

**DIVESTITURE TRUSTEE AGREEMENT BETWEEN  
THE FOOD PARTNERS LLC AND WHOLE FOODS MARKET, INC.**

This Divestiture Trustee Agreement ("Trustee Agreement") entered into this <sup>27<sup>th</sup></sup> day of February 2009 by and among Whole Foods Market, Inc. ("Whole Foods" or "Respondent") and The Food Partners LLC ("Food Partners") provides as follows:

WHEREAS, the staff of the United States Federal Trade Commission (the Commission") and Respondent, *In the Matter of Whole Foods Market, Inc.*, Docket No. 9324, have entered into an Agreement Containing Consent Orders ("Consent Agreement") incorporating a Decision and Order ("Order") which requires the Commission to appoint a Divestiture Trustee;

WHEREAS, the staff of the Commission on February 19, 2009, notified counsel for Respondent that they were prepared to recommend that the Commission appoint Food Partners as the Divestiture Trustee, and Respondent not objecting to the appointment of Food Partners as the Divestiture Trustee, are executing this Trustee Agreement subject to the approval of the Commission;

WHEREAS, this Trustee Agreement, although executed by Food Partners and Respondent, is not effective for any purpose until the Agreement Containing Consent Orders has been accepted by the Commission for public comment; and

WHEREAS, the parties to this Trustee Agreement intend to be legally bound;

NOW, THEREFORE, the parties agree as follows:

1. Capitalized terms used herein and not specifically defined herein shall have the respective definition given to them in the Order.
  2. The Divestiture Trustee shall have all of the powers and responsibilities conferred upon the Divestiture Trustee by the Order. The general scope of services are listed in Appendix A hereto, but nothing in Appendix A shall go beyond the duties and responsibilities in the Commission's Order.
  3. Respondent hereby agrees that it will fully comply with all terms of the Order requiring it to confer all powers, duties, authority, and responsibilities upon the Divestiture Trustee, to enable the Divestiture Trustee to perform the duties and responsibilities of the Divestiture Trustee as stated in the Order.
  4. Respondent further agrees that:
    - a. it will provide the Divestiture Trustee with copies of all reports submitted to the Commission pursuant to the Order, simultaneous with the submission of such reports to the Commission, for the duration of the Divestiture Trustee's term under the Order;
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- b. it will, subject to any demonstrated legally recognized privilege, provide to the Divestiture Trustee information subject to Paragraph II.C.4 of the Order; and
- c. it will cooperate with the Divestiture Trustee and shall take no action to interfere with or impede the Divestiture Trustee's ability to execute its responsibilities subject to the terms of the Order.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all expenses necessary for the sale of the Assets To Be Divested.

6. Respondent shall pay the Divestiture Trustee all fees and expenses in accordance with the fee schedule attached hereto as Confidential Appendix B.

7. The Divestiture Trustee shall have full and direct responsibility for compliance with all applicable laws, regulations and requirements pertaining to work permits, income and social security taxes, unemployment insurance, worker's compensation, disability insurance and the like that are applicable for its employees.

8. The Divestiture Trustee shall maintain the confidentiality of all information provided to the Divestiture Trustee by Respondents. Such information shall be used by the Divestiture Trustee only in connection with the performance of the Divestiture Trustee's duties pursuant to this Trustee Agreement. Such information shall not be disclosed by the Divestiture Trustee to any third party other than:

- a. persons employed by, or working with, the Divestiture Trustee under this Trustee Agreement, in which case such persons shall be informed of, and agree in writing to abide by, the confidentiality obligations applicable to the Divestiture Trustee, in accordance with Paragraph 15, below,
- b. persons employed at the Commission and working on this matter, or
- c. potential buyers of the Assets To Be Divested, subject to the terms of the Confidentiality and Non-Disclosure Agreement included as Appendix C hereto.

9. The Divestiture Trustee shall maintain a record and inform the Commission and Respondent of all persons (other than representatives of the Commission) to whom confidential information related to this Trustee Agreement has been disclosed.

10. The Divestiture Trustee shall report in writing to Respondent and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture, for the duration of the Divestiture Trustee's term under the Order.

11. The Divestiture Trustee shall notify Respondent immediately upon signing any letter of intent or other significant event relating to the sale of the Assets To Be Divested.

