

UNOFFICIAL COPY



Doc#: 1413933020 Fee: \$60.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 05/19/2014 10:27 AM Pg: 1 of 12

**THIS DOCUMENT WAS PREPARED
BY, AND AFTER RECORDING,
RETURN TO:**

Donna M. Shaw, Esq.
Robbins, Salomon & Patt, Ltd.
180 North LaSalle St., Suite 3300
Chicago, Illinois 60601

PERMANENT TAX INDEX NUMBERS:

(See Schedule I attached hereto)

PROPERTY ADDRESS:

2601 West 95th Street
Evergreen Park, Illinois 60805

This space reserved for Recorders use only.

NONDISTURBANCE, ATTORNMENT AND SUBORDINATION AGREEMENT

THIS NONDISTURBANCE, ATTORNMENT AND SUBORDINATION AGREEMENT (the "Agreement") made and entered into and effective as of this 9th day of May, 2014, by and between **PNC BANK, NATIONAL ASSOCIATION**, a national banking association (herein, together with its successors and/or assigns under the Mortgage, collectively called, "**Lender**") whose address is One North Franklin Street, Suite 2150, Chicago, Illinois 60606, Attention: Joel G. Dalson, Vice-President and **ROUNDY'S SUPERMARKETS, INC.**, a Wisconsin corporation (herein called "**Tenant**") whose address is 875 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-5402, Attention: Daniel P. Farrell (MS-3370).

WITNESSETH:

WHEREAS, ROUNDY'S SUPERMARKETS, INC., as Tenant, and **95TH & WESTERN, LLC**, an Illinois limited liability company, as Landlord (herein called "**Landlord**"), heretofore entered into a certain Shopping Center Lease dated July 18, 2012 (together with all amendments and modifications thereof herein collectively called the "**Lease**") demising to Tenant those certain premises described in the Lease which premises are a part of the real property and improvements thereon located in the Village of Evergreen Park, Cook County, Illinois, commonly known as Evergreen Promenade and legally described in **Schedule I** attached hereto and made a part hereof (herein called the "**Shopping Center**"); and

WHEREAS, concurrently herewith, the Landlord is executing and delivering to Lender a Construction Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing (herein called the "**Mortgage**") dated as of May 9, 2014, creating a mortgage lien upon

S N
P 12
S N
SC y
INT AB

8935723 Dz PG 5 of 7

UNOFFICIAL COPY

the Shopping Center as security for certain indebtedness evidenced by said Landlord's note dated as of May 9, 2014, in the principal sum of **TWENTY MILLION FIFTY THOUSAND AND NO/100 DOLLARS** (\$20,050,000.00), 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:

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 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 Leased Premises during the Term of the Lease and any extension thereof, and 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.

(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 (unless the Tenant is a necessary party under applicable law), and the same shall not affect the rights of the Tenant under the Lease. 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,

UNOFFICIAL COPY

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 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; (iii) liable for more than one (1) month’s rent or additional rent which Tenant might have paid in advance to the Landlord; or (iv) liable for return of any security deposit unless the same is actually received by Lender.

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 Tenant pursuant to Section 12 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. Tenant hereby covenants and agrees to and with Lender not to seek to terminate the Lease by reason of any default of Landlord without prior written notice thereof to Lender (sent by certified or registered mail, postage prepaid at Lender’s address set forth above) and the lapse thereafter of such time as under the Lease was offered to Landlord in which to remedy the default.

7. Tenant hereby covenants and agrees to and with Lender not to pay any rent or other sums due or to become due under the Lease more than thirty (30) days in advance of the date on which the same are due or to become due under the Lease.

8. Subject to the provisions contained in the Agreement by Landlord attached hereto, Tenant hereby covenants and agrees to and with Lender that upon receipt from Lender of notice of any default by Landlord under the Mortgage, to pay to Lender directly all rent and other sums due under the Lease.

9. 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, provided that Lender shall give notice of such assignment to Tenant within thirty (30) days after any such assignment.

