

01012171 B: 2278 P: 0249

Page 1 of 12

Mary Ann Trussell, Summit County Utah Recorder  
02/04/2015 10:46:35 AM Fee \$49.00

By Landmark Title Company  
Electronically Recorded

After recording, please return to:  
Christopher J. Devlin  
AVP and Managing Counsel, Investments  
Unum  
2211 Congress Street – C474  
Portland, Maine 04122-0590  
**Loan No. 100011515**

#### **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

**THIS AGREEMENT** is made this 1st day of January, 2015, by and among Boyer Spring Creek, LC (“**Borrower/Landlord**”), WFM-WO, Inc., a Delaware corporation f/k/a Wild Oats Markets, Inc. (“**Tenant**”), and Unum Life Insurance Company of America, (“**Lender**”).

#### **RECITALS:**

**WHEREAS**, Landlord is the owner and holder of fee simple title in and to certain real property (the “**Premises**”) situated in Park City, Utah and described in Exhibit A attached hereto and by this reference made a part hereof; and

**WHEREAS**, Landlord and Tenant have entered into a Lease Agreement dated March 14, 2003, as amended by a First Amendment to Lease Agreement, dated November 15, 2003 and a Second Amendment to Lease Agreement dated January 13, 2005, (collectively, the “**Lease**”) demising a part of the Premises (the “**Leased Premises**”); and

**WHEREAS**, Lender has conditionally agreed to make a loan to Landlord, in the principal amount of Twenty Nine Million Seven Hundred Fifty Thousand Dollars (\$29,750,000) to be secured by a First Mortgage or Deed of Trust (the “**Security Instrument**”) anticipated to be dated January 30, 2015, placing a first lien on the Premises (the “**Loan**”); and

**WHEREAS**, the Lease will be assigned by Landlord to Lender by an Assignment of Rents, Leases and Other Benefits (the “**Assignment**”).

**WHEREAS**, Lender is not willing to make the Loan to Landlord unless Tenant enters into this Agreement; and

**NOW, THEREFORE**, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, Tenant, Landlord, and Lender, intending to be legally bound, covenant and agree as follows:

1. The Lease and Tenant's leasehold estate created thereby, including all rights and options to purchase the Leased Premises, shall be and are subject and subordinate to the lien of the Security Instrument and to all advances made or to be made thereunder, and to any renewals, extensions, modifications or replacements thereof, provided, however, that at anytime hereafter, at the election of the Lender, Lender shall have the right to declare the Lease superior to the lien and effect of the Security Instrument.

2. If Lender obtains title to the Leased Premises through foreclosure or deed in lieu of foreclosure under the Security Instrument and provided that Tenant is not in default under any provision to the Lease and is then in possession of the Leased Premises, then (a) the right of possession of Tenant to the Leased Premises shall not be affected or disturbed, (b) the Lease shall remain in full force and effect according to its terms, and (c) Tenant shall recognize and attorn to the Lender, its successors and assigns, to the same extent and with the same force as if Lender were the Landlord under the Lease. Tenant further agrees to recognize and attorn to: (i) Lender when in possession of the Premises pursuant to Lender's rights under the Security Instrument or the Assignment; and (ii) any receiver appointed in an action or proceedings to foreclose the Security Instrument or otherwise pursuant to Lender's rights under the Security Instrument or the Assignment. Landlord hereby expressly and irrevocably authorizes Tenant to so attorn notwithstanding any contrary instructions of or demands from Landlord. Tenant shall have no responsibility to ascertain whether such demand by Lender is permitted under the Security Instrument or whether a default actually exists under the Security Instrument. Landlord hereby releases and discharges Tenant of, and from any liability to Landlord on account of any such payments.

3. By virtue of the Assignment, Lender shall be entitled, but not obligated, to exercise the claims, rights, powers, privileges, options and remedies of the Landlord under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by Tenant under the Lease as though Lender were named therein as the Landlord. Notwithstanding anything to the contrary contained in this Agreement, Tenant shall retain all rights of offset and termination expressly set forth in the Lease, regardless of when such rights accrued, but will not exercise such rights until Tenant has given Lender notice and an opportunity to cure pursuant to Section 4 of this Agreement.