12. The Divestiture Trustee shall act in a fiduciary capacity for the benefit of the Commission.

13. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at a price from each Commission-approved Acquirer not less than zero dollars. Each divestiture shall be made in the manner and to an acquirer as required by the Order on an as-is, where-is basis without requiring from Respondent additional consideration, either cash or non-cash, pursuant to an agreement in the form of Appendix D (model asset purchase agreement) and Appendix E (model intellectual property purchase agreement) hereto; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity for a particular location listed on Appendix A, Appendix B or Appendix D of the Order, and if the Commission determines to approve more than one such acquiring entity for such location, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; *provided further, however*, that Respondent shall select such entity within five (5) days after receiving notification of the Commission's approval.

14. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.

15. Upon termination of the Divestiture Trustee's duties under this Trustee Agreement, the Divestiture Trustee shall promptly return to Respondent or destroy all material provided to the Divestiture Trustee by Respondent and shall destroy any material prepared by the Divestiture Trustee that contains or reflects any confidential information of Respondent. Nothing herein shall abrogate the Divestiture Trustee's duty of confidentiality.

16. To the extent that the Divestiture Trustee wishes to retain any agent, consultant or any other third party to assist the Divestiture Trustee in accordance with the Order, the Divestiture Trustee shall ensure that, prior to being retained, such person(s) execute a confidentiality agreement in the form of Appendix F hereto.

17. Nothing in this Trustee Agreement shall require Respondent to disclose any material or information that is subject to a legally recognized privilege or that Respondent is prohibited from disclosing by reason of law or an agreement with a third party.

18. Each party shall be reasonably available to the other to discuss any questions or issues that either party may have concerning compliance with the Order as they relate to Respondent.

19. Respondent hereby confirms its obligation to indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless in accordance with and to the extent required by the Order. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

20. Respondent recognizes and confirms that in performing its duties pursuant to this Trustee Agreement, Divestiture Trustee will be using and relying on data, material and other information (the "Information") furnished by Respondent and its employees and representatives and on information available from generally recognized public sources without any independent investigation or verification thereof. Accordingly, Divestiture Trustee assumes no responsibility for the accuracy and completeness of the Information. In rendering its services hereunder, Divestiture Trustee will not make an appraisal or independent valuation of any of the assets or liabilities of Respondent. Respondent agrees that any services will be based entirely upon Information supplied by Respondent or available from public sources. Respondent will exercise reasonable care to ensure that Information is complete and accurate in all material respects, and not materially misleading, and Respondent will be solely responsible for the accuracy and completeness of any such Information used, summarized or presented in any services. Without limiting the foregoing, Divestiture Trustee will be neither responsible for nor liable to any party for any representations, assertions or statements based on the Information or reasonably derived therefrom if such representations, assertions or statements prove to be false, inaccurate, deceptive, misleading or incomplete.

21. In the event of a disagreement or dispute between Respondent and the Divestiture Trustee concerning Respondent's obligations under the Order, and in the event that such disagreement or dispute cannot be resolved by the parties, either party may seek the assistance of the Commission's Compliance Division to resolve this issue.

22. The Trustee Agreement shall be subject to the substantive law of the State of Delaware.

23. The Trustee Agreement shall terminate upon the divestiture of the all of the assets listed in the Order, but no later than the time period provided in Paragraph II.C.2 of the Order.



24. In the event that, during the term of this Trustee Agreement, the Divestiture Trustee becomes aware that he has or may have a conflict of interest that may affect or could have the appearance of affecting the performance by the Divestiture Trustee of any of his duties under this Trustee Agreement, the Divestiture Trustee shall promptly inform both Respondent and the Commission of such conflict or potential conflict. Notwithstanding the foregoing, Respondent recognizes that Divestiture Trustee may from time to time throughout the term of this Trustee Agreement provide services to companies that are in competition with Respondent. Respondent hereby agrees that this Trustee Agreement does not limit Divestiture Trustee's ability to provide such services, and that Divestiture Trustee's providing of such services does not represent a conflict of interest for Divestiture Trustee in the context of this Trustee Agreement.

25. It is understood that the Divestiture Trustee will be serving under this Trustee Agreement as an independent contractor and that the relationship of employer and employee shall not exist between Divestiture Trustee and Respondent.

26. This Trustee Agreement is for the sole benefit of the Parties hereto and their permitted assigns and the Commission, and nothing herein express or implied shall give or be construed to give any other person any legal or equitable rights hereunder.

27. This Trustee Agreement contains the entire agreement between the parties hereto with respect to the matters described herein and replaces any and all prior agreements or understandings, whether written or oral.

