



Doc#: 1236642043 Fee: \$54.00
Karen A. Yarbrough RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/31/2012 10:58 AM Pg: 1 of 9

**PREPARED BY AND WHEN
RECORDED MAIL TO:**

Ann Miller
Senior Documentation Specialist
State Bank of The Lakes
440 Lake Street
Antioch, IL 60002

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5 of 7

**SUBORDINATION, NONDISTURBANCE
AND ATTORNMENT AGREEMENT**

This Agreement is dated as of 12/19/12 and is made by and between **WFM-WO, INC., f/k/a Wild Oats Markets, Inc.** ("Tenant"), **THE UPTON PROPERTIES, INC.** ("Landlord"), and **STATE BANK OF THE LAKES** ("Lender").

P R E A M B L E:

Pursuant to that certain Lease more fully described on Exhibit B attached hereto (said lease, as amended, and as may from time to time be amended, modified, substituted, extended, renewed or restated shall be referred to as the "Lease"), Landlord, the owner of the property more fully described on Exhibit "A" attached hereto ("Property"), leased to Tenant the portion of the Property described in the Lease. Landlord has requested Lender to provide financing (the "Financing") from time to time to Landlord, which Financing shall be secured by the Property. Lender has agreed to provide such Financing so long as, among other things, this Agreement is entered into by Tenant.

NOW, THEREFORE, in consideration of the foregoing, to induce Lender to provide the Financing to Landlord and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. **Attornment.** Tenant covenants and agrees to attorn to Lender or any other purchaser at any foreclosure sale of the Property as its new landlord and upon such event the Lease shall continue in full force and effect as a direct lease between the Tenant and Lender or such other person, upon all terms, covenants, conditions and agreements set forth in the Lease; provided, however, that in no event shall Lender or such third person be (a) personally liable for any act or omission of the Landlord; (b) bound by any payment of rent or additional rent made by the Tenant to Landlord for more than one month in advance; or (c) bound by any amendment or material modification of the Lease after the date of this

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Agreement made without the consent of Lender (which consent shall not be unreasonably withheld or delayed).

2. Subordination of Lease. Tenant covenants and agrees that all of Tenant's right, title and interest in and under the Lease is and shall be subordinated to the lien or interest of Lender in and to the Property, and to all right, title and interest granted to Lender in and to the Property, in the same manner as if the Lease had been executed after execution, delivery and recording of Lender's interest in the Property.

3. No disturbance. Lender covenants and agrees that in the event that Lender or any other person exercises any of its rights, powers or remedies pursuant to any agreement, instrument or document relating to the Financing with respect to the Property, and Lender or any other person acquires title to the Property pursuant to the exercise of any such right, power or remedy, and provided that the Tenant is not then in default under the Lease, then Tenant's leasehold shall not be disturbed by Lender's or any third parties' exercise of any of such rights, powers or remedies.

4. Tenant's Fixtures. The Financing shall not cover, nor shall the lien thereof extend to Tenant's leasehold interest in the Lease or Tenant's fixtures and equipment.

5. Restoration Proceeds. Lender shall permit proceeds received by Tenant or Landlord from insurance, eminent domain, condemnation and the like and relating to the Property to be used as required by the provisions of the Lease.

6. Notice. Whenever and wherever in this Agreement, the Lease, the Financing or in any proceedings involving the foreclosure or attempt to foreclose pursuant to the Financing, it shall be required or permitted that notice, request or demand be given or served by any party, such notice, request or demand shall be in writing and be deemed to have been given or served upon receipt or refusal of receipt after being mailed, postage prepaid, by certified, registered or express mail, return receipt requested, or when delivered in person and addressed as follows:

To Landlord:

The Upton Properties, Inc.



To Tenant:

WFM-WO, Inc.
Attention: Store Team Leader
1111 Chicago Avenue
Evanston, Illinois 60202

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With copies of all notices to:

Whole Foods Market, Inc.
640 North La Salle Street, Suite 300
Chicago, Illinois 60654
Attention: Regional President

and

Whole Foods Market, Inc.
550 Bowie Street
Austin, Texas 78703
Attention: General Counsel
(512) 542-0217

and

Senn Visciano Canges P.C.
Wells Fargo Center
1700 Lincoln Street, Suite 4500
Denver, Colorado 80203
Attention: David C. Camp
(303) 298-1122

To Lender:

State Bank of The Lakes
440 Lake Street
Antioch, Illinois 60002

or to such other addresses as may hereafter be designated by any party not less than thirty (30) days in advance by proper notice to the others.

7. Amendment, Modifications. This Agreement may not be modified other than by agreement in writing signed by Lender and Tenant, or by their respective successors in interest.

8. Binding Agreement. This Agreement shall inure to the benefit of and shall be binding upon Lender and its successors and assigns, and be binding upon Tenant and its successors and assigns.

