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Doc# 1720034086 Fee \$56.00

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KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 07/19/2017 02:08 PM PG: 1 OF 10

RECORDING REQUESTED AND
WHEN RECORDED RETURN TO:
Jewel Food Stores, Inc.
c/o Albertsons Companies, LLC
P.O. Box 20
Boise, ID 83726
Attention: Real Estate Law (pma)

(Space above this line for Recorder's Use)

#3478 - Arlington Heights
440 E. Rand Rd., Arlington Heights, IL

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT ("Agreement") is made as of the 21 day of June, 2017, between **AmCap Northpoint II LLC**, ("Landlord"), **Jewel Food Stores, Inc.** an Ohio corporation ("Tenant"), and **Natixis, New York Branch**, a branch of Natixis S.A., a societe anonyme a conseil d'administration, organized and existing under the laws of France ("Lender").

RECITALS:

A. Tenant is the holder of a leasehold interest in that certain real property together with all buildings and improvements thereon and all easements, rights and appurtenance thereto located in the City of Arlington Heights, County of Cook, State of Illinois, pursuant to that certain Shopping Center Lease dated as of August 15, 1990 between LaSalle National Trust N.A. as Trustee under Trust Agreement dated October 1, 1961 and known as Trust No. 28684, predecessor-in-interest to Landlord, as Landlord, and Jewel Companies, Inc., predecessor-in-interest to Tenant, as tenant. A Memorandum of Shopping Center Lease entered on August 15, 1990 and recorded October 16, 1990 as document 90506748 in the Official Records of Cook County. The Shopping Center Lease and Memorandum of Shopping Center Lease, as they may have been amended from time to time, shall hereafter be referred to as the "Lease;" and

B. The Leased Premises are part of a larger tract of land located in the City of Arlington Heights, County of Cook, State of Illinois, legally described in Exhibit AA attached hereto and incorporated herein by this reference ("Shopping Center"); and

C. Lender has made or has agreed to make a loan to Landlord in the maximum principal amount of \$34,700,000.00, which loan shall be secured by that certain Mortgage, Assignment of Leases

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and Rents, Security Agreement and Fixture Filing encumbering all or a part of the Shopping Center, to be recorded in the Official Records of Cook County prior to this Agreement, ("**Mortgage**"); and

D. The parties desire to subordinate the Lease to the lien of the Mortgage and to establish certain rights of quiet and peaceful possession to the Leased Premises for Tenant's benefit together with certain obligations of attornment, all in the manner hereafter provided.

The foregoing recitals are incorporated into and made an integral part of this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed between the parties as follows:

1. Subject to the terms and conditions set forth in this Agreement, the Tenant agrees that the Lease is and shall at all times be subordinate to the lien of the Mortgage.

2. Lender agrees that, if no default exists under the Lease which at such time would then permit Landlord to terminate the Lease or to exercise any dispossessory remedy provided for therein: (a) Tenant will not be made a party in any action or proceeding to foreclose the Mortgage or to remove or evict Landlord from the Leased Premises or from any part of the Shopping Center; (b) Tenant will not be evicted or removed from the Leased Premises or from any part of the Shopping Center nor will its possession or right to possession of the Leased Premises or of any part of the Shopping Center under the Lease for the term thereof (including any and all extensions or renewals thereof effected in accordance with any option therefor in the Lease) be terminated or disturbed or in any way interfered with by any action taken by Lender to enforce any rights or remedies under the Mortgage; and (c) Lender, upon succeeding to Landlord's interest in the Leased Premises, will recognize the Lease and Tenant as its direct tenant under the Lease for the full term thereof (including any and all extensions or renewals thereof effected in accordance with any option therefor in the Lease), and will be bound by and perform all of the obligations of Landlord set forth in the Lease as if said person were originally named therein as the landlord thereunder; **provided, however, that Lender shall not be: (i) personally liable for the payment of any sum arising under or with respect to the Lease prior to the date Lender acquires Landlord's interest in the Leased Premises, which sum it is Landlord's obligation to pay, provided, however, that the foregoing shall not in any event prevent recourse by the Tenant against all or any part of Lender's right, title and interest in and to the Leased Premises or the Shopping Center or any part thereof (including, without limitation, Lender's right, title and interest in and to the rents and other income or revenue receivable from the Leased Premises or the Shopping Center or any part thereof, or the consideration receivable from the sale or other disposition (including a condemnation) of all or any part of the Leased Premises or the Shopping Center or from any fire or other casualty affecting all or any of the improvements located on the Leased Premises or the Shopping Center); (ii) obligated to cure any default of any prior landlord (including Landlord) under the Lease which occurred prior to the date Lender acquires Landlord's interest in the Leased Premises, provided, however, that the foregoing shall not be deemed to constitute a waiver of any other rights or remedies of Tenant under the Lease including, without limitation, any right of offset against rent or any right of termination; (iii) subject to any right of offset against rent for any event of which Lender has not received written notice from Tenant pursuant to this Agreement; or (iv) bound by any payment of rent or other amount by Tenant to any prior landlord (including Landlord) more than thirty (30) days in advance of the due date under**

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the Lease, except to the extent said payment is required by the terms, covenants, conditions or agreements contained in the Lease. .