28. Any notices or other communication required to be given hereunder shall be deemed to have been properly given if sent by mail, facsimile (with acknowledgment of receipt of such facsimile having been received), or electronic mail, to the applicable party at its address below (or to such other address as to which such party shall hereafter notify the other party):

If to the Divestiture Trustee, to:

Matthew S. Morris  
The Food Partners LLC  
5335 Wisconsin Avenue, N.W.  
Suite 410  
Washington, D.C. 20015

Telephone: (202) 589-0434  
Facsimile: (202) 589-0433  
Email: [msmorris@thefoodpartners.com](mailto:msmorris@thefoodpartners.com)

If to the Respondent, to:

Roberta L. Lang  
General Counsel and Vice President of Legal Affairs

Whole Foods Market, Inc.  
550 Bowie Street  
Austin, TX 78703

Telephone: (512) 542-0217  
Facsimile: (512) 482-7217  
Email: roberta.lang@wholefoods.com

With copy to:

Paul T. Denis  
Dechert LLP  
1775 I Street, N.W.  
Washington, D.C. 20006-2401

Telephone: (202) 261-3430  
Facsimile: (202) 261-3333  
Email: paul.denis@dechert.com

If to the Commission, to

Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Attention: Secretary  
Telephone: (202) 326-2514  
Facsimile: (202) 326-2496

With copy to:

Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20001

Attention: Assistant Director for Compliance  
Telephone: (202) 326-2526  
Facsimile: (202) 326-3396

29. This Trustee Agreement shall not become binding until it has been approved by the Commission.

30. This Trustee Agreement may be signed in counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this Trustee Agreement as of the date first above written.

WHOLE FOODS MARKET, INC.

DIVESTITURE TRUSTEE



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Roberta L. Lang  
Whole Foods Market, Inc.

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Matthew S. Morris  
The Food Partners LLC


IN WITNESS WHEREOF, the parties hereto have executed this Trustee Agreement as of the date first above written.

WHOLE FOODS MARKET, INC.

DIVESTITURE TRUSTEE

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Roberta L. Lang  
Whole Foods Market, Inc.



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Matthew S. Morris  
The Food Partners LLC

## APPENDIX A

- a) Assist and advise Respondent and the Commission in developing a strategy for accomplishing the Divestiture(s).
- b) Prepare an information package for distribution to the prospective Acquirer(s) describing the Assets To Be Divested.
- c) Visit a representative sample of the Assets To Be Divested.
- d) Retain and coordinate services of all consultants and other parties, including attorneys, as reasonably necessary for the Divestiture Trustee to carry out its duties and responsibilities.
- e) Contact prospective Acquirer(s).
- f) Maintain a record and inform Respondent and the Commission of all persons (other than representatives of Respondent or the Commission) who have executed a Confidentiality Agreement, the form of which will be pre-approved by the parties, and to whom confidential information has been distributed.
- g) Provide Respondent and the Commission with written progress reports regarding the status of the Divestiture(s).
- h) Facilitate and respond to questions and information requests raised by prospective Acquirer(s) (in consultation with Respondent, as appropriate).
- i) Attend meetings and conference calls with prospective Acquirer(s).
- j) Coordinate with Respondent and supervise store inspections and due diligence by prospective Acquirer(s).
- k) Evaluate proposals from prospective Acquirers(s).

- l) Review, structure, negotiate and execute all agreements with prospective Acquirer(s), subject to regulatory approval.
  
- m) Submit all executed agreements to the Commission for regulatory approval.
  
- n) Close the Divestiture(s).



**CONFIDENTIAL APPENDIX B**



APPENDIX C

[confidentiality agreement for potential buyers]

**STRICTLY CONFIDENTIAL**

\_\_\_\_\_, 2009

[Name]

[Address]

Ladies and Gentlemen:

In connection with your consideration of the acquisition (the "Transaction") from a divestiture trust, for which The Food Partners, LLC (the "Trustee") acts as trustee, that has control over the divestiture of certain stores owned and operated by Whole Foods Market, Inc. (the "Company," which term as used herein shall include all direct and indirect affiliates of the Company) pursuant to a settlement agreement between the Company and the Federal Trade Commission, the Trustee will provide you with certain material non-public information concerning the Company. This information is confidential and proprietary to the Company and not otherwise available. As a condition to your being furnished such information, you agree to treat any information (whether (i) prepared by the Company, its advisors or otherwise or gathered by inspection, (ii) in written, oral, electronic or other form, (iii) identified as "confidential" or otherwise or (iv) such information is prepared before, on or after the date hereof) concerning the Company which is furnished to you or any of your directors, officers, employees, representatives, agents and/or advisors (collectively, "Representatives") by or on behalf of the Company (collectively, the "Confidential Material") in accordance with the provisions of this letter agreement and to take or abstain from taking certain other actions herein set forth. The term "Confidential Material" shall be deemed to include, without limitation, all notes, analyses, compilations, Excel spreadsheets, operating and capital budgets, loan and other debt agreements, summaries, data, studies, interpretations, forecasts, records, memoranda or other documents or information furnished to you or prepared by your Representatives which contain, reflect or are based on, in whole or in part, any Confidential Material. The term "Confidential Material" does not include information which (i) is already in your possession, provided that such information is not known by you to be subject to another confidentiality agreement with or other obligation of secrecy to the Company or another party, (ii) is or becomes generally available to the public other than as a result of a disclosure, directly or indirectly, by you or your Representatives, or (iii) becomes available to you on a non-confidential basis from a source other than the Company or its respective advisors, provided that such source is not known by your or your Representatives to be bound by a confidentiality agreement with or other obligation of secrecy to the Company or another party.

You hereby agree that the Confidential Material (i) will be used solely for the purpose of evaluating a possible Transaction and will not be used, directly or indirectly, to compete with the Company or for any other purpose and (ii) will be kept confidential by you and your Representatives and will be not be disclosed by you or your Representatives; provided, however, that any such information may be disclosed to your Representatives who need to know such information for the sole purpose of evaluating a possible Transaction and whom you have informed of the obligations contained herein and who agree to keep the Confidential Material confidential and who agree to be bound by the terms of this letter agreement to the same extent as if they were parties hereto. You agree to be responsible for any breaches of any of the provisions of this letter agreement by you or your Representatives (it being understood that such responsibility shall be in addition to and not by way of limitation of any right or remedy the Company may have against your Representatives with respect to such breach).

You hereby acknowledge that you are aware, and that you will advise your Representatives who are informed as to the matters which are the subject of this letter agreement, that the United States securities laws prohibit any person who has received from an issuer material, non-public information concerning the matters which are the subject of this letter agreement from purchasing or selling securities of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities. The term “person” as used in this letter agreement will be interpreted broadly to include the media (electronic, print or otherwise), the internet, any governmental representative or authority or any corporation, company, partnership, group or other entity or individual.

In addition, without the prior written consent of the Company, you will not, and will direct your Representatives not to, disclose to any person (i) the fact that investigations, discussions or negotiations are taking place concerning a possible Transaction, (ii) that you or any of your Representatives has received Confidential Material or that Confidential Material has been made available to you or any of your Representatives and (iii) any of the terms, conditions or other facts with respect to any Transaction, including, without limitation, the status thereof and the existence of this letter agreement. You acknowledge that disclosure of any of the information described in the preceding sentence may irreparably damage the Company.

In the event that you or your Representatives are requested in any proceeding to disclose any Confidential Material, you will give the Company prompt notice of such request so that an appropriate protective order may be sought. If in the absence of a protective order you or your Representatives are nonetheless compelled to disclose Confidential Material in any proceeding, such compelled disclosure may be made without liability hereunder, provided that you shall give the Company written notice of the information to be disclosed as far in advance of its disclosure as practicable and, upon request, you shall use your best efforts to obtain assurances that confidential treatment will be accorded to such information.

You agree that, for a period of three years from the date hereof, neither you nor any of your Representatives will (or will assist or encourage others to), directly or indirectly, solicit to hire or hire or cause or seek to cause to leave the employ of the Company: (i) any officer employed by the Company; or (ii) any other employee of the Company with whom you have had contact or who (or whose performance) became known to you or your Representatives in connection with the process contemplated by this letter agreement; provided, however, that you may employ any such person who responds to your general solicitations for employees in the ordinary course of business and consistent with past practice.

