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Doc#: 1336419055 Fee: \$52.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 12/30/2013 12:23 PM Pg: 1 of 8

Prepared by and after recording
return to:

Much Shelist
191 N. Wacker Drive
Suite 1800
Chicago, Illinois 60606
Attn: Arnold Weinberg, Esq.

NONDISTURBANCE, ATTORNMENT AND SUBORDINATION AGREEMENT

THIS AGREEMENT, made and entered into as of this 20th day of December, 2013, by and between FIRSTMERRIT BANK, N.A. (herein, together with its successors and assigns under the Mortgage hereinafter referred to, called "Lender") and ROUNDY'S SUPERMARKETS, INC. (herein called "Tenant").

WITNESSETH:

WHEREAS, Roundy's Supermarkets, Inc., as Tenant, and NRG Touhy McCormick, LLC, an Illinois limited liability company, as Landlord (herein called "Landlord"), heretofore entered into a certain Lease dated May 8, 2013 as modified on December 20th, 2013 (herein collectively called the "Lease") demising to Tenant those certain premises described in the Lease (the "Premises") and legally described on Exhibit A attached hereto and made a part hereof which Premises is located in the City of Skokie, Cook County, State of Illinois; and

WHEREAS, concurrently herewith, the Landlord is executing and delivering to Lender a mortgage (herein called the "Mortgage") dated as of December 20th, 2013, creating a mortgage lien upon the Premises and other real estate adjacent thereto (the Premises and adjacent real estate are collectively referred to herein as the "Shopping Center") as security for certain indebtedness evidenced by said Landlord's note dated as of December 20th, 2013, in the principal sum of \$28,800,000.00, together with any and all advances made thereunder, all interest thereon and any renewals or extensions thereof (herein called the "Mortgage Debt"), and more fully described in the Mortgage; and

WHEREAS, as a condition precedent to disbursement of the Mortgage Debt, Lender has required that the Lease and the rights of Tenant thereunder be subordinated and made subject to the lien of the Mortgage upon the terms and conditions hereinafter expressed.

NOW THEREFORE, in consideration of the foregoing premises and of the agreements hereinafter contained, and to induce Lender to disburse the Mortgage Debt, it is agreed as follows:

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1. Tenant hereby agrees that the Lease, and the rights of Tenant in, to or under the Lease, shall be and remain in all respects and for all purposes, subject, subordinate and junior in right and interest to the lien of the Mortgage (as the Mortgage may be amended, renewed, modified, consolidated, replaced or extended from time to time, including, but not limited to increases in the amount of the Mortgage Debt) and to the right and interest of the holder of the Mortgage Debt secured thereby whether now or hereafter outstanding, as fully and with the same effect as if the Mortgage had been duly executed, acknowledged, delivered and recorded by the record owner of the Shopping Center so as to constitute a first lien of record, and as if the Mortgage Debt had been fully disbursed prior to the execution and delivery of the Lease.

2. Lender hereby agrees that so long as Tenant, its successors, assigns and sublessees, shall not be in default under the provisions of the Lease:

(a) The Lease shall remain in full force and effect without impairment of any of the rights of the Tenant thereunder, including the Tenant's continued right to possession of the Premises during the Term of the Lease and any extension thereof. In the event that Lender takes possession of the Shopping Center, the Lease shall continue with the same force and effect as if the Lender, as landlord, and Tenant, as tenant, had entered into a lease as of the date Lender takes possession of the Shopping Center containing the same terms, conditions and covenants as contained in the Lease; provided, however, that Lender shall in no way be liable or responsible for any alleged default by the Landlord under the Lease pertaining to any period prior to the time that Lender takes possession of the Shopping Center.

(b) In the event of foreclosure of the Mortgage or sale in lieu of foreclosure or other suit or proceeding under or pursuant to the Mortgage or consequent upon an Event of Default thereunder, the Tenant under the Lease will not be made a party to any such proceeding and the same shall not affect the rights of the Tenant under the Lease; provided, however, Lender may name or join Tenant in any foreclosure or other action or proceeding initiated by Lender pursuant to the Mortgage to the extent necessary under applicable law in order for Lender to avail itself of and complete the foreclosure or other remedy, but such naming or joinder shall not be in derogation of the rights of Tenant as set forth in this Agreement. Any purchaser of the Shopping Center pursuant to any such proceedings or deed in lieu of foreclosure shall take the Shopping Center subject to the Lease and shall be bound by all of its covenants, as though the purchaser were the original Landlord; provided, however, that said purchaser shall in no way be liable or responsible for any alleged default by the Landlord under the Lease pertaining to any period prior to the time that purchaser acquires legal title to or possession of the Shopping Center.