UNOFFICIAL COPY

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

11. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

(SIGNATURE AND NOTARY PAGES IMMEDIATELY FOLLOW)

Property of Cook County Clerk's Office
COOK COUNTY
RECORDED DEEDS
SCANNED BY _____

UNOFFICIAL COPY

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

LENDER:

TENANT:

PNC BANK, NATIONAL ASSOCIATION,
a national banking association

ROUNDY'S SUPERMARKETS, INC.,
a Wisconsin corporation

By: Joel G. Dalson

By: Edward G. Kitz

Name: Joel G. Dalson

Name: Edward G. Kitz

Title: Vice-President

Title: Group V.P. - Legal, Risk + Treasury

(NOTARY PAGES IMMEDIATELY FOLLOW)

PROPERTY OF COOK COUNTY CLERK'S OFFICE
RECORDS & DEEDS
SCANNED BY _____

UNOFFICIAL COPY

LENDER ACKNOWLEDGEMENT

STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

I, Andrew M. Sachs, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Joel G. Dalson, a Vice-President of **PNC BANK, NATIONAL ASSOCIATION**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his 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 22 day of May, 2014.

[Handwritten Signature]

Notary Public

State of IL

My Commission Expires



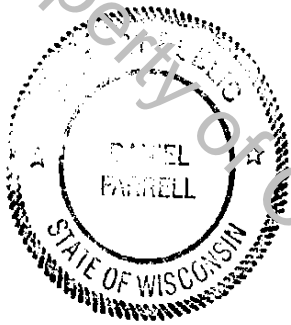
RECORDED DEEDS
SCANNED BY _____

UNOFFICIAL COPY

TENANT ACKNOWLEDGEMENT

STATE OF WISCONSIN)
) SS
 COUNTY OF MILWAUKEE)

This instrument was acknowledged before me on the 1 day of May, 2014, by Edward b Kitz, as G.V.P. of ROUNDY'S SUPERMARKETS, INC., a Wisconsin corporation.



Daniel Farrell
 Notary Public
 State of WI
 My Commission Expires: 1-10-2016

RECORDS & DEEDS
 SCANNED BY _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY

AGREEMENT BY LANDLORD

Landlord, as the Mortgagor under the Mortgage, agrees for itself and for its successors and assigns that (i) the foregoing Nondisturbance, Attornment and Subordination Agreement (the "**Agreement**") does not constitute a waiver or partial waiver by Lender of any of its rights under the Mortgage, (ii) the Agreement does not in any way release Landlord from its obligations to comply with every term, provision, condition, covenant, agreement, representation, warranty and obligation of the Mortgage, and that each of same remain in full force and effect and must be complied with by the Landlord thereunder and (iii) upon Tenant's receipt from Lender of notice of any default by Landlord under the Mortgage and a demand by the Lender for direct payment to the Lender of the rents due under the Lease, Tenant has agreed to make all subsequent rent payments directly to the Lender. The Landlord hereby agrees that any rents, fees or other amounts paid by the Tenant to or as directed by the Lender pursuant to this such demand shall be deemed to have been duly and validly paid by the Tenant under the Lease, and any such amounts shall be credited against the Tenant's obligations under the Lease as if the same were paid directly to the Landlord. The Landlord further agrees that the Tenant shall have no obligation to determine whether the Landlord is in default under the Mortgage, and the Tenant may rely on such notice and direction from the Lender without any duty to investigate. All capitalized terms used in this Agreement by Landlord which are not otherwise defined herein shall have the meanings contained in the Agreement.

Dated this 6 day of May, 2014.

LANDLORD:

95TH & WESTERN, LLC
an Illinois limited liability company

By: **IBT Group, LLC,**
an Illinois limited liability company

Title: **Manager**

By: 
Name: **Gary A Pachucki**
Title: **Manager**

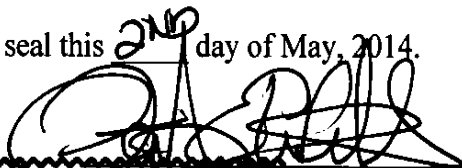
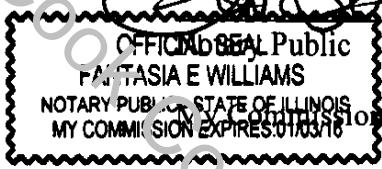
UNOFFICIAL COPY

