

UNOFFICIAL COPY



Doc# 1717819061 Fee \$56.00

RHSP FEE: \$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 06/27/2017 01:01 PM PG: 1 OF 10

8984038 DB
11 of 11

DOCUMENT COVER SHEET

SUBORDINATION, NON-DISTURBANCE AND ATTORNEMENT AGREEMENT

Prepared By and Return To:

Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700
Atlanta, GA 30363
Attn: Rusty A. Fleming, Esq.

S 1
P 10
S N
SC 1
INT 1

UNOFFICIAL COPY

DocuSign Envelope ID: CD4F9247-FD2A-45AD-87E0-66A0C67C3270

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT, made this 23rd day of June 2017, between BENEFIT STREET PARTNERS REALTY OPERATING PARTNERSHIP, L.P. ("Mortgagee") and PARTY CITY CORPORATION, a Delaware corporation (hereinafter called "Tenant") having its principle offices at 25 Green Pond Road, Rockaway, New Jersey 07866.

WITNESSETH:

WHEREAS, Tenant has entered into a certain Lease Agreement dated October 10, 2005 (the lease and all amendments thereto are hereinafter referred to as the "Lease") executed by TCB - Lincoln Village, LLC, as successor in interest to IA Chicago Lincoln, L.L.C. (hereinafter called the "Landlord"), covering certain premises (the "Premises") at Lincoln Village Shopping Center, 6133 N. Lincoln Avenue and located in the city of Chicago, Illinois; and

WHEREAS, Mortgagee has made or has agreed to make a loan to Borrower, said loan being secured by a mortgage or a deed of trust covering the Shopping Center real property (the "Mortgage"); and

WHEREAS, the parties to set forth their agreement as to their respective rights and priorities as hereinafter set forth.

NOW THEREFORE, in consideration of the Premises and the sum of One (\$1.00) Dollar by each party in hand paid to the other, the receipt of which is hereby acknowledged, it is hereby agreed as follows:

1. The Lease is and shall be subject and subordinate to the Mortgage insofar as it affects the real property of which the Premises forms a part, and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal sum secured thereby and interest thereon, provided that the same shall in no way expand or enlarge Tenant's obligations under and pursuant to the Lease.
2. Tenant agrees that, upon written notice from Mortgagee, it will attorn to and recognize any purchaser at a foreclosure sale under the Mortgage or any transferee who acquires the Shopping Center by deed in lieu of foreclosure as its landlord for the unexpired balance (and any extensions, if exercised) of the Lease term, upon the same terms and conditions set forth in the Lease.
3. As long as Tenant is not in default beyond any cure period provided in the Lease in either the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be affected in accordance with any option thereof in the Lease, shall not be diminished or interfered with by Mortgagee, and Tenant's occupancy of the Premises shall not be disturbed by Mortgagee for any reason whatsoever during the Lease term or any such extensions or renewals thereof.

UNOFFICIAL COPY

DocuSign Envelope ID: CD4F9247-FD2A-45AD-87E0-66A0C87C3270

4. Mortgagee to Receive Notices. Tenant shall provide Mortgagee with copies of all written notices sent to Landlord pursuant to the Lease simultaneously with the transmission of such notices to the Landlord. Tenant shall notify Mortgagee of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease or to an abatement of the rents, additional rents or other sums payable thereunder, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof or of such an abatement shall be effective unless Mortgagee shall have received notice of default giving rise to such cancellation or abatement and shall have failed within sixty (60) days after receipt of such notice to cure such default, or if such default cannot be cured within sixty (60) days, shall have failed within sixty (60) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default.

5. In the event that it should become necessary to foreclose the Mortgage, and so long as Tenant is not in default under any of the terms, covenants or conditions of the Lease beyond any cure period provided in the Lease, Mortgagee will neither terminate the Lease through foreclosure sale or by deed in lieu thereof, nor join Tenant in summary or foreclosure proceedings unless required under applicable law, nor disturb the quiet enjoyment or peaceful possession of Tenant under the Lease.

