

# UNOFFICIAL COPY

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WHEN RECORDED MAIL TO:

Jewel Food Stores, Inc.  
8725 W. Higgins Road  
Chicago, Illinois 60631

92087483

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT is made as of the 30th day of January, 1992, by and among JEWEL FOOD STORES, INC., formerly known as Jewel Companies, Inc., a New York corporation ("Lessee"), LA SALLE NATIONAL TRUST, N.A., as Trustee under Trust Agreement dated January 15, 1992 and known as Trust No. 116878 <sup>and not personally</sup> ("Lessor") and LA SALLE NATIONAL BANK, a national banking association, ("Lender"), collectively the "Parties" and individually, a "Party".

### RECITALS

WHEREAS, Lender has agreed to make a loan to Lessor, repayment of which is to be secured by that certain Construction Mortgage and Security Agreement with Assignment of Rents (the "Mortgage") entered into by Lessor, as mortgagor, and Lender, as beneficiary of the Mortgage, which pertains to that certain real property located in the City of Chicago, County of Cook, and State of Illinois more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property").

WHEREAS, the Mortgage is to be or has been recorded in the Office of the County Recorder of Cook County, State of Illinois; and

WHEREAS, Lessee is the lessee of a portion of the Property (the "Premises") under a Lease entered into with Foster/Pulaski Limited Partnership, an Illinois Limited Partnership, dated as of October 15, 1991, as amended, (the "Lease"), which Lease has been assigned to Lessor; and

WHEREAS, as a condition precedent to Lender's making a loan to Lessor, Lender has required that Lessee execute this Agreement; and

WHEREAS, in return for Lessee's execution of this Agreement, Lender is willing to agree to not disturb Lessee's quiet possession of the Premises as long as Lessee is not in default under the Lease; and

WHEREAS, Lender is making the loan in reliance upon the agreements and certifications herein made by Lessee;

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DEPT-01 RECORDING  
143333 TRAN 9126 02/11/92 13:50:00  
\$5610.4 \*--92--087483  
COOK COUNTY RECORDER \$35.00

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NOW, THEREFORE, in consideration of the foregoing, Lender, Lessor, and Lessee agree as follows:

1. SUBORDINATION. All rights of Lessee under the Lease are hereby subjected and subordinated and shall remain in all respects and for all purposes subject, subordinate and junior to the lien of the Mortgage, and to the rights and interest of the from time-to-time holder of the Mortgage, as fully and with the same effect as if the Mortgage had been duly executed, acknowledged and recorded, and the indebtedness secured thereby had been fully disbursed, prior to the execution of the Lease or possession of the Premises by Lessee.

2. NON-DISTURBANCE AND ATTORNMENT. Provided Lessee is not in default under the Lease (as defined in the Lease and beyond any period given Lessee to cure the default), then:

- a. Lessee's right of possession to the Premises and Lessee's other rights pursuant to the Lease or otherwise shall not be affected or disturbed by Lender or any successor or assign in the exercise of any of its rights under the Mortgage. Further, Lessee shall not be named as a party defendant in any foreclosure on the lien of the Mortgage nor in any other way be deprived of its rights under the Lease.
- b. In the event Lender or any other person acquires title to the Premises pursuant to the exercise of any remedy provided for in the Mortgage or by any conveyance in lieu of foreclosure, the Lease shall not be terminated or affected by the foreclosure, conveyance or other proceeding. Lender also covenants that any sale by it of the Premises as a result of the exercise of any rights and remedies under the Mortgage, or otherwise, shall be subject to the Lease and the rights of Lessee under the Lease, and Lessee covenants and agrees to attorn to Lender (or such other person), as may purchase the Premises, as its new landlord, and the Lease shall continue in full force and effect as a direct Lease between Lessee and Lender, or such other person, upon all of the terms, covenants, conditions and agreements set forth in the Lease; provided, Lessee shall be under no obligation to pay rent to Lender until Lessee receives written evidence from Lender that it has succeeded to Lessor's interest under the Lease. Lender and any person or persons, corporation or association, on acquiring the rights and interest of Lessor under the Lease, in any manner whatsoever (a "Successor"), shall be liable to Lessee, effective as of the date of such acquisition, for the performance of all obligations of Lessor arising under the Lease from and after the date of such acquisition. A Successor shall also be liable as landlord for every

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obligation of Lessor arising or accruing under the Lease prior to the date of such acquisition which has not yet been performed or satisfied (an "Existing Obligation"). Lessee's remedies for an Existing Obligation shall be limited to the right of offset and any other remedies provided under the Lease, and Lessee shall not otherwise have the right to recover damages or obtain relief directly from or against a Successor because of an Existing Obligation. No foreclosure or conveyance or other act or omission by a Successor, shall, in any event, relieve Lessor of any of the covenants, liabilities, or obligations of Lessor under the Lease. Lender shall not be bound by any payment of rent or additional rent made by Lessee to Lessor for more than one month in advance.

