

# UNOFFICIAL COPY

PREPARED BY AND AFTER RECORDING  
RETURN TO:

Aronberg Goldgehn  
330 N. Wabash Ave.  
Suite 1700  
Chicago, IL 60611  
Attn: Ned S. Robertson

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

PIN(s): 13-02-220-027-0000  
13-02-220-028-0000

14904873 7 of 7



Doc# 1919113193 Fee \$105.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 07/10/2019 04:20 PM PG: 1 OF 10

(For Recorder's Use Only)

Near North National Title  
222 N. LaSalle  
Chicago, IL 60601



## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

BY AND BETWEEN

FIFTH THIRD BANK,

TCB-LINCOLN VILLAGE, LLC

AND

T.J. MAXX OF IL, LLC

DATED MAY 29, 2019

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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN  
T AGREEMENT (this "Agreement") is made and entered into as of May 28, 2019, by and among Fifth Third Bank ("Lender"), TCB-Lincoln Village, LLC ("Landlord") and T.J. Maxx of IL, LLC ("Tenant").

### RECITALS:

**WHEREAS**, Lender is the holder of a Promissory Note which is secured, inter alia, by a Mortgage and Security Agreement (the "Mortgage") and Assignment of Lease and Rents (the "Lease Assignment") covering certain real property more particularly described in the Mortgage known as Lincoln Village Shopping Center located in Chicago, IL and described further in **Exhibit A**, a copy of which is attached hereto (hereinafter referred to as "Property"); and

**WHEREAS**, Landlord and Tenant are the current holders of the interests of landlord and tenant under a Lease dated March 27, 2018 as the same has been amended from time to time (the "Lease"), whereby Landlord demised to Tenant a portion of the Property (the "Demised Premises"). All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Lease.

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

1. **SUBORDINATION.** This Lease shall be and is hereby made subordinate to the lien of (but not the terms and conditions of) the Mortgage and to all increases, renewals, modifications, amendments, consolidations and extensions thereof.

2. **NON-DISTURBANCE.** Provided that Tenant is not in default under the Lease of such a nature as would permit Landlord to terminate the Lease pursuant to default provisions of the Lease, Lender shall not, in the exercise of any right, remedy, or privilege granted by the Mortgage or the Lease Assignment, or otherwise available to Lender at law or in equity:

(i) disturb Tenant's possession, enjoyment, use or occupancy of the Demised Premises and the appurtenant rights thereto under the Lease during the term of the Lease (including any extensions, renewal, or modification thereof); or

(ii) join or name Tenant as a party to any foreclosure or other proceeding instituted by Lender to enforce the terms of the Mortgage or the Lease Assignment against Landlord.

In the event Lender comes into possession of or acquires title to all or any portion of the Property as a result of any enforcement of the Mortgage, or any other means, Tenant shall peaceably and quietly have,

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hold and enjoy the Demised Premises and the rights of Tenant appurtenant thereto for the term of the Lease as the same may be extended, subject to the terms, covenants, conditions, provisions and agreements thereof.

3. ATTORNNMENT. In the event Lender comes into possession of or acquires title to all or any portion of the Property as a result of foreclosure or other enforcement of the Mortgage, or as a result of any other means, Lender agrees to recognize Tenant's possession of the Demised Premises and Tenant agrees to attorn to and accept Lender as landlord under the Lease for the balance then remaining of the term of the Lease, subject to all of the terms and conditions of the Lease.

Upon any attornment under this Paragraph 3, the Lease shall continue in full force and effect as a direct lease between Tenant and Lender and Lender will assume and perform all of Landlord's obligations under the Lease except that Lender shall not be:

(i) liable for any damages for any breach, act or omission of any prior landlord under the Lease except for acts or omissions of a continuing nature which continue after such time as Lender comes into possession of or acquires title to all or any portion of the Property; or

(ii) subject to any offsets, claims or defenses which Tenant might have against any prior landlord including Landlord except to the extent such right of offset or defense is specifically set forth in the Lease, or unless Lender was previously notified of the act or event giving rise to such offset or defense; or

(iii) bound by any rent or additional rent or other payment in lieu of rent which Tenant might have paid to any prior landlord more than 30 days in advance of its due date under the Lease, unless such prepayment is required pursuant to the terms of the Lease; or

(iv) bound by any amendment or modification to the Lease which has the effect of decreasing the rent payable under the Lease, or decreasing the term of the Lease made without Lender's written consent which consent shall not be unreasonably withheld, conditioned or delayed; or

(v) be liable for any security deposit unless actually received by Lender.