6. In the event that Mortgagee or any purchaser at a foreclosure sale or any transferee who acquires the Shopping Center by deed in lieu of foreclosure shall succeed to the interest of Landlord under the Lease, Mortgagee, such purchaser or transferee agrees to be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall thereafter have the same remedies against Mortgagee, such purchaser or transferee for any breach or noncompliance with any provision in the Lease that Tenant would have had under the Lease against Landlord if Mortgagee, such purchaser or transferee had not succeeded to the interest of Landlord, provided that Mortgagee, such purchaser or transferee shall not be

- (a) liable for any act or omission of any prior landlord (including Landlord), but this limitation shall in no way be deemed or construed to release Mortgagee from liability or responsibility as successor landlord under the Lease for its own default of the same or a similar nature to the pre-existing default of the prior landlord (including Landlord); or
- (b) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); or
- (c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior Landlord (including Landlord); or
- (d) bound by any amendment, assignment, sublease or modification of the Lease or any collateral agreement made without Mortgagee's consent.

7. Nothing herein shall obligate Tenant to pay rent or otherwise attorn to Mortgagee or to any purchaser or transferee pursuant to Section 2 hereof, until Tenant receives written notice from Mortgagee.

8. Tenant shall, from time to time, deliver such certificates, in form and substance satisfactory to Tenant in its reasonable discretion, as Mortgagee shall request

UNOFFICIAL COPY

DocuSign Envelope ID: CD4F9247-FD2A-45AD-87E0-66A0C67C3270

as to the continuance of the Lease in effect, as to payment of rents thereunder, and as to such related matters as Mortgagee shall reasonably request.

9. Mortgagee shall apply any casualty or condemnation proceeds to the restoration of the Premises and/or the Common Area as provided for in the Mortgage or any loan document related thereto.

10. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

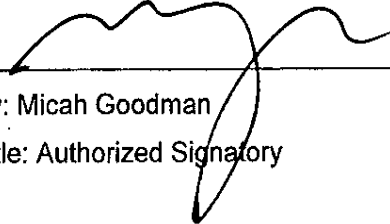
11. This may be executed in separate counterparts, all of which shall constitute a single instrument.

12. Notices to Tenant hereunder shall be sent to PARTY CITY CORPORATION, 25 Green Pond Road, Rockaway, NJ 07866, Attention: Vice President – Real Estate, or to such other person or address as Tenant shall subsequently designate in writing to Mortgagee. Notices to Mortgagee hereunder shall be sent to BENEFIT STREET PARTNERS REALTY OPERATING PARTNERSHIP, L.P., 9 West 57th Street, Suite 4920, New York, New York 10019 Attention: Micah Goodman, General Counsel with a copy to: Nelson Mullins Riley & Scarborough, LLP, 201 17th Street, Suite 1700, Atlanta, Georgia 30365, Attention: Rusty A. Fleming, Esq. or any such other person or address as Mortgagee shall subsequently designate in writing to Tenant. Notices shall be either personally delivered or sent by certified mail, return receipt requested, or by a nationally recognized overnight courier and shall be effective upon receipt by the party to whom addressed.

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly-executed and delivered in their respective names by their duly-authorized representatives, effective as of the day and year first above written.

**BENEFIT STREET PARTNERS
REALTY OPERATING
PARTNERSHIP, L.P. (Mortgagee)**



By: Micah Goodman
Title: Authorized Signatory

**PARTY CITY
CORPORATION (Tenant)**

By:
Title: Vice President, General Counsel
and Secretary

**NEWPORT CAPITAL PARTNERS,
LLC (Landlord)**

By:
Title: _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly-executed and delivered in their respective names by their duly-authorized representatives, effective as of the day and year first above written.

