



Doc# 1919113191 Fee #88.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 07/10/2019 04:19 PM PG: 1 OF 13

This document prepared by and after
Recording return to:

NED S. ROBERTSON
ARONBERG GOLDGEHN
330 NORTH WABASH, SUITE 1700
CHICAGO, ILLINOIS 60611

1L1904873 5 of 7

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (this "Agreement") dated as of this 8th day of July, 2019, is made by and among **FIFTH THIRD BANK**, an Ohio banking corporation, successor in interest to Fifth Third Bank, a Michigan banking corporation ("Tenant"), **TCB-LINCOLN VILLAGE, LLC**, a Delaware limited liability company ("Landlord"), and **FIFTH THIRD BANK**, an Ohio banking corporation and its successors and assigns ("Mortgagee").

WHEREAS, Mortgagee has agreed to make a loan to Landlord in the maximum principal amount of \$25,350,000.00, secured by, among other things, a Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Ten's dated July 8, 2019 (herein, as may from time to time be extended, amended, restated or supplemented, the "Mortgage"), covering, among other property, the land (the "Land") described in Exhibit "A" which is attached hereto and incorporated herein by reference, and the improvements thereon ("Improvements") (such Land and Improvements being herein together called the "Property");

WHEREAS, Fifth Third Bank, a Michigan banking corporation, as tenant, and BGP Lincoln Village, an Illinois limited liability company, as landlord, entered into that certain Shopping Center Lease dated **October 3rd, 2002** (herein, as may from time to time be extended, amended, restated or supplemented, the "Lease"), covering a portion of the Property (said portion being herein referred to as the "Premises"); and

WHEREAS, the term "Landlord" as used herein means the present landlord under the Lease or, if the landlord's interest is transferred in any manner, the successor(s) or assign(s) occupying the position of landlord under the Lease at the time in question.

NOW, THEREFORE, in consideration of the mutual agreements herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Subordination. Tenant agrees and covenants, subject to the terms of this Agreement, that the Lease and the rights of Tenant thereunder, all of Tenant's right, title and interest in and to the Premises, are and shall be subject, subordinate and inferior in all respects to (a) the lien of the Mortgage and the rights of Mortgagee thereunder, and all right, title and interest of Mortgagee in the Property, and (b) all other security documents now or hereafter

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securing payment of any indebtedness of the Landlord to Mortgagee which cover or affect all or any portion of the Property (collectively, the "Security Documents"). This Agreement is not intended and shall not be construed to subordinate the Lease to any mortgage, deed of trust or other security document other than those referred to in the immediately preceding sentence, securing the indebtedness owing to Mortgagee. Provided, however, that the foregoing subordination provision shall not be deemed or construed as limiting Tenant's rights under the Lease and/or Landlord's obligations thereunder, including without limitation, the use of insurance proceeds and condemnation awards for eminent domain, and notwithstanding any inconsistent provisions of the Mortgage with respect thereto, such proceeds and awards shall be applied as set forth in the Lease.

2. Non-Disturbance. Mortgagee agrees that so long as the Lease is in full force and effect and Tenant is not in default in the payment of rent, additional rent or other payments due under the Lease or in the performance of any of the other terms, covenants or conditions of the Lease on Tenant's part to be performed (beyond the period, if any, specified in the Lease within which Tenant may cure such default),

(a) Tenant's possession of the Premises under the Lease and Tenant's rights under the Lease shall not be disturbed or interfered with by Mortgagee in the exercise of any of its foreclosure rights under the Mortgage or in connection with the conveyance of the Property by deed in lieu of foreclosure, and

(b) Mortgagee will not join Tenant as a party defendant to any action, suit or proceeding which may be instituted by Mortgagee to foreclose or seek other remedies under the Mortgage by reason of a default or event of default under the Mortgage, nor in any other way deprived of its rights under the Lease except in accordance with the terms of the Lease.