3. From and after the date that Lender takes possession of the Shopping Center, or upon any foreclosure sale or conveyance in lieu thereof, and if the Tenant's right of possession has been preserved as hereinabove provided, Tenant will attorn to Lender (or the purchaser at foreclosure sale or grantee pursuant to deed in lieu of foreclosure; and for the purposes hereof, the term "Lender" shall include such purchaser or grantee) and the Lender will accept such attornment; the Lender will have the same obligations as Landlord had or would have had if the Lender had not taken possession of the Shopping Center and the same remedies by entry, action or otherwise for the nonperformance of any agreement contained in the Lease for the recovery of rent, for the commission of any waste or for any forfeiture, as the Landlord had or would have

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had. From and after the time of such attornment, Tenant shall have the same remedies against the Lender who shall be in possession of the Shopping Center for the breach of any covenant or agreement contained in the Lease that Tenant might have had against the Landlord; provided, however, that, except for Tenant's right of offset contained in Section 19 of the Lease, which right Tenant shall retain against the Lender, the Lender shall not be (i) liable for any prior act or omission of Landlord; (ii) subject to any offsets or defenses which Tenant might have against Landlord; or (iii) liable for more than one (1) month's rent or additional rent which Tenant might have paid in advance to the Landlord.

4. Lender shall not be bound by any modification or amendment of the Lease unless Lender has given its consent thereto in writing.

5. Lender agrees to permit the application of (i) all insurance proceeds derived from the policy of insurance carried by Landlord pursuant to Section 13 of the Lease to the restoration of the Leased Premises in accordance with Section 17 thereof and (ii) all proceeds resulting from any condemnation to the restoration or reconstruction of the Shopping Center in accordance with Section 16 of the Lease.

6. This instrument shall constitute acknowledgment by Tenant of notice of the existence of the Mortgage as a mortgage lien upon the Shopping Center and of the name and address of Lender as mortgagee. Upon assignment by Lender of its interest as mortgagee under the Mortgage, all rights of Lender shall immediately inure to its assignee. Lender shall endeavor to give notice of such assignment to Tenant as soon as possible after any such assignment; provided that the failure to do so will not affect the parties rights and benefits hereunder.

7. This instrument shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

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

Lender:
FIRSTMERIT BANK, N.A.

Tenant:
ROUNDY'S SUPERMARKETS, INC.

By: _____
Name: _____
Title: _____

By: Edward G. Katz
Name: Edward G. Katz
Title: Group VP - Legal, Risk + Treasury

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had. From and after the time of such attornment, Tenant shall have the same remedies against the Lender who shall be in possession of the Shopping Center for the breach of any covenant or agreement contained in the Lease that Tenant might have had against the Landlord; provided, however, that, except for Tenant's right of offset contained in Section 19 of the Lease, which right Tenant shall retain against the Lender, the Lender shall not be (i) liable for any prior act or omission of Landlord; (ii) subject to any offsets or defenses which Tenant might have against Landlord; or (iii) liable for more than one (1) month's rent or additional rent which Tenant might have paid in advance to the Landlord.

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Lender:
FIRSTMERIT BANK, N.A.

Tenant:
ROUNDY'S SUPERMARKETS, INC.

By: Oliver P. Beish
Name: Oliver P. Beish
Title: SVP

By: _____
Name: _____
Title: _____

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STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

This instrument was acknowledged before me on the ___ day of _____ 2013, by _____, as _____ of FIRSTMERIT BANK N.A..

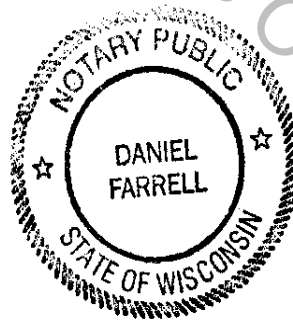
Notary Public, State of Illinois
My Commission: _____

STATE OF WISCONSIN)
) ss
COUNTY OF MILWAUKEE)

This instrument was acknowledged before me on the 18 day of December 2013, by Edward G. Kitz, as Group V.P. of ROUNDY'S SUPERMARKETS, INC.