Although the Company has endeavored to include in the Confidential Material information known to it which it believes to be relevant for the purpose of evaluation a potential transaction, you understand that neither the Company nor any of its Representatives has made or makes any representation or warranty as to the accuracy or completeness of the Confidential Material. You agree that neither the Company nor its Representatives shall have any liability to you or any of your Representatives resulting from the use of the Confidential Material. Neither this letter agreement nor disclosure of any Confidential Material to you shall be deemed by implication or otherwise to vest in you rights in or to the Confidential Material, other than the right to use such Confidential Material solely for the purpose of evaluating a Transaction. Only those representations or warranties that are made in a definitive agreement regarding a Transaction (a “Definitive Agreement”) when, as, and if it is executed, and subject to such limitations and restrictions as may be specified in such Definitive Agreement, will have any legal effect. You agree that unless and until a Definitive Agreement has been executed and delivered, neither the Company nor you will be under any legal obligation of any kind whatsoever with respect to a Transaction by virtue of this or any written or oral expression with respect to a Transaction by the Company or any of its directors, officers, employees, agents or any other Representatives except, in the case of this letter agreement, for

the matters specifically agreed to herein. For the purposes of this letter agreement, the term "Definitive Agreement" does not include an executed letter of intent or any other preliminary written agreement, nor does it include any written or oral acceptance of any offer or bid by you. You also acknowledge that the Company and its advisors shall be free to conduct the process regarding a possible transaction and for the dissemination of the Confidential Material as they in their sole discretion shall determine, including (i) negotiating with any other party and entering into a definitive transaction agreement with any other party without prior notice to you or any other person and (ii) changing any procedures relating to the process at any time without prior notice to you or any other person.

In the event that you do not proceed with a possible Transaction within a reasonable time, if you do not decide that you do not wish to proceed with a Transaction or at any time upon the written request of the Company for any reason, you shall either (i) promptly deliver to the Company all Confidential Material furnished to you and any other material containing or reflecting any information in the Confidential Material furnished to you or your Representatives or (ii) destroy all Confidential Material furnished to you and any other material containing or reflecting any information in the Confidential Material furnished to you or your Representatives and provide a written certification to the Company regarding such destruction from an authorized officer supervising such destruction. You and your Representatives may not retain any copies, extracts or other reproductions in whole or in part of such material. Notwithstanding any such return or destruction of the Confidential Material, you and your Representatives will continue to be bound by the obligations of confidentiality and other obligations hereunder.

You also understand and agree that money damages may not be a sufficient remedy for any breach of this letter agreement by you or any of your Representatives and that, in addition to all other remedies, the Company shall be entitled to equitable relief, including injunction and specific performance, as a remedy for such breach and that you shall not oppose the granting of such relief. Such remedies shall not be deemed to be the exclusive remedies for a breach by you or any of your Representatives of this letter agreement but shall be in addition to all other remedies available to the Company at law, in equity or otherwise.

The agreement set forth in this letter agreement may be modified or waived only by a separate writing by the Company and you expressly so modifying or waiving such agreement. You agree that no failure or delay by the Company in exercising any right, remedy, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. If any provision of this letter agreement is found to violate any statute, regulation, rule, order or decree of any governmental authority, court, agency or exchange, such invalidity shall not be deemed to affect any other provision hereof or the validity of the remainder of this letter agreement, and such invalid provision shall be deemed deleted herefrom to the minimum extent necessary to cure such violation. Neither this agreement nor any of the rights and/or obligations hereunder may be assigned, by operation of law or otherwise, by either party without the prior written consent of the other party, and any attempted assignment or transfer by either party not in accordance herewith shall be null and void. All references to "you" and "your" shall mean and include you and your affiliates. This agreement is for the benefit of each party and its respective directors, officers, employees, representatives and agents and their respective successors and permitted assigns. Unless otherwise extended by the parties, this letter agreement shall automatically terminate two years from the date hereof.



This letter agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware. You hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of Delaware and U.S. Federal courts located in the State of Delaware for any actions, suits or proceedings arising out of or relating to this letter agreement and the transactions contemplated hereby (and you agree not to commence any action, suit or proceeding relating thereto except in such courts, and further agree that service of any process, summons, notice or document by U.S. registered mail to your address set forth above shall be effective service of process for any action, suit or proceeding brought against you in any such court). You hereby irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this agreement or the transactions contemplated hereby in the courts of the State of Delaware or U.S. Federal courts located in the State of Delaware, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

**[The remainder of this page is intentionally blank.]**

Please confirm your agreement with the foregoing by signing and returning one copy of this agreement to the undersigned, whereupon this letter agreement shall become a binding agreement between you and the Company.

Very truly yours,

WHOLE FOODS MARKET, INC.