9. Counterparts. This Agreement may be executed in any number of counterparts, each of which counterparts, once executed and delivered, shall be deemed to be an original and all of which counterparts taken together, shall constitute but one and the same Agreement.

10. Governing Laws. This Agreement shall be deemed to be a contract made under the laws of the State of Illinois and for all purposes shall be construed in accordance with the internal laws, and not the conflict of laws provisions, of the State of Illinois.

**[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]**

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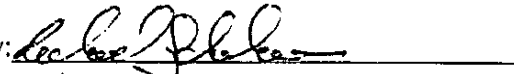
IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement on the day and year first set forth above.

STATE BANK OF THE LAKES

By: 

Title: A.V.P. Commercial Lending

WFM-WO, INC., f/k/a WILD OATS
MARKETS, INC.

By: 

Title: President
WFO - Region

THE UPTON PROPERTIES, INC.

By: 

Title: He

Property of Cook County Clerk's Office

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TENANT

STATE OF ILLINOIS)
COUNTY OF COOK) SS.

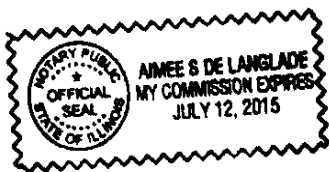
The Undersigned, a Notary Public in and for said County in the state aforesaid, DO HEREBY CERTIFY THAT ~~MICHAEL BASHAW~~ ^{PRESIDENT} ~~MIDWEST REGION~~ of WFM-WO, Inc. f/k/a Wild Oats Markets Inc., personally known to me to be the same person whose name is subscribed to the foregoing instrument as such ~~MICHAEL BASHAW~~ appeared before me this day in person and acknowledged that such person signed and delivered said instrument as such person's own free and voluntary act, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 18th day of December 2012.


NOTARY PUBLIC

My Commission Expires: July 12th 2015

[SEAL]



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LANDLORD

STATE OF IL)
COUNTY OF Lake) SS.

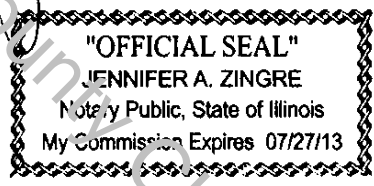
The Undersigned, a Notary Public in and for said County in the state aforesaid, DO HEREBY CERTIFY THAT Terry H. Upton of The Upton Properties, Inc., personally known to me to be the same person whose name is subscribed to the foregoing instrument as such he, appeared before me this day in person and acknowledged that such person signed and delivered said instrument as such person's own free and voluntary act, and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 10 day of Dec 2012.

[Signature]
NOTARY PUBLIC

My Commission Expires:

7/27/13
[SEAL]



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LENDER

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

The Undersigned, a Notary Public in and for said County in the state aforesaid, DO HEREBY CERTIFY THAT Thomas E Sweetwood, of State Bank of the Lakes, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such his, appeared before me this day in person and acknowledged that such person signed and delivered said instrument as such person's own free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 10 day of Dec 2012 2012.

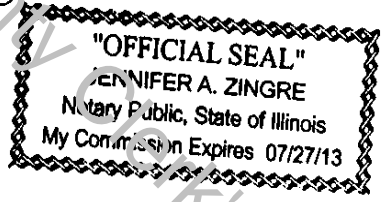
Jingre

NOTARY PUBLIC

My Commission Expires:

7/27/13

[SEAL]



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EXHIBIT A LEGAL DESCRIPTION

PARCEL 1: LOT 1 OF LEVY'S PLAT OF CONSOLIDATION OF LOTS 12 TO 15 IN CLOCK 77 IN NORTHWEST UNIVERSITY SUBDIVISION OF THE NORTH ½ OF THE NORTH ½ (EAST OF CHICAGO AVENUE) OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE 15 ½ ACRES IN THE NORTH EAST CORNER OF SAID TRACT) IN COOK COUNTY, ILLINOIS.

PARCEL 2: PLAT OF CONSOLIDATION OF LOTS 16, 17, 18, 19, 20 AND PART OF LOT 21 IN BLOCK 77 IN NORTH WESTERN UNIVERSITY IN THE NORTH ½ OF THE NORTH ½ OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING EAST OF CHICAGO AVENUE (EXCEPT 15 ½ ACRES IN THE NORTHEAST CORNER THEREOF) IN COOK COUNTY, ILLINOIS

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EXHIBIT B TO
SUBORDINATION, NONDISTURBANCE AND NONDISTURBANCE AGREEMENT

Leased dated January 26, 1998, by and between The Upton Properties, Inc., as landlord, and Wild Oats Markets, Inc., as tenant

Property of Cook County Clerk's Office