4. Except as otherwise set forth in this Agreement, Lender shall not, by virtue of the Assignment or this Agreement, be or become subject to any liability or obligation to Tenant under the Lease or otherwise, until Lender shall have obtained title to the Leased Premises, by foreclosure or otherwise, and then only to the extent of liabilities or

obligations accruing subsequent to the date that Lender has obtained title to the Leased Premises. Furthermore, Lender shall not be liable for: (a) any reason, any amount in excess of the value of Lender's interest in the Premises; or (b) security deposits or other refundable fees unless paid over to Lender Before exercising its remedies under the Lease in response to a default by Landlord: (a) Tenant shall provide Lender with notice of the breach or default by Landlord giving rise to the same and (b) Lender has had a reasonable period of time following such notice (but in no event in excess of two (2) months) to remedy such default. Lender shall have no obligation to cure (and shall have no liability or obligation for not curing (except as otherwise provided in this Agreement) any breach or default by Landlord, except to the extent that Lender agrees or undertakes otherwise in writing.

5. Tenant shall not pay an installment of rent or any part thereof more than one month prior to the due date of such installment except for amounts normally paid less frequently, such as insurance or real estate taxes, and Lender shall be entitled to recover from Tenant as rent under the Lease any payment of rent or additional rent made by Tenant to Landlord for more than one month in advance except for amounts normally paid less frequently, such as insurance or real estate taxes. Lender shall not be bound or affected by any amendment or modification of the Lease that reduces the value of the Lease and has been made without the written consent of Lender. Lender shall not unreasonably withhold, delay or condition its consent to any such amendment or modification.

6. Tenant shall not agree to an early buyout of its lease obligations without the prior written consent of Lender, which consent shall not be unreasonably delayed, conditioned or withheld.

7. After notice is given to Tenant by Lender, pursuant to the Assignment, that the rentals under the Lease should be paid to Lender, Tenant shall pay to Lender, or in accordance with the directions of Lender, all rentals and other monies due and to become due to the Landlord under the Lease. Landlord hereby expressly and irrevocably authorizes Tenant to make such payments as directed by Lender after receiving such notice from Lender notwithstanding any contrary instructions of or demands from Landlord. Tenant shall have no responsibility to ascertain whether such demand by Lender is permitted under the Security Instrument or whether a default actually exists under the Security Instrument. Landlord hereby releases and discharges Tenant of, and from any liability to Landlord on account of any such payments.

8. The Security Instrument shall not cover, nor shall the lien thereof extend to Tenant's leasehold interest in the Lease or Tenant's fixtures and equipment.

9. The holder of the Security Instrument shall permit proceeds received by Tenant or Landlord from insurance, eminent domain, condemnation and the like and relating to the Leased Premises to be used as required by the provisions of the Lease.

10. Landlord hereby represents and warrants that the indebtedness evidenced by the following agreements has been paid in full, the agreements listed below are no

longer of any force or effect and the consent of the lenders under such agreements is not required for Landlord's execution, delivery and performance of this Agreement.:

(a) Subordination Agreement, Acknowledgement of Lease Assignment Attornment, and Non-Disturbance Agreement dated April 17, 2003 by and among Landlord, Tenant and Wells Fargo Bank, National Association; and

(b) Subordination Agreement, Acknowledge of Lease Assignment Attornment, and Non-Disturbance Agreement dated \_\_\_\_\_ by and among Landlord, Tenant and Bank of America, National Association.

11. Each notice, demand, election or request provided for or permitted to be given pursuant to this Agreement must be in writing and shall be deemed to have been properly given or served by personal delivery or by sending the same by overnight courier or by depositing the same in the United States Mail, postpaid and certified, return receipt requested, to the address set forth below for the party to whom such notice, demand, election or request is intended.