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

CONFIRMED AND AGREED TO:

[NAME]

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

APPENDIX D

APPENDIX E

APPENDIX F

[confidentiality agreement for agents, consultants, etc.]

**STRICTLY CONFIDENTIAL**

\_\_\_\_\_, 2009

[Name]  
[Address]

Ladies and Gentlemen:

In connection with your role as representative, agent or advisor of The Food Partners, LLC (the "Trustee") in its role as trustee of a divestiture trust that have shall control over the divestiture of certain stores (the "Divestiture") owned and operated by Whole Foods Market, Inc. (the "Company," which term as used herein shall include all direct and indirect affiliates of the Company) pursuant to a settlement agreement between the Company and the Federal Trade Commission, the Trustee may provide you with certain material non-public information concerning the Company. This information is confidential and proprietary to the Company and not otherwise available. As a condition to your being furnished such information, you agree to treat any information (whether (i) prepared by the Company, the Company's advisors or otherwise or gathered by inspection, (ii) in written, oral, electronic or other form, (iii) identified as "confidential" or otherwise or (iv) such information is prepared before, on or after the date hereof) concerning the Company which is furnished to you or any of your directors, officers, employees, representatives and/or agents (collectively, "Representatives") by or on behalf of the Company (collectively, the "Confidential Material") in accordance with the provisions of this letter agreement and to take or abstain from taking certain other actions herein set forth. The term "Confidential Material" shall be deemed to include, without limitation, all notes, analyses, compilations, Excel spreadsheets, operating and capital budgets, loan and other debt agreements, summaries, data, studies, interpretations, forecasts, records, memoranda or other documents or information furnished to you or prepared by your Representatives which contain, reflect or are based on, in whole or in part, any Confidential Material. The term "Confidential Material" shall not include information which (i) is already in your possession, provided that such information is not known by you to be subject to another confidentiality agreement with or other obligation of secrecy to the Company or another party, (ii) is or becomes generally available to the public other than as a result of a disclosure, directly or indirectly, by you or your Representatives, or (iii) becomes available to you on a non-confidential basis from a source other than the Company or its respective advisors, provided that such source is not known by your or your Representatives to be bound by a confidentiality agreement with or other obligation of secrecy to the Company or another party.

You hereby agree that the Confidential Material (i) will be used solely for the purpose of assisting with the Divestiture and will not be used, directly or indirectly, to compete with the Company or for any other purpose and (ii) will be kept confidential by you and your Representatives and will be not be disclosed by you or your Representatives; provided, however, that any such information may be disclosed to your Representatives who need to know such information for the sole purpose of assisting in the Divestiture. You agree to be responsible for any breaches of any of the provisions of this letter agreement by you or your Representatives (it being understood that such responsibility shall be in addition to and not by way of limitation of any right or remedy the Company may have against your Representatives with respect to such breach).

You hereby acknowledge that you are aware, and that you will advise your Representatives who are informed as to the matters which are the subject of this letter agreement, that the U.S. federal securities laws prohibit any person who has received from an issuer material, non-public information



concerning the matters which are the subject of this letter agreement from purchasing or selling securities of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities. The term “person” as used in this letter agreement will be interpreted broadly to include the media (electronic, print or otherwise), the internet, any governmental representative or authority or any corporation, company, partnership, group or other entity or individual.

In addition, without the prior written consent of the Company, you will not, and will direct your Representatives not to, disclose to any person (i) the fact that investigations, discussions or negotiations are taking place concerning the Divestiture, (ii) that you or any of your Representatives has received Confidential Material or that Confidential Material has been made available to you or any of your Representatives and (iii) any of the terms, conditions or other facts with respect to the Divestiture, including, without limitation, the status thereof and the existence of this letter agreement. You acknowledge that disclosure of any of the information described in the preceding sentence may irreparably damage the Company.

In the event that you or your Representatives are requested in any proceeding to disclose any Confidential Material, you will give the Company prompt notice of such request so that the Company may seek an appropriate protective order. If in the absence of a protective order you or your Representatives are nonetheless compelled to disclose Confidential Material in any proceeding, such compelled disclosure may be made without liability hereunder, provided that you shall give the Company written notice of the information to be disclosed as far in advance of its disclosure as practicable and, upon request, you shall use your best efforts to obtain assurances that confidential treatment will be accorded to such information.

