

# UNOFFICIAL COPY

*-and prepared*



Doc#: 1105533098 Fee: \$50.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 02/24/2011 02:29 PM Pg: 1 of 8

## RECORDING REQUESTED BY:

Patricia Tighe Ash, Esq.  
The Kroger Co.  
1014 Vine Street  
Cincinnati OH 45202

## AND WHEN RECORDED MAIL TO:

1100 West Artesia Boulevard  
Compton, California 90220  
Attention: Legal Department

Common Address: 2501 W. North Avenue  
(Northwest Corner of 25<sup>th</sup> Avenue and North Avenue),  
Melrose Park, Illinois.

PINs: 12-33-402-001-0000; 12-33-402-002-0000; 12-33-402-003-0000; 12-33-402-004-0000;  
12-33-402-005-0000; 12-33-402-006-0000; and 12-33-402-007-0000

[SPACE ABOVE THIS LINE RESERVED FOR THE RECORDER'S PURPOSES]

## SUBORDINATION, NONDISTURBANCE AND ATTORNMEN AGREEMENT

This SUBORDINATION, NONDISTURBANCE AND ATTORNMEN AGREEMENT (this "Agreement") is made as of the 11<sup>th</sup> day of FEBRUARY, 2011, by and among Ralphs Grocery Company, an Ohio Corporation ("Tenant"), MP Center LLC, an Illinois limited liability company ("Borrower"), and Lakeside Bank, an Illinois corporation ("Lender"), with reference to the following recitals:

- A. V-Land Melrose Park North, LLC, an Illinois limited liability company ("Original Landlord") and Tenant entered into that certain Ground Lease Agreement, dated as of December 20, 2005 (as amended from time to time, the "Lease"), covering the portion (the "Premises") of the property more particularly described in **Exhibit A** hereto (the "Encumbered Property").
- B. Original Landlord subsequently assigned all of its right, title and interest in, to and under the Lease to MB805 LLC, an Illinois limited liability company ("Current Landlord").
- C. Current Landlord, as seller, and Borrower, as purchaser, have entered into a Real Estate Sale Contract, dated as of December 31, 2010, pursuant to

*Handwritten initials and signature*

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which Borrower will purchase from Current Landlord, among other real property, the Encumbered Property, and Borrower will thereby become the landlord under the Lease.

D. Borrower's interest in the Encumbered Property is to be encumbered by one or more mortgages, deeds of trust or other security agreements to be made by Borrower in favor of Lender (collectively, the "Mortgage"). The Mortgage will be recorded in the Official Records of Cook County, Illinois.

E. Tenant requires that Lender agree that Tenant shall not, by reason of the Mortgage or the obligation secured thereby, be disturbed in its tenancy or possession of the Premises for any reason.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements contained herein, the parties hereto agree as follows:

1. In the event that Lender or the trustee under the Mortgage exercises any power of sale contained in the Mortgage or in the event the Mortgage is foreclosed or other proceedings, as provided by law, are instituted due to a default under the Mortgage or any instrument secured by the Mortgage (hereinafter collectively referred to as the "Foreclosure Proceedings"), Tenant shall not be made a party to the Foreclosure Proceedings, and any sale, transfer or conveyance of Borrower's interest in the Premises, or any part thereof, whether pursuant to a power of sale, foreclosure, deed in lieu of foreclosure or other transfer (hereinafter collectively referred to as a "Transfer") shall be made subject to the Lease, provided that the Lease and this Agreement shall be in effect at the time of such Transfer and that Tenant shall attach to the person or entity which obtains control or ownership in such Transfer as Tenant's landlord under the Lease. Notwithstanding the foregoing, if by virtue of any law applicable to the Foreclosure Proceedings, the Lender is required to name Tenant as a party to such Proceedings, Lender may do so, provided any Transfer is made subject to the Lease, provided that the Lease and this Agreement shall be in effect at the time of such Transfer. Any such person or entity which acquires control or ownership of such property through such Transfer shall assume and perform all of the duties and obligations of the landlord under the Lease. Further, notwithstanding anything to the contrary contained herein, no such transferee shall be bound by any amendment or modification of the Lease of which Lender has not approved in writing, excepting, however, commercially reasonable amendments or modifications to the Lease which are the result of good faith, arm's length negotiations between Landlord and Tenant and that do not materially decrease Landlord's rights or materially increase Landlord's obligations under the Lease.