4. RENTS. Landlord hereby advises Tenant that the Lease Assignment provides for the direct payment to Lender of all rents and other monies due and to become due to Landlord under the Lease upon the occurrence of certain conditions as set forth in the Lease Assignment without Lender's taking possession of the Demised Premises or otherwise assuming Landlord's position or any of Landlord's obligations under the Lease. After written notice is given to Tenant by Lender in form reasonably acceptable to Tenant, that Landlord has defaulted under the Mortgage and that the rentals under the Lease should be paid to Lender, Tenant shall pay to Lender, or in accordance with the direction of Lender all rentals and other monies due and to become due to the Landlord under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments as directed by Lender and hereby releases and discharges Tenant of, and from any liability to Landlord

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on account of any such payments. Tenant shall have no responsibility to ascertain whether such demand by Lender is permitted under the Mortgage or the Lease Assignment. Furthermore, in connection with the aforesaid, and notwithstanding anything to the contrary contained elsewhere, Landlord, its successor and/or assigns hereby agree to indemnify and hold harmless Tenant against any expenses, claims, losses, or damages incurred by Tenant resulting from or arising out of claims by Landlord, its successors or assigns that such rental payments should not have been, or cannot be, made to Lender or the like.

5. DEFAULT NOTICES TO LENDER. So long as the Mortgage is in force and effect, Tenant agrees not to terminate the Lease by reason of default by Landlord under the Lease without giving prior written notice thereof to Lender and Lender shall have the right (but not the obligation until Lender comes into possession of or acquires title to all or any part of the Property) to cure any of Landlord's defaults under the Lease within the same time period as is available to Landlord for the curing thereof under the Lease after receipt of such notice except Tenant shall have the right to exercise its enumerated termination rights set forth in the Lease without giving Lender notice or the opportunity to cure.

6. NOTICES. All notices and other communications pursuant to the provisions of this Agreement shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by a reputable commercial overnight carrier that provides a receipt, such as Federal Express or Airborne Express, and shall be deemed given when received and addressed as noted below, or to such other address or addresses as shall from time to time be designated by notice by any party to the other as herein provided.

If to Tenant                    c/o The TJX Companies, Inc.  
770 Cochituate Road  
Framingham, MA 01701  
Attn: Vice President - Real Estate

If to Lender:                    Fifth Third bank  
363 West Ontario Street  
Chicago, IL 60657  
Attn: Stephen Gottesman

If to Landlord:                TCB-Lincoln Village, LLC  
c/o Newport Capital Partners  
350 N. LaSalle Street, Suite 700  
Chicago, IL 60654  
Attn: Ryan Schraier

Any party may change the place that notices are to be sent by written notice delivered in accordance with this Agreement.

7. SUCCESSORS AND ASSIGNS. As used in this Agreement, the term "Tenant" shall mean Tenant and any subsequent holder or holders of an interest of the lessee under the Lease, and the term "Lender" shall mean Lender or any other subsequent holder or holders of the Mortgage or any party becoming a mortgagee in possession or acquiring title to the Property or the Demised Premises by purchase at a foreclosure sale, deed in lieu of foreclosure, other enforcement of the Mortgage,

Chicago, IL  
TJ Maxx #1461

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by deed of the Lender, or otherwise. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. The terms Lease, Mortgage and Lease Assignment shall include any and all amendments, modifications, replacements, substitutions, extensions, renewals and supplements thereto. 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 unenforceable shall 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.

8. RECORDATION. Mortgagee agrees to record this agreement promptly upon full execution of the same. Upon recorded satisfaction of the Mortgage, this Agreement shall become null and void and be of no further effect.

This page ends here.

Property of Cook County Clerk's Office

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9. AUTHORITY. The individuals executing this Agreement hereby represent and warrant that they are empowered and duly authorized to so execute this agreement on behalf of the parties they represent.