Daniel Farrell

Notary Public, State of Wisconsin
My Commission: 1-10-2016



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STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

This instrument was acknowledged before me on the 18th day of December 2013, by Alec P. Bliss, as SVP of FIRSTMERIT BANK N.A..



Shawneese Carson
Notary Public, State of Illinois
My Commission: Nov. 15, 2015

STATE OF WISCONSIN)
) ss
COUNTY OF MILWAUKEE)

This instrument was acknowledged before me on the ___ day of _____ 2013, by _____, as _____ of ROUNDY'S SUPERMARKETS, INC.

Notary Public, State of Wisconsin
My Commission: _____

UNOFFICIAL COPY**EXHIBIT A****LEGAL DESCRIPTION OF PREMISES**

THAT PART OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE SOUTH LINE OF SAID SECTION 26, WHICH IS 660 FEET WEST OF THE SOUTHEAST CORNER OF SAID SECTION; THENCE SOUTH 89 DEGREES 04 MINUTES 18 SECONDS WEST, ALONG SAID SECTION LINE, 856.49 FEET (RECORD DISTANCE OF 856.85 FEET) TO THE SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 1 IN H & M REALTY SUBDIVISION RECORDED JUNE 25, 1999 AS DOCUMENT NUMBER 99616231, ALSO BEING A POINT WHICH IS 460.02 FEET (RECORD DISTANCE OF 460.00 FEET) EAST OF THE WEST LINE OF THE SOUTH HALF OF THE EAST HALF OF THE WEST HALF OF SOUTHEAST QUARTER OF SAID SECTION 26 (MEASURED ALONG SAID SECTION LINE); THENCE NORTH 00 DEGREES 37 MINUTES 39 SECONDS EAST, ALONG SAID SOUTHERLY EXTENSION AND EAST LINE, 55.00 FEET TO A LINE 55.00 FEET NORTH OF AND PARALLEL WITH THE CENTERLINE OF TOUHY AVENUE AS SHOWN ON DOCUMENT NUMBER 89300294 AND THE POINT OF BEGINNING;

THENCE NORTH 00 DEGREES 37 MINUTES 39 SECONDS EAST, ALONG SAID EAST LINE, 445.38 FEET TO A CORNER; THENCE NORTH 89 DEGREES 05 MINUTES 36 SECONDS EAST, ALONG SOUTH LINE OF SAID LOT 1 IN H & M REALTY SUBDIVISION, 648.16 FEET; THENCE SOUTH 00 DEGREES 55 MINUTES 42 SECONDS EAST, 217.00 FEET; THENCE SOUTH 27 DEGREES 47 MINUTES 33 SECONDS WEST, 67.24 FEET; THENCE SOUTH 89 DEGREES 04 MINUTES 18 SECONDS WEST, 197.00 FEET; THENCE SOUTH 00 DEGREES 55 MINUTES 42 SECONDS EAST, 170.86 FEET; THENCE NORTH 87 DEGREES 29 MINUTES 39 SECONDS WEST, 30.99 FEET TO A LINE 55.00 FEET NORTH OF AND PARALLEL WITH SAID CENTERLINE OF TOUHY AVENUE; THENCE SOUTH 89 DEGREES 04 MINUTES 18 SECONDS WEST, ALONG SAID PARALLEL LINE, 211.78 FEET; THENCE NORTH 30 DEGREES 55 MINUTES 42 SECONDS WEST, 28.87 FEET TO A LINE 80.00 FEET NORTH OF AND PARALLEL WITH SAID CENTERLINE OF TOUHY AVENUE; THENCE SOUTH 89 DEGREES 04 MINUTES 18 SECONDS WEST, ALONG SAID PARALLEL LINE, 73.13 FEET; THENCE SOUTH 29 DEGREES 04 MINUTES 18 SECONDS WEST, 28.87 FEET TO A LINE 55.00 FEET NORTH OF AND PARALLEL WITH SAID CENTERLINE OF TOUHY AVENUE; THENCE SOUTH 89 DEGREES 04 MINUTES 18 SECONDS WEST, ALONG SAID PARALLEL LINE, 86.22 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

TO BE KNOWN AS:

LOT 1 IN SKOKIE COMMONS SUBDIVISION, BEING A SUBDIVISION OF THAT PART OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS.

CONTAINING 249,313 SQUARE FEET, (5.723 ACRES) MORE OR LESS.

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Part of PIN: 10-26-403-002-0000

Part of 3300 – 3408 Touhy Avenue and 7200 – 7248 McCormick Boulevard, Skokie, IL *60076*

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