

97-02660

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REGISTERED NUMBER
97-002660

File No. 885

RECORDED PM 2:59

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Verify
D.E.
Rec'd
Acc. 27.50
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WHEN RECORDED, PLEASE RETURN TO:

Mortgage Loan Department
First National Bank of Omaha
Third Floor, First National Plaza
11404 West Dodge Road
Omaha, Nebraska 68154

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMEN T AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT ("Agreement"), made this 28 day of January, 1997, among FIRST NATIONAL BANK OF OMAHA, a national banking association, Omaha, Nebraska ("Lender"), Old Fashioned Enterprises, Inc., a Nebraska corporation ("Tenant"), and Wiltham Place Limited Partnership, a Nebraska limited partnership ("Landlord").

WITNESSETH:

WHEREAS, Landlord and Tenant have entered into a certain Brentwood Village Shopping Center Lease (hereinafter referred to as the "Lease") dated October 29, 1996, relating to premises located in LaVista, Sarpy County, Nebraska, more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter, the "Premises"); and

WHEREAS, Lender has made, or has committed to make, a construction loan (the "Loan"), secured by a Deed of Trust, Security Agreement and Assignment of Rents and an Assignment of Rents and Leases from Landlord to Lender covering the Premises (hereinafter collectively referred to as the "Mortgage"); and

WHEREAS, Tenant has agreed that the Lease shall be subject and subordinate to the Mortgage, provided Tenant is assured of continued occupancy of the Premises under the terms of the Lease;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and notwithstanding anything in the Lease to the contrary, it is hereby agreed as follows:

1. Lender, Tenant and Landlord do hereby covenant and agree that the Lease with all rights, options, liens and charges created thereby is, and shall continue to be, subject and

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subordinate in all respects to the Mortgage and to any advancements made thereunder and to any renewals, modifications, consolidations, replacements and extensions thereof.

2. Lender does hereby agree with Tenant that, so long as Tenant complies with and performs its obligations under the Lease, (a) Lender will take no action which will interfere with or disturb Tenant's possession or use of the Premises or other rights under the Lease, and (b) in the event Lender becomes the owner of the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, the Premises shall be subject to the Lease and Lender shall recognize Tenant as the tenant of the Premises for the remainder of the term of the Lease in accordance with the provisions thereof, provided, however, that Lender shall not be liable for any act or omission of any prior landlord, or subject to any offsets or defenses which Tenant might have against any prior landlord, nor shall Lender be bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord nor shall it be bound by any amendment or modification of the Lease made without its consent.

3. Tenant does hereby agree with Lender that, in the event Lender becomes the owner of the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, then Tenant shall attorn to and recognize Lender as the Landlord under the Lease for the remainder of the term thereof, and Tenant shall perform and observe its obligations thereunder, subject only to the terms and conditions of the lease. Tenant further covenants and agrees to execute and deliver upon request of Lender, or its assigns, an appropriate agreement of attornment to any subsequent titleholder of the Premises.

4. So long as the Mortgage remains outstanding and unsatisfied, Tenant will mail or deliver to Lender, at the address and in the manner hereinbelow provided, a copy of all notices permitted or required to be given to the Landlord by Tenant under and pursuant to the terms and provisions of the Lease. At any time before the rights of the Landlord shall have been forfeited or adversely affected because of any default of the Landlord, or within the time permitted the Landlord for curing any default under the Lease as therein provided, Lender may, but shall have no obligation to, pay any taxes and assessments, make any repairs and improvements, make any deposits or do any other act or thing required of the Landlord by the terms of the Lease; and all payments so made and all things so done and performed by the Lender shall be as effective to prevent the rights of the Landlord from being forfeited or adversely affected because of any default under the Lease as the same would have been if done and performed by Landlord.

5. Tenant acknowledges that Landlord will execute and deliver to Lender an assignment of the Lease as security for said loan and Tenant hereby expressly consents to such assignment.