3. Attornment.

(a) Tenant covenants and agrees that in the event of the foreclosure of the Mortgage, whether by power of sale or by court action, or upon a transfer of the Property by a deed in lieu of foreclosure (each being referred to herein as the "Transfer Date") (the purchaser at foreclosure or the transferee in such deed in lieu of foreclosure, including Mortgagee if it is such purchaser or transferee, being herein called the "New Owner"), Tenant shall attorn to the New Owner as Tenant's new landlord, and agrees that the Lease shall continue in full force and effect as a direct lease between Tenant and New Owner upon all of the terms, covenants, conditions and agreements set forth in the Lease (including all option terms which have been or are hereafter exercised) and this Agreement; provided, however, that in no event shall the New Owner be:

(i) liable for any act, omission, default, misrepresentation, or breach of warranty, of any previous landlord (including Landlord) or obligations accruing prior to New Owner's actual ownership of the Property, provided nothing herein shall relieve the New Owner of any obligations of landlord pursuant to the Lease;

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(ii) subject to any offset, defense, claim or counterclaim which Tenant might be entitled to assert against any previous landlord (including Landlord) unless the Tenant shall have provided the Mortgagee with (A) notice of the applicable default that gave rise to such offset or defense, and (B) the opportunity to cure the same, all in accordance with the terms of Section 4(b) below;

(iii) bound by any payment of rent, additional rent or other payments, made by Tenant to any previous landlord (including Landlord) more than sixty (60) days preceding the date upon which New Owner gave Tenant notice of New Owner's succeeding to the Landlord's interest under the Lease; or

(iv) liable for any deposit that Tenant may have given to any previous landlord (including Landlord) which has not been transferred to New Owner.

(b) The provisions of this Agreement regarding attornment by Tenant shall be self-operative and effective without the necessity of execution of any new lease or other document on the part of any party hereto or the respective heirs, legal representatives, successors or assigns of any such party. Tenant agrees, however, to execute and deliver upon the request of New Owner, any reasonable instrument or certificate which in the reasonable judgment of New Owner may be necessary or appropriate to evidence such attornment, including a new lease of the Premises on the same terms and conditions as set forth in the Lease (including all option terms available to the Tenant under the Lease) for the unexpired term of the Lease.

(c) Notwithstanding the foregoing, nothing in this Section 3 shall be deemed to exclude or absolve New Owner from responsibility for repairs, replacements, and maintenance to the Premises required of Landlord under the Lease from and after the date New Owner succeeds to the rights of Landlord under the Lease, whether or not the need for such repairs, replacements or maintenance accrued before or after such date.

4. Acknowledgment and Agreement by Tenant. Tenant acknowledges and agrees as follows:

(a) Tenant will not amend, alter or waive any provision of, or consent to the amendment, alteration or waiver of any provision of the Lease without the prior written consent of Mortgagee, unless such amendment is permitted pursuant to the Security Documents. Tenant shall not prepay any rents or other sums due under the lease for more than one (1) month in advance of the due date therefor. Tenant acknowledges that Mortgagee will rely upon this instrument in connection with the financing being made by Mortgagee and secured, in part, by the Mortgage.

(b) From and after the date hereof, in the event of a default by Landlord which would give Tenant the right, either immediately or after the lapse of time, to terminate the Lease or to claim a partial or total eviction, Tenant shall notify Mortgagee in writing of the occurrence of any default by Landlord and Mortgagee shall have the same rights and same time period as Landlord to cure such defaults as provided under the Lease.

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(c) In the event that Mortgagee notifies Tenant of a default under the Mortgage or Security Documents and demands that Tenant pay its rent and all other sums due under the Lease directly to Mortgagee, Tenant shall honor such demand and pay the full amount of its rent and all other sums due under the Lease directly to Mortgagee, without offset, or as otherwise required pursuant to such notice beginning with the payment next due after such notice of default.

(d) Tenant has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Premises or the Property, or any portion thereof or any interest therein.

(e) Mortgagee and any New Owner shall have no obligation nor incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession provided that to the extent that the breach of any such warranty shall give the Tenant the right to terminate the Lease pursuant to the terms of the Lease, Tenant shall retain such right to terminate pursuant to the terms of the Lease.