**BENEFIT STREET PARTNERS REALTY
OPERATING PARTNERSHIP, L.P.**
(Mortgagee)

By: _____

Title: _____

PARTY CITY CORPORATION
(Tenant)

DocuSigned by:
By: Joseph J. Zepf, Esq.
Joseph J. Zepf, Esq.

Title: Vice President, General Counsel and Secretary

TCB – Lincoln Village, LLC
(Landlord)

By: _____

Title: _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY

[Landlord Signature Page –
Factory Card Outlet Subordination, Non-Disturbance and Attornment Agreement]

TCB - LINCOLN VILLAGE, LLC,
a Delaware limited liability company

By: *Ben Andrews*
Name: *Ben Andrews*
Its: *Authorized Representative*

STATE OF ILLINOIS)
) :SS
COUNTY OF COOK)

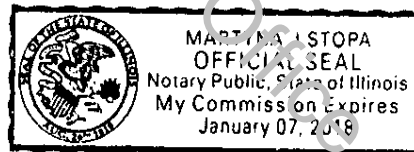
I, *Martyna J. Stopa*, a Notary Public in and for said County, in the State aforesaid, do hereby certify that *Ben Andrews*, the *Authorized Representative* of TCB – LINCOLN VILLAGE, LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument in as such capacity, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said entity, for the uses and purposes therein set forth.

Given under my hand and Notary Seal, this *21* day of June, 2017.

Martyna J. Stopa
Notary Public

My commission expires on: *January 7, 2018*

(Seal)



UNOFFICIAL COPY

MORTGAGEE'S ACKNOWLEDGEMENT

STATE OF New York)

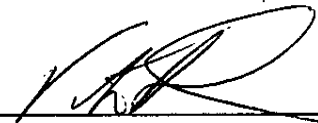
) SS:

COUNTY OF New York)

Before me, a Notary Public in and for said County and State, did personally appear Micah Goodman, who acknowledged himself to be the Authorized Signatory of Benefit Street Partners Realty Operating Partnership, L.P., a Delaware limited partnership and that he did execute the foregoing Subordination, Non-Disturbance and Attornment Agreement on behalf of said limited partnership, being authorized so to do by signing his name, and that said execution is the free and voluntary act and deed of said _____.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 20 day of June, 2017.

Victoria A. Kuhne
Notary Public, State of New York
No. 01KU6328486
Qualified in New York County
Commission Expires August 3, 2019



Notary Public
My Commission expires: _____

TENANT'S ACKNOWLEDGEMENT

STATE OF _____)

) SS:

COUNTY OF _____)

Before me, a Notary Public in and for said County and State, did personally appear Joseph J. Zepf, who acknowledged himself to be the V.P., General Counsel & Secretary of Party City Corporation, a Delaware corporation and that he did execute the foregoing Subordination, Non-Disturbance and Attornment Agreement on behalf of said corporation, being authorized so to do by signing his name, and that said execution is the free and voluntary act and deed of said Party City Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 2017.

Notary Public
My Commission expires: _____

UNOFFICIAL COPY

MORTGAGEE'S ACKNOWLEDGEMENT

STATE OF _____)
) ss:
 COUNTY OF _____)

Before me, a Notary Public in and for said County and State, did personally appear _____, who acknowledged himself to be the _____ of _____, a _____ and that he did execute the foregoing Subordination, Non-Disturbance and Attornment Agreement on behalf of said _____, being authorized so to do by signing his name, and that said execution is the free and voluntary act and deed of said _____.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 2017.


 Notary Public
 My Commission expires: _____

TENANT'S ACKNOWLEDGEMENT

STATE OF NEW JERSEY)
) ss:
 COUNTY OF MORRIS)

Before me, a Notary Public in and for said County and State, did personally appear Joseph J. Zepf, who acknowledged himself to be the V.P., General Counsel & Secretary of Party City Corporation, a Delaware corporation and that he did execute the foregoing Subordination, Non-Disturbance and Attornment Agreement on behalf of said corporation, being authorized so to do by signing his name, and that said execution is the free and voluntary act and deed of said Party City Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 16 day of June, 2017.