6. Landlord and Tenant hereby certify to Lender that the Lease has been duly executed by Landlord and Tenant and is in full force and effect; that the Lease and any modifications and amendments specified herein are a complete statement of the agreement between Landlord and Tenant with respect to the leasing of the Premises, and the Lease has not been modified or amended, except as specified herein; that to the knowledge of Landlord and Tenant, no party to the Lease is in default thereunder; that no rent under the Lease has been paid, nor shall be paid, more than thirty (30) days in advance of its due date; and that Tenant, as of this date, has no charge, lien or claim of offset under the Lease, or otherwise, against the rents or other charges due or to become due thereunder; nor shall the Lease be terminated, amended or modified in any respect without the prior written consent of Lender until the Mortgage, as the same may be hereinafter amended or modified, is released.

7. Any and all notices, elections or demands permitted or required to be made under this Agreement shall be in writing, signed by the party giving such notice, election or demand and shall be delivered personally, or sent by registered or certified United States mail, postage prepaid, to the other party at the address set forth below, or at such other address within the continental United States of America as may have theretofore been designated in writing. The date of personal delivery or the date of mailing, as the case may be, shall be the date of such notice, election or demand. For the purpose of this Agreement:

The address of Lender is: First National Bank of Omaha
1620 Dodge Street
Omaha, Nebraska 68102
Attn: Sr. Officer, Mortgage
Loan Department

The address of Tenant is: Old Fashioned Enterprises, Inc.
11040 Oak Street
Omaha, Nebraska 68144

The address of Landlord is: Wiltham Place Limited Partnership
c/o Willard I. Friedman
1227 South 113th Plaza
Omaha, Nebraska 68144

8. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-title and assigns. When used herein, the term "Landlord" refers to the Landlord designated herein and to any successor to the interest of Landlord under the Lease.

9. Tenant has executed this Agreement for the purpose of inducing Lender to make the Loan and acknowledges that Lender will rely upon this Agreement in making the Loan.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first above written.

LENDER:

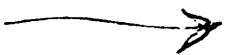
FIRST NATIONAL BANK OF OMAHA, a national banking association, Omaha, Nebraska

By: Robert J. Horak
Robert J. Horak, Vice President

TENANT:

OLD FASHIONED ENTERPRISES, INC., a Nebraska corporation

By: James C. Gleason
James C. Gleason - Chief Financial Officer



LANDLORD:

WILTHAM PLACE LIMITED PARTNERSHIP, a
Nebraska limited partnership

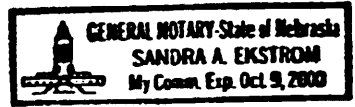
By: WILLARD CONSTRUCTION CO., INC., a
Nebraska corporation - General Partner

By: Willard I. Friedman
Willard I. Friedman - President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

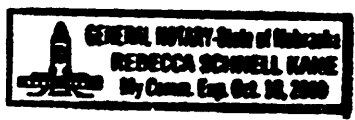
The foregoing instrument was acknowledged before me, a Notary Public, this 30th
day of January, 1997, by Robert J. Horak, Vice President of First National Bank of Omaha, a
national banking association, on behalf of said association.

Sandra A. Ekstrom
Notary Public



STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me, a Notary Public, this 30
day of January, 1997, by James C. Gleason, Chief Financial Officer of Old Fashioned
Enterprises, Inc., a Nebraska corporation, on behalf of said corporation.

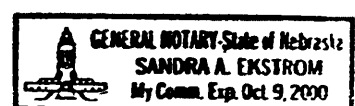


Rebecca Schnell Kane
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me, a Notary Public, this 30th
day of January, 1997, by Willard I. Friedman, President of Willard Construction Co., Inc., a
Nebraska corporation, on behalf of said corporation, General Partner of Wiltham Place Limited
Partnership, a Nebraska limited partnership, on behalf of said limited partnership.

Sandra A. Ekstrom
Notary Public



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EXHIBIT "A"

Lots 5, 6, 7, 8 and 9, in Wiltham Place Replat 1, an Addition to the City of LaVista, Sarpy County, Nebraska,

together with non-exclusive easement rights granted by easements filed March 8, 1996, as Instrument No. 96-04403, March 15, 1996, as Instrument No. 96-04916, and March 15, 1996, as Instrument No. 96-04920.