

Doc#: 1308035047 Fee: \$56.00
RHSP Fee:\$10.00 Affidavit Fee:
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 03/21/2013 02:43 PM Pg: 1 of 10

This document prepared by,
and after recording, return to:

Nixon Peabody LLP
437 Madison Avenue
New York, New York 10022
Attn: William X. Lang, Esq.

Above space for Recorder's Use Only

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT ("Agreement") is made effective this 21st day of March, 2013, by and between SELF-INSURERS' SECURITY FUND ("Mortgagee"), and JEWEL FOOD STORES, INC., an Ohio corporation, ("Tenant").

WHEREAS, Mortgagee is the owner of and holds a Mortgage Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Mortgage"), executed by JETCO PROPERTIES, INC., a Delaware corporation, (the "Mortgagor") on the land described on Exhibit "A," and recorded immediately prior hereto, together with present or future improvements (the "Real Property"); and

WHEREAS, Mortgagor, as successor in interest to Evanston-Chicago Properties, Inc., has entered into a lease with Tenant, as successor in interest to Jewel Companies, Inc., as to all or a portion of the Real Property dated the 11th day of October, 1984, (which lease together with all amendments, assignments, options, extensions, renewals and replacements is the "Lease"); and

WHEREAS, Mortgagee and Tenant have reached certain agreements as to the subordination of that Lease to the Mortgage; and

WHEREAS, the parties desire to set forth in writing their agreements.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein contained, which the parties agree and acknowledge constitute good and adequate consideration, the parties mutually agree as follows:

1. **Subordination.** The Lease, all of its terms and provisions, and all of the Tenant's rights thereunder and as to the Real Property shall be and are subordinate to the Mortgage.

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2. **Consent to Assignment.** The Tenant consents to the assignment of the Lease to Mortgagee as security for the Loan.

3. **Notice to Lender in the Event of Landlord Default.** If Mortgagor defaults under the Lease and, upon notice, fails to cure its default within the cure period provided under the Lease, if any, Tenant will notify Mortgagee of the default and afford Mortgagee a reasonable opportunity to cure the default (but in no event exceeding forty-five (45) days after such notice) before terminating the Lease or exercising any self-help rights from which a right of setoff would arise.

4. **New Owner Obligations.** If Mortgagee forecloses the Mortgage, or acquires title to the Real Property by deed in lieu of foreclosure, and only if both (i) Mortgagee agrees in writing to recognize the Lease and Tenant's rights thereunder (which Mortgagee shall have the right to do or not do in its sole and absolute discretion) and (ii) Tenant agrees in writing to attorn to Mortgagee (which Tenant shall have the right to do or not to do in its sole and absolute discretion), the following terms and conditions will govern the respective rights and obligations of Tenant and Mortgagee or other new owner of the Real Property (in either case, the "New Owner"):

- a) Neither the New Owner or anyone claiming by, through or under the New Owner:
 - i. will be bound by any purchase rights of the Tenant contained in the Lease, including but not limited to options to purchase and rights of first refusal to purchase.
 - ii. will as to matters arising prior to the date New Owner acquires title to the Real Property, assume any of Mortgagor's liabilities to Tenant arising from any: (i) Mortgagor default, act or omission; or (ii) Lease indemnification or hold harmless provisions; provided, however that: (x) to the extent the Lease obligates the landlord under the Lease to maintain the Real Property in good repair, the New Owner will make the repairs of which the Mortgagee shall have received the notice required under Section 3; and (y) Tenant may exercise any of its rent reduction or abatement rights under the Lease for such default.
 - iii. will be subject to any defenses, counterclaims or off-sets which Tenant has as of the date New Owner acquires title to the Real Property that are not expressly allowed for under the Lease.
 - iv. will be liable to the Tenant in excess of the value of New Owner's interest in the Real Property.
 - v. will be bound by any modification of the Lease, including the release from liability of any party liable for the obligations of Tenant, made without Mortgagee's written consent, if such consent is required per the terms of the loan documents.
 - vi. will be bound by any rent paid more than one month in advance unless actually received by New Owner, except as expressly required by the Lease, or unless New Owner has consented to an advance payment in writing.
 - vii. will be liable for the return of security or other lease deposits, unless and then only to the extent of any security or funds actually received by New Owner.
 - viii. will be responsible for any consequential damages arising out of a default, act or omission of landlord under the Lease.

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- b) The Tenant will reissue all letters of credit, if any, issued to landlord under the Lease as security to the Lease to the New Owner.

5. **Tenant Obligations as to Payment of Rental under the Lease.** This Agreement will not vary any terms of the Lease that condition Tenant's obligation to pay rent on the landlord's performance of its covenants under the Lease in respect of the habitability and quiet enjoyment of the Real Property, which Mortgagee agrees shall apply to the New Owner as they have to the landlord, provided Tenant has performed all of its obligation under Paragraph 3 of this Agreement.