(f) In the event that Mortgagee or any New Owner shall acquire title to the Premises or the Property, Mortgagee or such New Owner shall have no obligation, nor incur any liability, beyond Mortgagee's or New Owner's interest in the Property or the Premises (which shall include but not be limited to all rent, all insurance proceeds, all condemnation proceeds and all refinancing proceeds), and Tenant shall look exclusively to such interest of Mortgagee or New Owner for the payment and discharge of any obligations imposed upon Mortgagee or New Owner hereunder or under the Lease or for recovery of any judgment from Mortgagee, or New Owner, provided that Mortgagee or New Owner, as applicable, maintain insurance in the amount and on the same terms as required of Landlord for the term of the Lease. This limitation of Mortgagee liability and New Owner liability shall not apply to indemnity obligations of Landlord or limit in any way insurance available to be paid to Tenant.

5. Acknowledgment and Agreement by Landlord. Landlord, as landlord under the Lease and grantor under the Mortgage, acknowledges and agrees for itself and its heirs, representatives, successors and assigns, that: (a) this Agreement does not constitute a waiver by Mortgagee of any of its rights under the Mortgage or any of the other Security Documents, or in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Mortgage and the other Security Documents; (b) the provisions of the Lease, the Mortgage and the other Security Documents remain in full force and effect and must be complied with by Landlord; and (c) Tenant is hereby authorized to pay its rent and all other sums due under the Lease directly to Mortgagee upon receipt of a notice as set forth in paragraph 4(c) above from Mortgagee. Landlord hereby releases and discharges Tenant of and from any liability to Landlord resulting from Tenant's payment to Mortgagee in accordance with this Agreement. Landlord represents and warrants to Mortgagee that a true and complete copy of the Lease has been delivered by Landlord to Mortgagee.

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6. Lease Status. Landlord represents and warrants to Mortgagee that the Lease is bona fide and contains all of the agreements of the parties thereto with respect to the letting of the Premises and that all of the agreements and provisions therein contained are in full force and effect.

7. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder shall be in writing and shall be deemed sufficiently given or furnished if delivered by personal delivery, by expedited delivery service with proof of delivery, or by registered or certified United States mail, postage prepaid, at the addresses specified at the end of this Agreement (unless changed by similar notice in writing given by the particular party whose address is to be changed). Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt by the parties hereto other than the particular party whose address is to be changed. This Paragraph 7 shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Agreement or in the Lease or in any document evidencing, securing or pertaining to the loan secured by the Mortgage or to require giving of notice or demand to or upon any person in any situation or for any reason.

8. Miscellaneous.

(a) This Agreement supersedes any inconsistent provision of the Lease.

(b) Nothing contained in this Agreement shall be construed to derogate from or in any way impair, or affect the lien, security interest or provisions of the Mortgage or the other Security Documents.

(c) This Agreement shall inure to the benefit of the parties hereto, their respective successors and permitted assigns, and any New Owner, and its heirs, personal representatives, successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of Mortgagee, all obligations and liabilities of the assigning Mortgagee under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Mortgagee's interest is assigned or transferred.

(d) THIS AGREEMENT AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS AND APPLICABLE UNITED STATES FEDERAL LAW EXCEPT ONLY TO THE EXTENT, IF ANY, THAT THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED NECESSARILY CONTROL.

(e) The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" as used in this Agreement refer to this entire Agreement and not to any particular section or provision.

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(f) This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

(g) If any provision of the Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not apply to or affect any other provision hereof, but this Agreement shall be construed as if such invalidity, illegality, or unenforceability did not exist.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and sealed as of the date first above written.