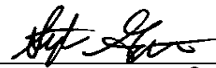
**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

**WITNESS:**

  
\_\_\_\_\_

**LENDER:**

Fifth Third Bank

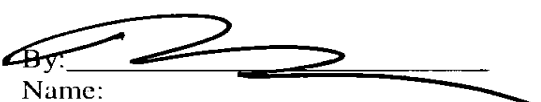
By:   
Name: Stephen Gottesman  
Its: V.P.

**WITNESS:**

  
\_\_\_\_\_

**LANDLORD:**

TCB-Lincoln Village, LLC

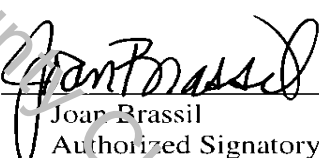
By:   
Name:  
Its:

**WITNESS:**

  
\_\_\_\_\_

**TENANT:**

T.J. Maxx of IL, LLC

By:   
Joan Brassil  
Authorized Signatory

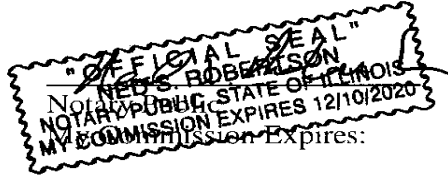
Chicago, IL  
TJ Maxx #1461

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## LENDER'S ACKNOWLEDGEMENT

STATE OF Illinois )  
 ) SS.  
 COUNTY OF Cook )

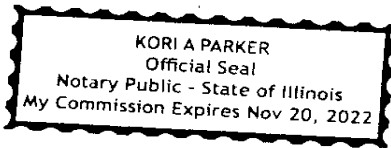
The foregoing instrument was acknowledged before me this 8<sup>th</sup>  
 day of July, 2019 by Mrs. S. Mueck and  
FCB Third Bank on behalf of



## LANDLORD'S ACKNOWLEDGMENT

STATE OF )  
 ) SS.  
 CITY/COUNTY OF )

The foregoing instrument was acknowledged before me this 1st  
 day of July, 2019 by Don A. Pans and  
TCB - Lincoln Village, LLC on behalf of



Kori A. Parker  
 Notary Public  
 My Commission Expires:  
November 20, 2022





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Exhibit A

Lease

## Schedule 1

### Legal Description

**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, 168.80 FEET; THENCE EAST, 679.50 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 83.00 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 EXTENDED 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 A FORESAID 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 THE PROLONGATION OF THE SAID LAST DESCRIBED COURSE TO A POINT; THENCE SOUTHWESTERLY 172.85 FEET ALONG A LINE FORMING AN ANGLE OF 130 DEGREES, 44 MINUTES TO THE RIGHT WITH THE 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 AND ALSO EXCEPT THAT PART CONVEYED BY DEED RECORDED AUGUST 3, 2001 AS DOCUMENT NUMBER 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

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EASEMENT AGREEMENT DATED JULY 16, 1984 AND RECORDED JANUARY 10, 1985 AS DOCUMENT 27402551 FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS OVER, UPON AND ACROSS THE FOLLOWING DESCRIBED PARCEL:

THAT PART OF THE NORTHEAST FRACTIONAL 1/4 OF SECTION 2, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTHEASTERLY OF KIMBALL AVENUE (MCCORMICK BOULEVARD), NORTHEASTERLY OF THE CENTERLINE 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, 585.57 FEET TO A POINT OF TERMINATION OF THE 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.

Property Address: 6059-6261 N. Lincoln Avenue, Chicago, Illinois 60659

PINS: 13-02-220-027-0000 and 13-02-220-028-0000

## REAL ESTATE TRANSFER TAX

27-Jun-2017



COUNTY:	14,450.00
ILLINOIS:	28,900.00
TOTAL:	43,350.00

13-02-220-028-0000 | 20170601676995 | 1-575-577-028

## REAL ESTATE TRANSFER TAX

27-Jun-2017



CHICAGO:	216,750.00
CTA:	86,700.00
TOTAL:	303,450.00

13-02-220-028-0000 | 20170601676995 | 0-501-835-200

Total does not include any applicable penalty or interest due