LANDLORD ACKNOWLEDGEMENT

STATE OF ILLINOIS)
)
 COUNTY OF COOK) SS

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Gary A. Pachucki, the Manager of **IBT GROUP, LLC**, an Illinois limited liability company, which is the Manager of **95th & WESTERN, LLC**, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act individually and as the Manager of and on behalf of and as the free and voluntary act of IBT Group, LLC, as the Manager of and on behalf of and as the free and voluntary act of **95th & WESTERN, LLC** for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 2nd day of May, 2014.

Expires: 1/3/16

UNOFFICIAL COPY

SCHEDULE I LEGAL DESCRIPTION OF THE SHOPPING CENTER

PARCEL 1:

THE EASTERLY 100 FEET OF BLOCK 4 IN HONORE'S SUBDIVISION OF THE NORTH 1/4 OF THE EAST 1/2 OF THE NORTHEAST 1/4 AND THE NORTH 3/8 OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, WHICH PARCEL IS ALSO KNOWN AS LOT 1 IN BLOCK 5 IN PETERSON AND WEATHERFORD'S SUBDIVISION OF BLOCKS 1, 2, 3, AND 4 TOGETHER WITH VACATED STREETS BETWEEN BLOCKS 1, 2, AND 3 AND THE VACATED EAST 14 FEET OF STREET ADJOINING BLOCK 4 ON THE WEST IN HARRY W. HONORE JR. SUBDIVISION OF THE NORTH 1/4 OF THE EAST 1/2 OF THE NORTHEAST 1/4 AND THE NORTH 3/8 OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 2 IN BLOCK 5 IN PETERSON AND WEATHERFORD'S SUBDIVISION OF BLOCKS 1, 2, 3 AND 4 TOGETHER WITH VACATED STREETS BETWEEN LOTS 1, 2, AND 3 AND THE VACATED EAST 14 FEET OF STREET AND ADJOINING BLOCK 4 ON THE WEST IN HARRY W. HONORE JR. SUBDIVISION OF THE NORTH 1/4 OF THE EAST 1/2 OF THE NORTHEAST 1/4 AND THE NORTH 3/8 OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

EXCEPTING THEREFROM THAT PART OF PARCELS 1 AND 2 (TAKEN AS A TRACT) DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1, SAID CORNER ALSO BEING THE INTERSECTION OF THE SOUTH RIGHT OF WAY LINE OF 95TH STREET (U. S. ROUTE NUMBERS 12 AND 20) WITH THE WEST RIGHT OF WAY LINE OF THE BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID LOT 1, ALSO BEING SAID BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD WEST RIGHT OF WAY LINE, A DISTANCE OF 220.00 FEET; THENCE WESTERLY 90 DEGREES 29 MINUTES 22 SECONDS TO THE RIGHT OF THE LAST DESCRIBED COURSE EXTENDED, ALONG A LINE PARALLEL WITH SAID SOUTH RIGHT OF WAY LINE OF 95TH STREET A DISTANCE OF 192.00 FEET THENCE NORTHERLY 89 DEGREES 30 MINUTES 38 SECONDS TO RIGHT OF THE LAST DESCRIBED COURSE EXTENDED ALONG A LINE PARALLEL WITH SAID WEST LINE OF THE BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD, A DISTANCE OF 220.00 FEET, TO A POINT ON SAID SOUTH RIGHT OF WAY LINE OF 95TH STREET; THENCE EASTERLY ALONG SAID SOUTH RIGHT OF WAY LINE A DISTANCE OF 192.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

UNOFFICIAL COPY

PARCEL 3:

THE NORTH 30 FEET OF VACATED 96TH STREET LYING SOUTH OF AND ADJOINING PARCELS 1 & 2.