ADDRESS OF MORTGAGEE:

363 West Ontario Street
Chicago, IL 60657
Attention: Stephen Gottesman

MORTGAGEE:

FIFTH THIRD BANK, an Ohio banking corporation

By: [Signature]
Name: Stephen Gottesman
Title: VP

ADDRESS OF TENANT:

38 Fountain Square Plaza
MD10ATA1
Cincinnati, OH 45236
Attn: Enterprise Workplace Services

TENANT:

FIFTH THIRD BANK, an Ohio banking corporation

By: [Signature]
Name: Thomas A. Ross
Title: Vice President

And By: [Signature]
Name: Rebecca Young
Title: Assistant Vice President

ADDRESS OF LANDLORD:

350 N LaSalle
Suite #700
Chicago, IL 60654

LANDLORD:

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

By: [Signature]
Name: _____
Title: _____

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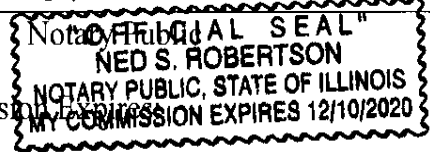
MORTGAGEE:

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Steve Goltjesma, the Vice President of **FIFTH THIRD BANK**, an Ohio banking corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument 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 company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 8th day of July, 2019.

Ned S. Robertson



My Commission Expires

Property of Cook County Clerk's Office

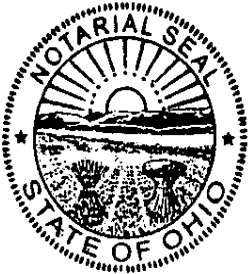
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TENANT:

STATE OF Ohio)
) SS.
COUNTY OF Hamilton)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Thomas A. Ross, the Vice President of **FIFTH THIRD BANK**, an Ohio banking corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument 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 company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 24 day of June, 2019.



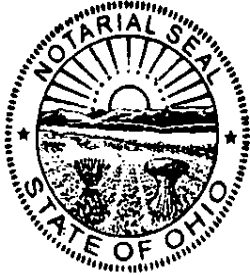
KAYLA WILLIAMSON
Notary Public, State of Ohio
My Commission Expires 12-17-2023

Kyla Weller
Notary Public
My Commission Expires:
12-17-23

STATE OF Ohio)
) SS.
COUNTY OF Hamilton)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Rebecca Young, the ASST. Vice President of **FIFTH THIRD BANK**, an Ohio banking corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument 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 company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 24 day of JUNE, 2019.



KAYLA WILLIAMSON
Notary Public, State of Ohio
My Commission Expires 12-17-2023

Kyla Weller
Notary Public
My Commission Expires:
12-17-23

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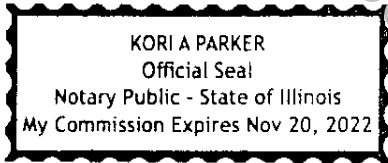
LANDLORD:

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Derrick E. McGinn the Manager 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 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 company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 1st day of July, 2019.

Kori A Parker
Notary Public



My Commission Expires:

November 20, 2022

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EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL 1:

That part of the Northeast 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 Northeast 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 90 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 line 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.

ALSO EXCEPT THAT CONVEYED BY DEED RECORDED AUGUST 3, 2001 AS DOCUMENT NO. 0010707219 TO THE PEOPLE OF THE STATE OF ILLINOIS-DEPARTMENT OF TRANSPORTATION FOR HIGHWAY PURPOSES.

PARCEL 2:

Easement for the benefit of Parcel 1 as created and defined in an Easement Agreement dated July 16, 1984 and recorded January 10, 1985 as Document

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27,402,551 for pedestrian and vehicular ingress and egress over, upon and across the following described parcel:

That part of the Northeast Fractional Quarter of Section 2, Township 40 North, Range 13 East of the Third Principal Meridian, lying Southeasterly of Kimball Avenue (McCormick Boulevard), Northeasterly of the center line of Lincoln Avenue and Westerly of the West line of the Sanitary District of Chicago described as follows: Being a strip of land 12 feet wide as measured at right angles, lying North of the following described lines: beginning at a point on the Westerly line of the Sanitary District of Chicago 918.73 feet Northwesterly of the center line of Lincoln Avenue; thence North 90 degrees West 565.57 feet to a point of termination of said line on the Easterly line of McCormick Boulevard, 230.13 feet Northerly of the center line of Lincoln Avenue, as measured along the Easterly line of McCormick Boulevard; and bounded on the East by the West line of the Sanitary District of Chicago and on the West by the Easterly right of way line of McCormick Boulevard, all in Cook County, Illinois.