3. NOTICES OF DEFAULT. Lessee agrees that in the event of a default by the Lessor under any of the terms and conditions of the Lease, Lessee, at the same time notice thereof is given to Lessor, will notify Lender at the address indicated below. It is further agreed that such notice will be given to any successor in interest of Lender in the Mortgage, provided that prior to any such default of the Lessor such successor in interest shall have given written notice to the Lessee of its acquisition of the Lender's interest therein, and designated the address to which such notice is to be directed. Lender or its successor, shall have the right, but not the obligation, to remedy such default during the same period of time as may be provided in the Lease for Lessor to remedy such default.

4. NOTICES. Any notice or demand given or served by a Party to any other Party shall not be deemed to have been duly given or served unless in writing and forwarded by certified or registered mail (return receipt requested), postage prepaid, or by another commercially recognized means of delivery, addressed as follows:

To Lender at: LaSalle National Bank  
120 South LaSalle Street  
Chicago, IL 60603  
Attn: Catherine A. Cahill

To Lessee at: 8725 W. Higgins Road, 10th Floor  
Chicago, IL 60631  
Attn: Real Estate Department

To Lessor at: LaSalle National Trust, N.A.,  
as Trustee for Trust No. 116878  
c/o Tanguay-Burke-Stratton  
321 N. Clark Street, Suite 900  
Chicago, IL 60610

The person and place to which notice is given may be changed by notice as provided above.

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5. COSTS AND ATTORNEY'S FEES. In the event a Party brings or commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing Party in such action shall have the right to recover reasonable attorneys' fees and costs from the losing Party, to be fixed by the court in the same action. The term "legal proceedings" shall include appeals from a lower court judgment as well as proceedings in the Federal Bankruptcy Court, whether or not they are adversary proceedings or contested matters. The "prevailing Party" involved in proceedings in the Federal Bankruptcy Court shall mean the prevailing Party in an adversary proceeding or contested matter, or any other actions taken by the non-bankrupt Party which are reasonably necessary to protect its rights under the terms of this Agreement.

RIDER ATTACHED TO AND MADE A PART OF DOCUMENT  
DATED 1-29-92 UNDER TRUST NO. 116878

This instrument is executed by LA SALLE NATIONAL TRUST, N.A., not personally but solely as Trustee, as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by LA SALLE NATIONAL TRUST, N.A., are undertaken by it solely as Trustee, as aforesaid, and not individually and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against LA SALLE NATIONAL TRUST, N.A., by reason of any of the terms, provisions, stipulations, covenants and/or statements contained in this instrument.

~~Under this agreement their heirs and the benefits shall pass~~  
to their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

LA SALLE NATIONAL BANK

JEWEL FOOD STORES, INC.  
(formerly Jewel Companies, Inc.)

By: [Signature]  
Title: First Vice President

By: [Signature] DK  
Title: Vice President

Attest: [Signature]  
Title: Assistant Vice President

Attest: [Signature]  
Title: Asst Secretary

LENDER

LESSEE

~~THE TRUSTEE'S RIDER ATTACHED HERETO AND MADE A PART HEREOF~~

LA SALLE NATIONAL TRUST, N.A., as  
Trustee aforesaid and not personally

By: [Signature]  
Title: Asst Vice President

Attest: [Signature]  
Title: ASSISTANT SECRETARY

LESSEE

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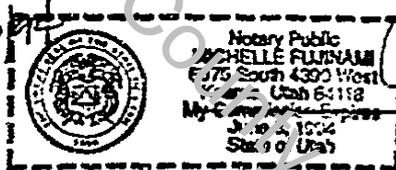
ACKNOWLEDGMENTS

STATE OF Utah )  
COUNTY OF Salt Lake ) SS.

I, Michelle Fujinami, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Jack Lund, personally known to me to be the Vice President of Jewell Food Stores, Inc. and Tracy Spencer, personally known to me to be the Asst. Secretary of said corporation, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument of writing as Vice President and Asst. Secretary of said corporation and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 7<sup>th</sup> day of February, 1992.

My Commission expires: 4/2/94



Michelle Fujinami  
Notary Public

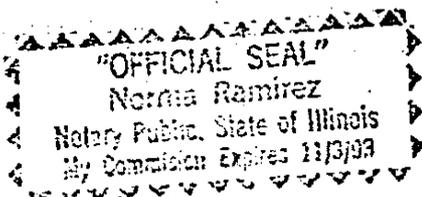
STATE OF Illinois )  
COUNTY OF COOK ) SS.

I, NORMA RAMIREZ, Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that L.A. Cahill, personally known to me to be the 1st Vice President of LaSalle National Bank, and Sara H. Clark, personally known to me to be the A.V.P. Secretary of said corporation, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument of writing as President and Secretary of said corporation and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes herein set forth.

Given under my hand and notarial seal this 30<sup>th</sup> day of January, 1992.

My Commission expires:

Norma Ramirez  
Notary Public



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## ACKNOWLEDGMENTS

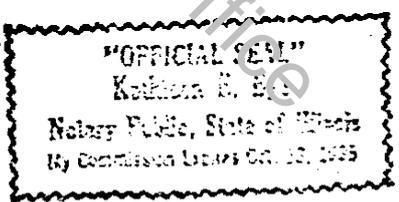
STATE OF Illinois )  
COUNTY OF Cook ) SS.