3. In the event that the Lender or any other person acquires title to the Leased Premises pursuant to the exercise of any remedy provided for in the Mortgage or under the law of the state where the Leased Premises is located, the Lease shall not be terminated or affected by said foreclosure or sale resulting from any such proceeding and the Lender hereby covenants that, if no default exists under the Lease which at such time would then permit Landlord to terminate the Lease or to exercise any dispossessionary remedy provided for therein, any sale by it of the Leased Premises pursuant to the exercise of any rights and remedies under the Mortgage or otherwise shall include the assumption by the purchaser or grantee of the Lease and the obligations of the Landlord thereunder.

4. Tenant agrees that, if the interest of Landlord in the Leased Premises shall be transferred to and owned by Lender by reason of foreclosure or other proceeding brought by it under any present or future lien against Landlord's interest in the Leased Premises, or by any other manner, Tenant shall be bound to the Lender under all of the terms, covenants, conditions and agreements set forth in the Lease for the balance of the term thereof remaining (including any and all extensions or renewals thereof effected in accordance with any option therefor in the Lease) with the same force and effect as if Lender were originally named therein as the landlord thereunder, and Tenant does hereby agree to attorn to Lender as its landlord thereunder so as to establish direct privity of estate and contract between Lender and Tenant, said attornment to be effective and self-operative without the execution of any further instrument on the part of either of the parties hereto immediately upon Lender succeeding to the interest of Landlord in the Leased Premises. The parties acknowledge and agree that the Mortgage provides that, under certain circumstances, Lender shall be entitled to collect, receive and demand payment of all or any part of the rent and other sums due and payable to Landlord under the Lease to Lender. The parties agree that: (a) Tenant shall be under no obligation to pay rent or any other sums due and payable to Landlord under the Lease to Lender until such time as Tenant receives written notice from Lender demanding payment of said amounts to Lender; (b) Tenant shall be entitled to rely on any such written notice from Lender and shall not incur any liability to Landlord as a result of such reliance notwithstanding the existence of any dispute between Landlord and Lender with respect to the existence of any default or the satisfaction of any condition under the Mortgage or any other document executed in connection with the transaction which is the subject of the Mortgage which would entitle Lender to collect, receive or demand payment of said amounts from Tenant; (c) all amounts paid by Tenant to Lender shall be credited toward Tenant's corresponding obligations under the Lease; and (d) all of Lender's rights described in this sentence shall be subject to all of Tenant's rights and remedies set forth in the Lease including, without limitation, the right of offset against rent.

5. Lender hereby ratifies, confirms, approves, and at such time, if any, as Lender succeeds to the Landlord's interest in the Leased Premises, assumes and agrees to be bound, by each and every term, covenant, condition and agreement contained in the Lease as if each thereof were set forth herein at length, and each of said terms, covenants, conditions and agreements shall inure to the benefit of and be enforceable by Tenant, its successors and assigns, including, without limitation, the mortgagee or beneficiary under any mortgage or deed of trust on Tenant's interest in the Lease or the Leased Premises, its successors and assigns. Lender covenants and agrees that in the event of a conflict, whether in the express provisions or by reason of variation in inclusion of provisions, between the Mortgage and the Lease, the provisions of the Lease shall govern for all purposes. Lender hereby acknowledges and agrees that, with respect to any assignment of rents contained in the Mortgage as it applies to the Lease between

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Landlord and Tenant, said assignment shall apply only to the rent which Landlord is entitled to receive pursuant to the Lease.

6. Lender agrees that all condemnation awards and insurance proceeds payable to Landlord or Lender with respect to the Leased Premises or the Shopping Center shall be paid and applied to restoration of the Leased Premises and the Shopping Center in accordance with the provisions for condemnation and casualty under the Lease. In no event shall the lien of the Mortgage affect or constitute a lien or charge on any fixtures, equipment or personal property owned by Tenant, and Tenant may at any time remove any of its fixtures, equipment or personal property from the Leased Premises in accordance with the provisions of the Lease.