You agree that, for a period of three years from the date hereof, neither you nor any of your Representatives will (or will assist or encourage others to), directly or indirectly, solicit to hire or hire or cause or seek to cause to leave the employ of the Company: (i) any officer employed by the Company; or (ii) any other employee of the Company with whom you have had contact or who (or whose performance) became known to you or your Representatives in connection with the process contemplated by this letter agreement; provided, however, that you may employ any such person who responds to your general solicitations for employees in the ordinary course of business and consistent with past practice.

Although the Company has endeavored to include in the Confidential Material information known to it which it believes to be relevant for the Trustee in its role as such, you understand that neither the Company nor any of its Representatives has made or makes any representation or warranty as to the accuracy or completeness of the Confidential Material. You agree that neither the Company nor its Representatives shall have any liability to you or any of your Representatives resulting from the use of the Confidential Material. Neither this letter agreement nor disclosure of any Confidential Material to you shall be deemed by implication or otherwise to vest in you rights in or to the Confidential Material, other than the right to use such Confidential Material solely for the purpose of assisting with the Divestiture. You agree that neither the Company, the Trustee nor you will be under any legal obligation of any kind whatsoever with respect to the Divestiture by virtue of this or any written or oral expression with respect to the Divestiture by any of the Company’s directors, officers, employees, agents or any other Representatives except, in the case of this letter agreement, for the matters specifically agreed to herein.

In the event that you do not continue to act as representative, agent or advisor of the Trustee in connection with the Divestiture or at any time upon the written request of the Company for any reason, you shall either (i) promptly deliver to the Company all Confidential Material furnished to you and any other material containing or reflecting any information in the Confidential Material furnished to you or

your Representatives or (ii) destroy all Confidential Material furnished to you and any other material containing or reflecting any information in the Confidential Material furnished to you or your Representatives and provide a written certification to the Company regarding such destruction from an authorized officer supervising such destruction. You and your Representatives may not retain any copies, extracts or other reproductions in whole or in part of such material. Notwithstanding any such return or destruction of the Confidential Material, you and your Representatives will continue to be bound by the obligations of confidentiality and other obligations hereunder.

You also understand and agree that money damages may not be a sufficient remedy for any breach of this letter agreement by you or any of your Representatives and that, in addition to all other remedies, the Company shall be entitled to equitable relief, including injunction and specific performance, as a remedy for such breach and that you shall not oppose the granting of such relief. Such remedies shall not be deemed to be the exclusive remedies for a breach by you or any of your Representatives of this letter agreement but shall be in addition to all other remedies available to the Company at law, in equity or otherwise.

The agreement set forth in this letter agreement may be modified or waived only by a separate writing by the Company and you expressly so modifying or waiving such agreement. You agree that no failure or delay by the Company in exercising any right, remedy, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law. If any provision of this letter agreement is found to violate any statute, regulation, rule, order or decree of any governmental authority, court, agency or exchange, such invalidity shall not be deemed to affect any other provision hereof or the validity of the remainder of this letter agreement, and such invalid provision shall be deemed deleted herefrom to the minimum extent necessary to cure such violation. Neither this agreement nor any of the rights and/or obligations hereunder may be assigned, by operation of law or otherwise, by either party without the prior written consent of the other party, and any attempted assignment or transfer by either party not in accordance herewith shall be null and void. All references to "you" and "your" shall mean and include you and your affiliates. This agreement is for the benefit of each party and its respective directors, officers, employees, representatives and agents and their respective successors and permitted assigns. Unless otherwise extended by the parties, this letter agreement shall automatically terminate on the later of (1) two years from the date hereof and (2) the one year anniversary of the termination of the Trustee's engagement as divestiture trustee.

This letter agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware. You hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of Delaware and U.S. Federal courts located in the State of Delaware for any actions, suits or proceedings arising out of or relating to this letter agreement and the transactions contemplated hereby (and you agree not to commence any action, suit or proceeding relating thereto except in such courts, and further agree that service of any process, summons, notice or document by U.S. registered mail to your address set forth above shall be effective service of process for any action, suit or proceeding brought against you in any such court). You hereby irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this agreement or the transactions contemplated hereby in the courts of the State of Delaware or U.S. Federal courts located in the State of Delaware, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Please confirm your agreement with the foregoing by signing and returning one copy of this agreement to the undersigned, whereupon this letter agreement shall become a binding agreement between you and the Company.

Very truly yours,

WHOLE FOODS MARKET, INC.

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

CONFIRMED AND AGREED TO:

[NAME]

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