PARCEL 4:

THE EAST 1/2 OF VACATED WASHTENAW AVENUE LYING WEST OF AND ADJOINING PARCEL 2, AS VACATED BY THE ORDINANCE RECORDED JULY 30, 2001 AS DOCUMENT 0010685740

PARCEL 5:

THE EAST 188.60 FEET OF THE NORTH 170 FEET OF THE EAST 1/4 OF BLOCK 5 IN HARRY H. HONORE JR.'S SUBDIVISION OF THE NORTH 1/4 OF THE EAST 1/2 AND THE NORTH 3/8 OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

ALSO:

LOTS 1, 2, 3, 4, AND 5 (EXCEPT FROM SAID LOT 5 THAT PART THEREOF LYING SOUTH OF A LINE 100.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF LOT 7) ALL IN ADDITION TO EVERGREEN PARK HILLS, A SUBDIVISION OF THE EAST 1/2 (EXCEPT THE NORTH 170 FEET THEREOF) OF BLOCK 5 IN HARRY H. HONORE JR.'S SUBDIVISION AFORESAID

ALSO:

THAT PART OF THE 20 FOOT VACATED EAST AND WEST ALLEY ADJOINING THE NORTH LINE OF LOT 1 AFORESAID LYING EAST OF THE WEST LINE OF THE EAST 188.60 FEET OF BLOCK 5 AFORESAID AND WEST OF THE WEST RIGHT OF WAY LINE OF THE 66.00 FOOT WASHTENAW AVENUE, ALL IN COOK COUNTY, ILLINOIS

PARCEL 6:

THAT PART OF LOTS 5, 6, AND 7 LYING SOUTH OF A LINE WHICH IS 100.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID LOT 7, ALL IN ADDITION TO EVERGREEN PARK HILLS, A SUBDIVISION OF THE EAST 1/2 OF THE EAST 1/2 (EXCEPT THE NORTH 170 FEET THEREOF) OF BLOCK 5 IN HARRY H. HONORE JR.'S SUBDIVISION OF THE NORTH 1/2 OF THE EAST 1/2 OF THE NORTH 3/8 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

UNOFFICIAL COPY

PARCEL 7:

THAT PART OF VACATED WASHTENAW AVENUE LYING EAST OF THE NORTH 180.00 FEET (INCLUDING THAT PART OF THE VACATED ALLEY) IN HARRY H. HONORE JR., SUBDIVISION OF THE NORTH 1/2 OF THE EAST 1/2 OF THE NORTHEAST 1/4 AND THE NORTH 3/8 OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 12; THAT PART OF VACATED WASHTENAW AVENUE LYING EAST OF LOTS 1 THROUGH 7 INCLUSIVE, IN ADDITION TO EVERGREEN PARK HILLS; AND THAT PART OF WASHTENAW AVENUE LYING EAST OF AND ADJACENT TO LOT 8 AND THE PUBLIC ALLEY NORTH OF LOT 8 (EXCEPT THE WEST 37 FEET) IN ADDITION TO EVERGREEN PARK HILLS, A SUBDIVISION OF THE EAST 1/2 OF THE EAST 1/2 (EXCEPT THE NORTH 170 FEET THEREOF) IN BLOCK 5 OF HARRY H. HONORE JR.'S SUBDIVISION, ALL LOCATED IN THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 8:

NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCELS 1 THROUGH 7, BOTH INCLUSIVE, TO USE THE COMMON AREA ACCESS FACILITIES FOR THE PASSAGE OF VEHICLES AND PEDESTRIANS AS CREATED BY CROSS ACCESS AND PARKING AGREEMENT BY AND BETWEEN 95TH AND WESTERN, LLC AND INGRAM FAMILY LIMITED PARTNERSHIP RECORDED AUGUST 26, 2013 AS DOCUMENT 1323839123

PERMANENT TAX IDENTIFICATION NUMBERS:

24-12-201-017-0000
 24-12-201-018-0000
 24-12-201-019-0000
 24-12-201-020-0000
 24-12-201-030-0000
 24-12-201-032-0000
 24-12-201-033-0000
 24-12-201-034-0000
 24-12-201-035-0000
 24-12-202-002-0000

STREET ADDRESS:

2601 West 95th Street
 Evergreen Park, Illinois 60805