To Landlord:

\_\_\_\_\_  
With copies of all notices to:

\_\_\_\_\_  
To Tenant:

WFM-WO, Inc.  
1748 West Redstone Center Drive  
Park City, UT 84098  
Attention: Store Team Leader

With copies of all notices to:

WFM-WO, Inc.  
1821 30<sup>th</sup> Street, Unit A  
Boulder, CO 80301  
Attention: Regional President  
and

Whole Foods Market, Inc.  
550 Bowie Street  
Austin, Texas 78703  
Attention: General Counsel  
(512) 542-0217

and

Senn Visciano Canges P.C.  
Wells Fargo Center

1700 Lincoln Street, Suite 4500  
Denver, Colorado 80203  
Attention: David C. Camp  
(303) 298-1122

To Mortgagee:  
\_\_\_\_\_

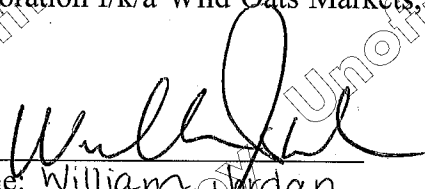
12. This Agreement shall inure to the benefit of and shall be binding upon Tenant, Landlord and Lender, and their respective heirs, personal representatives, successors and assigns. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Lender, not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Agreement shall be governed by and construed according to the laws of the State of Utah.

13. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instruments.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

**TENANT:**

WFM-WO, Inc., a Delaware corporation f/k/a Wild Oats Markets, Inc.

By:   
Name: William Jordan  
Title: Regional President  
Rocky Mountain

**LANDLORD:**

Boyer Spring Creek, LC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

1700 Lincoln Street, Suite 4500  
Denver, Colorado 80203  
Attention: David C. Camp  
(303) 298-1122

To Mortgagee:  
\_\_\_\_\_

12. This Agreement shall inure to the benefit of and shall be binding upon Tenant, Landlord and Lender, and their respective heirs, personal representatives, successors and assigns. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Lender, not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Agreement shall be governed by and construed according to the laws of the State of Utah.

13. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instruments.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

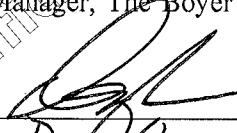
**TENANT:**

WFM-WO, Inc., a Delaware corporation f/k/a Wild Oats Markets, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LANDLORD:**

Boyer Spring Creek, L.C.,  
by its Manager, The Boyer Company,  
L.C.,

By:   
Name: David Glen  
Title: Manager

**LENDER:**

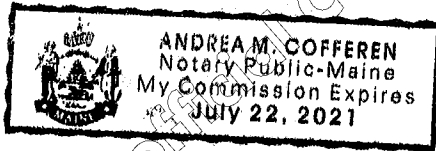
UNUM Life Insurance Company of America

By: Madelyn Duzinski  
Name: MADELYN DUZINSKI  
Title: SENIOR INVESTMENT OFFICER

STATE OF Maine  
COUNTY OF Cumberland, SS

January 30, 2015

Then personally appeared the above-named Madelyn Duzinski and acknowledged the foregoing instrument to be his/her free act and deed, in his/her said capacity, and the free act and deed of said Unum Life Insurance Company of America

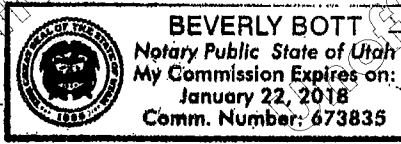


[Signature]  
Notary Public

STATE OF Utah  
COUNTY OF Salt Lake, SS

January 29, 2015

Then personally appeared the above-named Devon Glenn and acknowledged the foregoing instrument to be his/her free act and deed, in his/her said capacity, and the free act and deed of said Boyer Spring Creek, L.C.