PARCEL 3:

Leasehold estate as created, limited and defined in the Lease dated August 15, 1985 between the Metropolitan Sanitary District of Greater Chicago and Lincoln Village Associates (which Lease is incidentally disclosed of record by attachment as Exhibit A to the instrument recorded as Document No. 88-177351) as said Lease was amended by that certain sublease and consent instrument executed by said parties and Lincoln Village Investments which was disclosed of record by the Memorandum thereof recorded as Document No. 88-119649. Said Lease has subsequently been further amended by the Assignment and Assumption of Lease and Security Deposit dated June 25, 1996 between Lincoln Village Associates and Lincoln Village Investments Limited Partnership and the Consent to Assignment of Lease between said parties and the Metropolitan Water Reclamation District of Greater Chicago dated as of August 8, 1996 which were collectively recorded November 24, 1999 as Document No. 09-109,863. Said Lease as so amended demises Parcels A, B and C described as follows for a term expiring on July 31, 2010:

PARCEL A:

A parcel of land lying in the East 1/2 of the Northeast 1/4 of Section 2, Township 40 North, Range 13 East of the Third Principal Meridian, more particularly described as follows:

Commencing at the intersection of the East line of the aforesaid Northeast 1/4 and the Northeasterly right-of-way line of Lincoln Avenue; thence North 50 degrees 57 minutes 58 seconds West along the Northeasterly right-of-way line of Lincoln Avenue 462.72 feet to the point of beginning; thence continuing North 50 degrees 57 minutes 58 seconds West along said Northeasterly line 115.00 feet to the Westerly right-of-way line of the North Shore Channel; thence North 9 degrees 08 minutes 31 seconds West, along said Westerly line, 275.00 feet; thence North 80 degrees 51 minutes 29 seconds East, 115.00 feet; thence South 8 degrees 43 minutes 31 seconds East, 275.01 feet; thence South 13 degrees 49 minutes 19 seconds West, 93.07 feet to

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the point of beginning.

PARCEL B:

A parcel of land lying in the East 1/2 of the Northeast 1/4 of Section 2, Township 40 North, Range 13, East of the Third Principal Meridian, more particularly described as follows:

Commencing at the intersection of the East line of the aforesaid Northeast 1/4 and the Northeasterly right-of-way line of Lincoln Avenue; thence North 50 degrees 57 minutes 58 seconds West, along the Northeasterly right-of-way line of Lincoln Avenue, 577.72 feet to the Westerly right-of-way line of the North Shore Channel; thence North 9 degrees 8 minutes 31 seconds West, along said Westerly line, 275.00 feet to the point of beginning; thence continuing North 9 degrees 08 minutes 31 seconds West, 285.00 feet; thence North 80 degrees 51 minutes 29 seconds East, 118.00 feet; thence South 8 degrees 12 minutes 20 seconds East, 285.00 feet; thence South 80 degrees 51 minutes 29 seconds West, 115.00 feet to the point of beginning.

PARCEL C:

A parcel of land lying in the East 1/2 of the Northeast 1/4 of Section 2, Township 40 North, Range 13 East of the Third Principal Meridian, more particularly described as follows:

Commencing at the intersection of the East line of the aforesaid Northeast 1/4 and the Northeasterly right-of-way line of Lincoln Avenue; thence North 50 degrees 57 minutes 58 seconds West, along the Northeasterly right-of-way line of Lincoln Avenue, 577.72 feet to the Westerly right-of-way line of the North Shore Channel; thence North 9 degrees 08 minutes 31 seconds West, along said Westerly line, 560.00 feet to the point of beginning; thence continuing North 9 degrees 08 minutes 31 seconds West, 285.00 feet; thence North 80 degrees 51 minutes 29 seconds East, 145.00 feet; thence South 8 degrees 44 minutes 24 seconds East, 285.01 feet; thence South 80 degrees 51 minutes 29 seconds West, 143.00 feet to the point of beginning.

All of said Parcels A, B and C being in Cook County, Illinois.

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