 Notary Public
 My Commission expires: 1/30/2019

JOLEEN E. SHUDA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 1/30/2019

UNOFFICIAL COPY

EXHIBIT A SHOPPING CENTER LEGAL DESCRIPTION

THAT PART OF THE NORTH EAST FRACTIONAL 1/4 OF SECTION 2, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WEST LINE OF THE RIGHT OF WAY OF THE SANITARY DISTRICT OF CHICAGO AND THE CENTER LINE OF LINCOLN AVENUE AS FORMERLY LOCATED, THENCE NORTHWESTERLY ALONG THE CENTER LINE OF LINCOLN AVENUE AS FORMERLY LOCATED 1200 FEET; THENCE NORTHEASTERLY ON A LINE AT RIGHT ANGLES TO SAID CENTER LINE OF LINCOLN AVENUE, 168.8 FEET; THENCE EAST 679.5 FEET TO SAID WEST LINE OF THE RIGHT OF WAY OF THE SANITARY DISTRICT OF CHICAGO, THENCE SOUTHERLY ALONG THE WEST LINE OF SAID RIGHT OF WAY 918.73 FEET TO THE POINT OF BEGINNING (EXCEPT THAT PART LYING SOUTHWESTERLY OF A LINE 83 FEET NORTHEASTERLY OF AND PARALLEL TO THE SOUTHERLY OR SOUTHWESTERLY LINE OF LINCOLN AVENUE AS FORMERLY LOCATED) AND EXCEPTING THAT PART OF THE PREMISES IN QUESTION DESCRIBED AS FOLLOWS:

THAT PART OF THE NORTH EAST 1/4 OF SECTION 2, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE CENTER LINE OF LINCOLN AVENUE AND THE CENTER LINE OF KIMBALL AVENUE EXTENDED NORTH, THENCE NORTHWESTERLY 20.90 FEET ALONG THE CENTER LINE OF LINCOLN AVENUE TO A POINT; THENCE NORTHEASTERLY 50 FEET ALONG A LINE FORMING AN ANGLE OF 30 DEGREES WITH THE LAST DESCRIBED COURSE, TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY LINE OF LINCOLN AVENUE, WHICH IS THE POINT OF BEGINNING, BEGINNING AT AFORESAID DESCRIBED POINT, THENCE NORTHEASTERLY 118.80 FEET, ALONG A LINE FORMING AN ANGLE OF 90 DEGREES WITH THE NORTHEASTERLY RIGHT OF WAY OF LINCOLN AVENUE TO A POINT; THENCE EASTERLY 93.56 FEET ALONG A LINE FORMING AN ANGLE OF 49 DEGREES 16 MINUTES TO THE RIGHT WITH A PROLONGATION OF SAID LAST DESCRIBED COURSE TO A POINT; THENCE SOUTHWESTERLY 179.85 FEET ALONG A LINE FORMING AN ANGLE OF 130 DEGREES 44 MINUTES TO THE RIGHT WITH A PROLONGATION OF SAID LAST DESCRIBED COURSE TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY LINE OF LINCOLN AVENUE; THENCE NORTHWESTERLY 70.90 FEET ALONG THE NORTHEASTERLY RIGHT OF WAY LINE OF LINCOLN AVENUE TO THE POINT OF BEGINNING, AS CONDEMNED FOR KIMBALL AVENUE ON PETITION OF THE CITY OF CHICAGO FILED JULY 6, 1933, CASE B - 271453 CIRCUIT COURT OF COOK COUNTY, ILLINOIS ALL IN COOK COUNTY, ILLINOIS.

PINS:

13-02-220-027

13-02-220-028

Address: 6059 - 6201 N. Lincoln Avenue, Chicago, IL 60659