Beverly Bott  
Notary Public

STATE OF MAINE  
COUNTY OF CUMBERLAND, SS

\_\_\_\_\_, 20\_\_\_\_

**LENDER:**

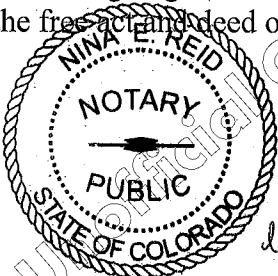
UNUM Life Insurance Company of America

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF Colorado  
COUNTY OF Boulder, ss

January 30, 2015

Then personally appeared the above-named William Jordan and acknowledged the foregoing instrument to be his/her free act and deed, in his/her said capacity, and the free act and deed of said WPM-WO, Inc



Nina Reid  
Notary Public

up. 8/1/2016

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, ss

\_\_\_\_\_, 20\_\_\_\_

Then personally appeared the above-named \_\_\_\_\_ and acknowledged the foregoing instrument to be his/her free act and deed, in his/her said capacity, and the free act and deed of said \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss

\_\_\_\_\_, 20\_\_\_\_



**LENDER:**

UNUM Life Insurance Company of America

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_, ss \_\_\_\_\_, 20\_\_\_\_

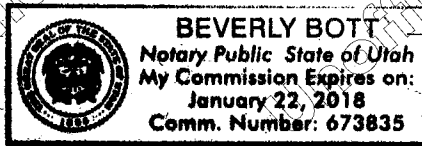
Then personally appeared the above-named \_\_\_\_\_ and acknowledged the foregoing instrument to be his/her free act and deed, in his/her said capacity, and the free act and deed of said \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF Utah  
COUNTY OF Salt Lake, ss \_\_\_\_\_, January 29, 2015

Then personally appeared the above-named Devon Glenn and acknowledged the foregoing instrument to be his/her free act and deed, in his/her said capacity, and the free act and deed of said Boyer Spring Creek, L.C.

Beverly Bott  
Notary Public



STATE OF MAINE  
COUNTY OF CUMBERLAND, ss \_\_\_\_\_, 20\_\_\_\_

**EXHIBIT A**

Legal Description

The land referred to herein is described as follows: situated in Summit County, State of Utah, to-wit:

**PARCEL 1:**

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 AND 20, REDSTONE AMENDMENT NO. 1 SUBDIVISION, according to the plat thereof, recorded November 25, 2003 under Entry No. 681341 of the Official Records of the County Recorder of Summit County, Utah.

LESS AND EXCEPTING THEREFROM THE FOLLOWING FOUR (4) TRACTS:

**EXCEPTED TRACT A:**

The parcel of land conveyed to SUMMIT COUNTY in that certain Special Warranty deed recorded January 18, 2013 as Entry No. 961829, in Book 2167, at Page 6 of the Official Records of the County Recorder of Summit County, Utah, to-wit:

A part of Lot 10, Redstone Subdivision, a subdivision lying within the Northwest Quarter of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, U.S. Survey in Summit County, Utah: Beginning at a point 82.95 feet North 89°43'46" East along the South Line of Newpark Boulevard from the Northwest Corner of said Lot 10 located 1943.60 feet South 89°47'32" East along the Section Line, and 1933.28 feet South 0°12'28" West from the Northwest Corner of said Section 19; and running thence North 89°43'46" East 123.97 feet along said North Line; thence Southwesterly along the arc of a 72.09 foot radius curve to the left a distance of 51.63 feet (Center bears South 25°26'22" East; Central Angle equals 41°02'03" and Long Chord bears South 44°02'36" West 50.53 feet); thence South 0°22'52" East 5.00 feet; thence South 89°37'08" West 58.93 feet to a point of curvature; thence Northwesterly along the arc of a 12.00 foot radius curve to the right a distance of 18.89 feet (Central Angle equals 90°12'40" and Long Chord bears North 45°16'32" West 17.00 feet) to a point of tangency; thence North 0°10'12" West 5.29 feet to a point of curvature; thence Northwesterly along the arc of a 25.00 foot radius curve to the left a distance of 31.94 feet (Central Angle equals 73°11'23" and Long Chord bears North 36°45'53" West 29.81 feet) to the point of beginning.

**EXCEPTED TRACT B:**

Beginning at the Northeasterly corner of Lot 4 REDSTONE AMENDMENT NO. 1 SUBDIVISION, according to the plat thereof, recorded November 25, 2003 under Entry No.