7. For the purpose of this Agreement: (a) the term "**Lease**" shall be deemed to include the Lease as described above in Recital A along with all amendments, modifications and supplements thereto; provided, however, that no such amendment, modification or supplement executed after the date of this Agreement shall be binding on Lender without Lender's written consent, which consent shall not be unreasonably withheld, conditioned or delayed; (b) the term "**foreclosure**" shall be deemed to include the acquisition of Landlord's interest in the Leased Premises by foreclosure or pursuant to the exercise of any power of sale contained in the Mortgage, or by deed (or assignment) given in lieu of, or in anticipation of, foreclosure or the exercise of any such power of sale, or by any other means whatsoever; and (c) the term "**Lender**" shall be deemed to include anyone who succeeds to Landlord's interest in the Leased Premises pursuant to the Mortgage including, without limitation, any purchaser at foreclosure or pursuant to the exercise of any power of sale contained in the Mortgage, or any grantee of a deed (or assignment) given in lieu of, or in anticipation of, foreclosure or the exercise of any such power of sale.

8. If any term, covenant, condition or agreement contained in this Agreement or the application thereof to any person, firm or entity shall at any time or to any extent be deemed or found to be invalid or unenforceable by operation of law, judicial proceedings or otherwise, the remainder of this Agreement or the application of such term, covenant, condition or agreement to persons or entities or to circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each remaining term, covenant, condition or agreement of this Agreement or the application thereof shall be valid and enforced to the fullest extent permitted by law.

9. All notices given pursuant to this Agreement shall be in writing and shall be given by personal delivery, by United States registered or certified mail, or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below.

Landlord: AmCap Northpoint II LLC
c/o AmCap CCN Manager LLC
1281 East Main Street
Stamford, CT 06902

Tenant: Jewel Food Stores, Inc. (#3478)
c/o Albertsons Companies, LLC
250 Parkcenter Blvd.
P.O. Box 20
Boise, Idaho 83726
Attention: Real Estate Law

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With a copy to: Jewel Food Stores, Inc. (#3478)
 c/o Safeway Inc.
 5918 Stoneridge Mall Rd.
 Pleasanton, CA 94588
 Attention: Real Estate Law

Lender: Natixis, New York Branch
 1251 Avenue of the Americas
 New York, New York 10020
 Attention: Real Estate Administration

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Agreement shall be deemed given upon receipt. For the purpose of this Agreement, the term "receipt" shall mean the earlier of any of the following: (a) the date of delivery of the notice or other document to the address specified above as shown on the return receipt; (b) the date of actual receipt of the notice or other document by the person or entity specified pursuant to this section; or (c) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of: (i) the date of the attempted delivery or refusal to accept delivery; (ii) the date of the postmark on the return receipt; or (iii) the date of receipt of notice of refusal or notice of non-delivery by the sending party. Lender agrees that, upon satisfaction of the Mortgage, Lender shall notify Tenant of such satisfaction at the address shown in this paragraph.

10. Tenant agrees to provide Lender with a copy of any written notice of default given to Landlord pursuant to the Lease. Tenant shall not terminate the Lease unless Tenant has sent a copy of the notice of default to Lender and Lender has not rectified the particulars specified in such notice of default within the time period allowed Landlord in the Lease.

11. If any litigation is commenced between the parties hereto concerning this Agreement or the rights or obligations of any party in relation thereto, the prevailing party in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for its attorney's fees in such litigation (including any appeal thereof), which sum shall be determined by the court in such litigation or in a separate action brought for that purpose.

12. This Agreement shall bind and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns, including, without limitation, the mortgagee or beneficiary under any mortgage or deed of trust on Tenant's interest in the Lease or the Leased Premises, its successors and assigns.

13. This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which together shall constitute but one and the same instrument, and shall be effective upon execution of one or more of such counterparts by each of the parties hereto.

14. This Agreement contains the entire agreement between the parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. This Agreement may not be

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modified in any manner whatsoever except by an instrument in writing signed by each of the parties hereto.

15. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

16. Landlord shall, at its expense, promptly record this Agreement in the Official Records of Cook County, Illinois, and the original, recorded Agreement shall be promptly provided by Landlord to Lender and Tenant.

17. The submission of this Agreement for examination, or its negotiation or the negotiation of the transaction described herein, does not constitute an offer to subordinate the Lease, and execution of this Agreement by Landlord and/or by Lender does not constitute a binding agreement until such time as this Agreement has been executed by all other parties, including by an authorized officer of Tenant, and a fully-executed and acknowledged original of this Agreement has been delivered to all parties. If this Agreement is not executed by both Landlord and Lender and a fully executed and acknowledged original delivered to Tenant's Legal Department at the address set forth herein on or before May 30, 2017, then Tenant shall consider the request for this Agreement withdrawn and Tenant's execution hereof shall be of no force or effect.

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

LENDER:

Natixis, New York Branch

By: [Signature]
Name: Katherine Czech
Its: Vice President

By: [Signature]
Name: BRIAN CLARK
Its: MANAGING DIRECTOR

State of New York)
County of New York) ss.