6. **Notices.** Any notice under this Agreement may be delivered by hand or sent by commercial delivery service or United States Postal Service express mail, in either case for overnight delivery with proof of receipt, or sent by certified mail, return receipt requested, to the following addresses:

To Tenant: Jewel Food Stores, Inc.
c/o New Albertson's, Inc.
250 Parkcenter Blvd.
Boise, ID 83706
Attention: Legal Dept.

Mortgagee shall also deliver simultaneously a copy of any notice it delivers to the following addresses:

Greenberg Traurig LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
Attn: Corey E. Light, Esq.

To Mortgagee: Self-Insurers' Security Fund
100 Pringle Avenue, No. 525
Walnut Creek, CA 94596
Attn: Jeffery W. Pettegrew

Mortgagor shall also deliver simultaneously a copy of any notice it delivers to the following addresses:

Richard C. Pedone, Esq.
Nixon Peabody LLP
100 Summer Street
Boston, MA 02108

And

Daniel R. Sovocool, Esq.
Nixon Peabody LLP
One Embarcadero Center
18th Floor
San Francisco, CA 94111

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Notice shall be deemed to have been given upon receipt if delivered by hand, on the next business day if sent for overnight delivery by commercial delivery service or United States Postal service express mail, or three (3) business days following mailing if sent by certified mail, return receipt requested.

7. **No Modification.** No modification of this Agreement shall be valid unless in writing and executed by the party against whom enforcement is sought.

8. **Applicable Law.** This Agreement shall be construed according to and governed by the laws of the state in which the Real Property is located.

9. **Successors and Assigns.** This Agreement shall be binding on, and shall inure to the benefit of, the parties' successors and assigns.

10. **Counterparts** This Agreement may be executed and delivered in counterparts for the convenience of the parties.

[Signature Page Follows]

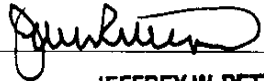
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IN WITNESS WHEREOF, the parties have signed this Subordination Agreement as of the year and date first above written.

Mortgagee:

SELF INSURERS' SECURITY FUND

By:
Name:
Title:



JEFFREY W. PETTEGREW
Executive Director
CA SELF-INSURER'S SECURITY FUND

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ACKNOWLEDGMENT

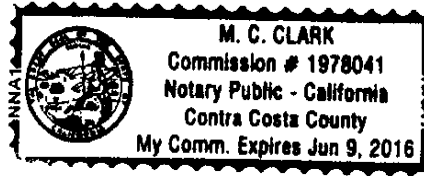
State of California
County of Contra Costa)

On March 15, 2013 before me, M. C. Clark
(insert name and title of the officer)

personally appeared Jeff Pettegrew
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 

(Seal)

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IN WITNESS WHEREOF, the parties have signed this Subordination Agreement as of the year and date first above written.

Tenant:

JEWEL FOOD STORES, INC., an Ohio corporation

By: *M Bessent*
Name: *M. Bessent*
Title: *Treasurer*

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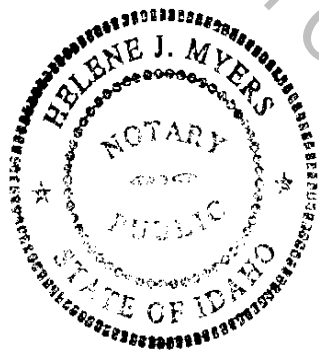
NOTARY ACKNOWLEDGMENT

STATE OF Idaho)
)
 COUNTY OF Ada) SS:

I, Helene J. Myers, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that M. Bessent, personally known to be to be the Treasurer of Jewel Food Stores, Inc., an Ohio corporation, and personally known to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that as such Treasurer he/she signed and delivered the said instrument pursuant to authority of said corporation as his/her free and voluntary act, and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

WITNESS MY HAND and Notary seal this 15 day of March 2013.

Helene J. Myers
 Notary Public



My commission expires:

12-21-2013

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EXHIBIT A

Description of the Land

See Legal Description Attached.

PIN NUMBER:

11-19-105-031-0000 Vol. 58

STREET ADDRESS:

1128 Chicago Avenue
Evanston, IL 60202

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COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____
Cook County Clerk's Office

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NCS # 587591-80

Lot 1 in Jewel Companies, Inc. consolidation plat of part of Hartwell's Subdivision of Block 2 and part of Snyder's Addition to Evanston, all in Section 19, Township 41 North, Range 14, East of the Third Principal Meridian, according to the plat thereof recorded on November 10, 1983 as Document Number 26858790, in Cook County, Illinois.

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