681341 of the Official Records of the County Recorder of Summit County, Utah, and running thence South 31°25'02" West along the easterly line of said Lot 4 and the extension thereof a distance of 109.38 feet to a point on the southerly boundary line of said REDSTONE AMENDMENT NO. 1 SUBDIVISION (which point is also on the southerly boundary line of FOX POINT AT REDSTONE VILLAGE PHASE 11, according to the plat thereof, recorded November 19, 2004 as Entry No. 717479 of the Official Records of the County Recorder of Summit County, Utah); thence South 58°41'43" East along said southerly boundary line 18.911 feet; thence South 58°37'39" East along said southerly boundary line 25.089 feet; thence North 31°25'02" East to and along the westerly line of Lot 5 of said REDSTONE AMENDMENT NO. 1 SUBDIVISION a distance of 109.32 feet to the Northwesterly corner of said Lot 5; thence North 58°34'58" West 44.00 feet to the point of beginning.

**EXCEPTED TRACT C:**

The AIR RIGHTS PARCELS located above the top of the joists defining the ceiling for the COMMERCIAL SPACE and supporting the floor for the AIR PARCELS defined and provided for in that certain Red Stone Village Air Rights Declaration recorded February 5, 2001 as Entry No. 581759, in Book 1352, at Page 632 of the Official Records of the County Recorder of Summit County, Utah, as amended by that certain First Amendment to Red Stone Village Air Rights Declaration recorded December 20, 2002 as Entry No. 642056, in Book 1498, at Page 428 of the Official Records of the County Recorder of Summit County, Utah.

**EXCEPTED TRACT D:**

Units F1 through F9 (inclusive) Building "F"; Units G1 through G10 (inclusive), Building "G", and Units H1 through H13 (inclusive) Building "H", all contained within FOX POINT AT REDSTONE VILLAGE PHASE 11 (A Utah Condominium Project), as the same is identified in the Record of Survey Map recorded November 19, 2004 as Entry No. 717479 of the Official Records of the County Recorder of Summit County, Utah (as said Record of Survey Map may have heretofore been amended and/or supplemented) and in the Third Amended Declaration of Condominium for Fox Point at Redstone (A Utah Expandable Condominium Project), recorded November 19, 2004 as Entry No. 717480, in Book 1661, at Page 849 of the Official Records of the County Recorder of Summit County, Utah (as said Declaration may have heretofore been amended and/or supplemented), together with the appurtenant interest in and to the project's common areas and facilities more particularly described in said Record of Survey Map, Declaration and any amendments and/or supplements thereto.

**PARCEL 2 (EASEMENT ESTATE):**

The nonexclusive easements, appurtenant to PARCEL 1 described herein defined in and created by that certain Master Declaration of Covenants, Conditions and Restrictions, recorded February

5, 2001 as Entry No. 581758, in Book 1352, at Page 608 of the Official Records of the County Recorder of Summit County, Utah, as amended, supplemented and/or otherwise affected by that certain First Amendment to Master Declaration of Covenants, Conditions and Restrictions, recorded December 20, 2002 as Entry No. 642057, in Book 1498, at Page 437 of the Official Records of the County Recorder of Summit County, Utah.

**PARCEL 3 (EASEMENT ESTATE):**

The easements, appurtenant to PARCEL 1 described herein, defined in and created by that certain Red Stone Village Air Rights Declaration recorded February 5, 2001 as Entry No. 581759, in Book 1352, at Page 632 of the Official Records of the County Recorder of Summit County, Utah, as amended by that certain First Amendment to Red Stone Village Air Rights Declaration recorded December 20, 2002 as Entry No. 642056, in Book 1498, at Page 428 of the Official Records of the County Recorder of Summit County, Utah.

**PARCEL 4 (EASEMENT ESTATE):**

The easements, appurtenant to PARCEL 1 described herein, defined in and created by that certain Development and Easement Agreement recorded February 5, 2001 as Entry No. 581761, in Book 1352, at Page 664 of the Official Records of the County Recorder of Summit County, Utah.

For reference purposes only:

Tax Parcel Numbers

RS-1-1AM, RS-2-1AM, RS-3-1AM,  
RS-4-1AM, RS-5-1AM, RS-6-1AM,  
RS-7-1AM, RS-8-1AM, RS-9-1AM,  
RS-10-1AM, RS-20-1AM