2. Provided Tenant is not default under the Lease, Lender shall not, in the exercise of any of its rights under the Mortgage or any instrument secured by the Mortgage or under any instrument or document modifying or amending the same or entered into in substitution or replacement thereof, disturb or deprive Tenant in, or of, its

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possession or its right to possession of the Premises under the Lease or of any right or privilege granted to or inuring to the benefit of Tenant under the Lease.

3. Lender agrees that, notwithstanding any provision of the Mortgage or any instrument secured by the Mortgage, any insurance proceeds and any condemnation awards which may be received by any party hereto and which relate to the Encumbered Property shall be used or disbursed in accordance with the terms of the Lease.

4. Borrower and Lender agree to execute a consent and waiver form in connection with any proposed financing of fixtures or equipment located or to be located on the Premises by Tenant (the "Equipment"). The consent and waiver form shall confirm title to the Equipment in Tenant and waive any right which Borrower or Lender now have or may hereafter have under the laws of the State where the Equipment is located to levy upon, claim or assert title to the Equipment.

5. Subject to the terms hereof, the Lease shall be subject and subordinate to the lien of the Mortgage, to all advances made or to be made thereunder, and to any renewals, extensions, modifications or replacements thereof.

6. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to another party or any other person shall be in writing and delivered by intra-city messenger service, overnight courier service (such as Federal Express) or certified or registered mail, addressed as follows:

If to Tenant:

Ralphs Grocery Company  
dba Food 4 Less Midwest  
7770 S. Cicero Avenue  
Burbank, IL 60459  
Attn: Real Estate Department

With a copy to:

The Kroger Co.  
1014 Vine Street  
Cincinnati, Ohio 45202  
Attn: Legal Department

If to Borrower:

MP Center LLC  
1237 W. Fullerton Avenue  
Chicago, Illinois 60614

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With a copy to:

Frederick M. Kaplan  
Krasnow Saunders Cornblath, LLP  
500 N. Dearborn – 2<sup>nd</sup> Floor  
Chicago, IL 60654

If to Lender:

Lakeside Bank  
55 West Wacker Drive, First Floor  
Chicago, Illinois 60601  
Attention: David Pinkerton

Any party may change its address by notifying the other parties of the change of address. Notices shall be deemed communicated upon the earlier of the receipt or seventy-two (72) hours from the time of mailing if mailed as provided in this paragraph.

7. In the event Lender notifies Tenant of the occurrence of a default under the Mortgage and demands that Tenant pay rent and all other sums due or to become due under the Lease directly to Lender, Tenant shall honor such demand effective five (5) business days following receipt thereof, and shall pay such sums directly to Lender or as Lender shall direct. Borrower specifically agrees that Tenant may conclusively rely upon any written notice Tenant receives from Lender notwithstanding any claim by Borrower contesting the validity of any term or condition of such notice, including but not limited to any default claimed by Lender, and that Borrower shall not make any claim of any kind whatsoever against Tenant or Tenant's leasehold interest with respect to any amounts paid to Lender by Tenant or any acts performed by Tenant pursuant to such written notice.

8. This Agreement shall be construed according to the laws of the state where the Premises are located. This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

9. Any provision hereof determined to be invalid by a court of competent jurisdiction shall in no way affect any other provision hereof. In such event, each and every such other provision shall remain in full force and effect.

10. The effectiveness of this Agreement is contingent upon the following:

- a. Execution and notarization by all parties hereto within fifteen (15) days of the day, month and year first hereinabove written.
- b. Recording of this document in the Official Records of Cook County, Illinois.

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In the event either of the foregoing contingencies is not satisfied, this Agreement shall immediately and without further action become null and void. In addition, Borrower agrees that it shall provide Tenant with a fully executed, notarized original of this Agreement within thirty (30) days of the day, month and year first hereinabove written. Borrower's failure to do so within such period of time will cause Tenant to incur certain administrative and processing costs, the exact amount of which are extremely difficult or impractical to fix. Accordingly, Borrower agrees to pay to Tenant a fee of Five Hundred Dollars (\$500.00), which shall be immediately due and payable in the event of Borrower's failure to provide a fully executed, notarized original within such period of time, and Tenant shall be entitled to offset said fee of \$500.00 from amounts otherwise payable by Tenant to Borrower under the Lease.