I, the undersigned a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Rosemary Collins personally known to me to be the ASS'T VICE President of LA SALLE NATIONAL TRUST, N.A., and SUSAN M. LOGAN personally known to me to be the ASSISTANT Secretary of said corporation, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument of writing as ASS'T VICE President and ASSISTANT Secretary of said corporation and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 20th day of January, 1992.

My Commission expires:

Kathleen E. Byrne  
Notary Public



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001/1/2008

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## EXHIBIT A

THAT PART OF THE SOUTH 580.00 FEET OF THE EAST 663.00 FEET OF THE NORTHEAST 1/4 OF SECTION 10, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF THE SOUTH 50.00 FEET (AS MEASURED AT RIGHT ANGLES TO THE SOUTH LINE THEREOF) OF THE AFORESAID NORTHEAST 1/4 OF SECTION 10, WITH THE WEST LINE OF THE EAST 33.00 FEET (AS MEASURED AT RIGHT ANGLES TO THE EAST LINE THEREOF) OF THE AFORESAID NORTHEAST 1/4 OF SECTION 10; THENCE NORTH 0 DEGREES 00 MINUTES 26 SECONDS EAST ALONG THE LAST DESCRIBED WEST LINE 530.01 FEET TO THE AFORESAID NORTH LINE OF THE SOUTH 580.00 FEET OF SAID SECTION 10; THENCE NORTH 89 DEGREES 35 MINUTES 36 SECONDS WEST ALONG SAID NORTH LINE 485.02 FEET TO A POINT DISTANT 145.00 FEET EAST OF THE AFORESAID WEST LINE OF THE EAST 663.00 FEET OF SAID SECTION 10; THENCE SOUTH 46 DEGREES 13 MINUTES 09 SECONDS WEST 200.85 FEET TO A POINT ON THE WEST LINE OF THE AFORESAID EAST 663.00 FEET OF THE NORTHEAST 1/4 OF SAID SECTION 10 AND DISTANT 140.00 FEET SOUTH OF THE AFORESAID NORTH LINE OF THE SOUTH 580.00 FEET OF SAID SECTION 10; THENCE SOUTH 0 DEGREES 00 MINUTES 26 SECONDS WEST ALONG THE WEST LINE OF THE EAST 663.00 FEET OF SAID SECTION 10 FOR A DISTANCE OF 320.22 FEET TO A POINT ON A CIRCLE CONVEX SOUTHWESTERLY, HAVING A RADIUS OF 30.00 FEET AND A CENTER WHICH IS 120.00 FEET NORTH (AS MEASURED AT RIGHT ANGLES TO THE SOUTH LINE THEREOF) OF THE SOUTH LINE OF THE AFORESAID NORTHEAST 1/4 OF SAID SECTION 10; THENCE SOUTHEASTERLY ALONG SAID CIRCLE 46.92 FEET, THE CHORD OF WHICH BEARS SOUTH 44 DEGREES 47 MINUTES 35 SECONDS EAST FOR 42.28 FEET TO THE INTERSECTION WITH THE NORTH LINE OF THE SOUTH 90.00 FEET (AS MEASURED AT RIGHT ANGLES TO THE SOUTH LINE THEREOF) OF THE AFORESAID NORTHEAST 1/4 OF SAID SECTION 10; THENCE SOUTH 89 DEGREES 35 MINUTES 36 SECONDS EAST ALONG THE SAID NORTH LINE OF THE SOUTH 90.00 FEET OF THE NORTHEAST 1/4 OF SAID SECTION 10 FOR A DISTANCE OF 105.49 FEET TO A POINT ON A LINE DRAWN PERPENDICULAR TO THE NORTH LINE OF THE AFORESAID SOUTH 50.00 FEET OF SAID SECTION 10 AND THROUGH A POINT DISTANT 135.00 FEET EAST OF THE WEST LINE OF THE AFORESAID EAST 663.00 FEET OF THE NORTHEAST 1/4 OF SAID SECTION 10; THENCE SOUTH 0 DEGREES 24 MINUTES 24 SECONDS WEST ALONG SAID PERPENDICULAR LINE 40.00 FEET TO THE NORTH LINE OF THE AFORESAID SOUTH 50.00 FEET OF THE NORTHEAST 1/4 OF SAID SECTION 10; THENCE SOUTH 89 DEGREES 35 MINUTES 36 SECONDS EAST ALONG SAID NORTH LINE 495.02 FEET TO THE HEREINABOVE DESIGNATED POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Tax ID #: 13-10-200-001  
13-10-200-005

Address: NW corner of Foster Avenue  
ID137 and Plaski Road, Chicago, IL

THE DOCUMENT CONTAINS  
A  
SERIAL  
NUMBER  
13-10-200-001  
13-10-200-005

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THIS DOCUMENT PREPARED BY  
& SHOULD BE RETURNED TO  
NABELBERG GOODEN & ASSOCIATES  
303 WEST MADISON STREET  
17TH FLOOR  
CHICAGO, ILLINOIS 60606  
LMA