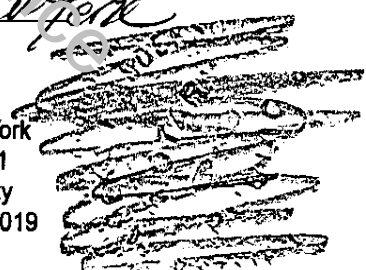
On this 15th day of June, 2019, before me, the undersigned Notary Public in and for said State, personally appeared Katherine Czech, known to me to be the VICE PRESIDENT of Natixis, New York Branch, the vice president that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said vice president, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires: June 8, 2019

[Signature]
Notary Public for the State of New York
Residing at _____

TAMEKA F. ANDERSON
Notary Public, State of New York
Registration #01AN6324831
Qualified in New York County
Commission Expires June 8, 2019



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

LANDLORD:

AmCap Northpoint II LLC
a Delaware limited liability company

By: [Signature]
Name: Jake Bisenius
Its: authorized agent

STATE OF Connecticut)
County of Fairfield) ss.

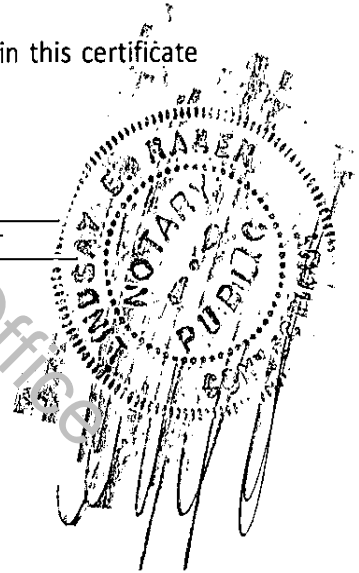
On this 13th day of June, 2017, before me, the undersigned Notary Public in and for said State, personally appeared Jake Bisenius, known to me to be the authorized agent of AmCap Northpoint II LLC the limited liability company that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:
9/30/2019

LINDSAY E. RABER
NOTARY PUBLIC OF CONNECTICUT
My Commission Expires 9/30/2019

[Signature]
Notary Public for the State of CT
Residing at Stamford, CT



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

TENANT:
Jewel Food Stores, Inc.
an Ohio corporation

By: [Signature]
Bradley R. Beckstrom
Its: Authorized Signatory *BRB*

STATE OF IDAHO

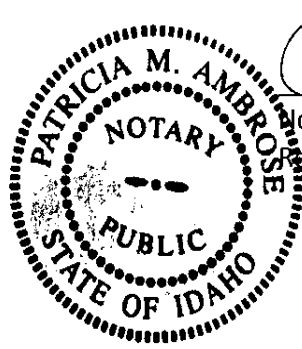
)
) ss.

County of Ada)

On this 15 day of June, 2017 before me, the undersigned Notary Public in and for said State, personally appeared Bradley R. Beckstrom, to me known to be the Lead Counsel, Business Law of Jewel Food Stores, Inc., the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day month and year in this certificate first above written.

My commission expires:
10/10/18



Patricia M. Ambrose
Notary Public for the State of Idaho
Residing at Boise, Idaho

UNOFFICIAL COPYEXHIBIT AA**LEGAL DESCRIPTION--****North Point Shopping Center**

Lot 1 of Northgate Shopping Center Subdivision of Part of the East 1/2 of the South West 1/4 of Section 17, Township 42 North, Range 11 East of the Third Principal Meridian, In Cook County, Illinois.

EXCEPT

That part of Lot 1 of Northgate Shopping Center Subdivision, being a Subdivision of part of the East 1/2 of the Southwest 1/4 of Section 17, Township 42 North, Range 11, East of the Third Principal Meridian, described as follows: Commencing at the Northwest corner of said Lot 1; thence Southward along the Westerly line of said Lot 1, being the Easterly line of Arlington Heights Road, South 1 degree 50 minutes 41 seconds East, a distance of 73.57 feet; thence South 00 degrees 17 minutes 45 seconds East, a distance of 470.00 feet; thence South 13 degrees 57 minutes 59 seconds East a distance of 40.00 feet; thence South 33 degrees 05 minutes 01 seconds East, a distance of 37.43 feet to the point of beginning; thence South 33 degrees 05 minutes 01 seconds East, a distance of 7.57 feet; thence Southeasterly along a line being 50.00 feet Northeasterly of and parallel with the centerline of Rand Road, South 48 degrees 24 minutes 05 seconds East, a distance of 389.47 feet; thence South 50 degrees 47 minutes 20 seconds East, a distance of 48.01 feet; thence North 48 degrees 24 minutes 05 seconds West, a distance of 444.74 feet to the point of beginning, all in Cook County, Illinois.

202 E. Rand Road + 470 East Rand Road
Arlington Heights, IL 60004

03-17-301-017, 03-17-301-019, 03-17-301-020

03-17-301-021 And 03-17-301-022