing on said Northerly R.O.W. line of Augusta Avenue along a curve to the left (having a radius of 240.00 feet) for an arc distance of 107.98 feet; thence N  $30^{\circ}57'06''$  W for 51.41 feet to the true point of beginning; thence N  $30^{\circ}57'06''$  W for 2.95 feet; thence N  $89^{\circ}59'16''$  W for 162.22 feet to the East R.O.W. line of the frontage road; thence S  $0^{\circ}0'44''$  W along said East R.O.W. line for 2.25 feet; thence S  $89^{\circ}59'16''$  E for 163.76 feet to the true point of beginning.