11. This Agreement may be executed by the parties in multiple counterparts, each of which shall be deemed an original agreement, and all of which shall constitute one agreement.

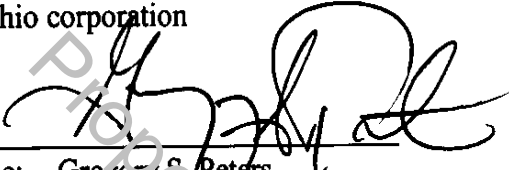
**[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS]**

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## [SIGNATURE PAGE FOR SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT]

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


RALPHS GROCERY COMPANY,  
an Ohio corporation

By:   
Name: Gregory S. Peters  
Its: Vice President

"Tenant"

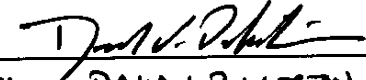
MP CENTER LLC,  
an Illinois limited liability company

By: Newgard Development LLC,  
an Illinois limited liability company,  
Its: Sole Manager

By:   
Name: PAUL UTIGARD  
Title: Manager

"Borrower"

LAKESIDE BANK,  
an Illinois corporation

By:   
Name: DAVID J. BRUNERTON  
Title: EXECUTIVE VICE PRESIDENT

"Lender"

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## TENANT ACKNOWLEDGEMENT

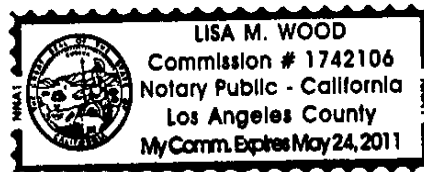
STATE OF CALIFORNIA     )  
 COUNTY OF LOS ANGELES    )

On February 1, 2011 before me, Lisa M. Wood, Notary Public, personally appeared Gregory S. Peters, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies) and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

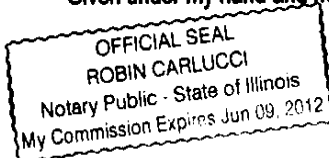
Signature *Lisa M. Wood*  
 Notary Public



## LENDER ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that DAVID V. PINKERTON, personally known to me to be the same person whose name is subscribed to the foregoing instrument as the EXEC VICE PRESIDENT of LAKE SIDE BANK, appeared before me this day in person and acknowledged that he/~~she~~ signed and delivered this instrument as his/~~her~~ free and voluntary act, and as the free and voluntary act of Lender, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 11 day of February, 2011.

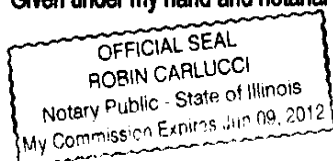


*Robin Carlucci*  
 Notary Public

## BORROWER ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the County of Cook in the State of Illinois, DO HEREBY CERTIFY that PAUL UTIGARD, personally known to me to be the same person whose name is subscribed to the foregoing instrument as the Manager of Newgard Development LLC, an Illinois limited liability company and the sole manager of MP Center, LLC, an Illinois limited liability company ("Borrower"), appeared before me this day in person and acknowledged that he/~~she~~ signed and delivered this instrument as his/~~her~~ free and voluntary act, and as the free and voluntary act of Borrower, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 11 day of February, 2011.



*Robin Carlucci*  
 Notary Public

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## EXHIBIT A

### Legal Description of the Encumbered Property

Lots 1, 2, 3, 4, 5, 6 and 7 in Vland Melrose Park North Subdivision, being a Subdivision in the Southeast Quarter of Section 33, Township 40 North, Range 12 East of the Third Principal Meridian, according to the Plat thereof recorded June 2, 2006, as Document Number 0615344142, in Cook County, Illinois.

Address: Northwest corner of North Avenue and  
25th Avenue, Melrose Park, Illinois 60160

PIN: 12-33-402-001-0000  
12-33-402-003-0000  
12-33-402-003-1000  
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12-33-402-007-0000