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Doc#: 2210316104 Fee: \$98.00

Karen A. Yarbrough

Cook County Clerk

Date: 04/13/2022 12:11 PM Pg: 1 of 11

Prepared by and After
Recording Return to:

CLARK HILL PLC
130 East Randolph Street, Suite 3900
Chicago, IL 60601
Attn: Chad M Poznansky, Esq.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement"), made this 4th day of April, 2022, by and among, **LAKESIDE BANK**, an Illinois state chartered bank ("Mortgagee"), **FIVE BELOW, INC.**, a Pennsylvania corporation ("Tenant"), and **KENNEDY PLAZA BK, L.L.C.**, an Illinois limited liability company, and **KENNEDY PLAZA RL, L.L.C.**, an Illinois limited liability company (collectively, "Landlord").

W I T N E S S E T H :

WHEREAS, by that certain Lease Agreement dated February 28, 2011, as amended by that certain Letter Agreement dated March 25, 2011, that certain First Amendment of Lease dated February 6, 2017, that certain Second Amendment of Lease dated April 1, 2020, and that certain Third Amendment of Lease dated as of March 31, 2021 (as amended, the "Lease"), Landlord has leased to Tenant, and Tenant has leased from Landlord, certain real estate and improvements (the "Premises") located on a portion of the real estate located in the shopping center commonly known as Kennedy Plaza Shopping Center (the "Property"), which Property is further described in **Exhibit "A"** attached hereto and made a part hereof; and

WHEREAS, Mortgagee is the holder of a Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated January 31, 2022, in the original principal amount of Twenty Million Five Hundred Thousand and 00/100 Dollars (\$20,500,000.00), which Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing has been recorded among the Land Records of the Cook County Clerk's Office, Chicago, Illinois as Document No. 2203357001 (hereinafter, such Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing, as the same may from time to time be modified, supplemented, extended, and/or renewed is referred to as the "Mortgage"); and

WHEREAS, Mortgagee desires that the Lease be subordinate to the lien of the Mortgage (but not to any financing secured by the Property and provided by any lender or person other than Mortgagee) and that Tenant agrees to attorn to Mortgagee or the Purchaser (as defined in Section 3 below) at foreclosure of the Mortgage in the event of such foreclosure, or by acceptance of a deed in lieu of foreclosure, or by any other manner, and Mortgagee agrees to recognize Tenant's rights under the Lease to the extent hereinafter indicated.

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NOW, THEREFORE, for and in consideration of mutual covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party hereto, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The Lease is subject to the lien of the Mortgage and to all renewals, modifications, consolidations and extensions thereof to the full extent of the principal sum secured thereby.

2. Neither the Lease, nor Tenant's use, possession or enjoyment of the Premises, or any other right, option or privilege of Tenant under the Lease, shall be interfered with by Mortgagee or any Purchaser, nor shall the leasehold estate granted by the Lease be affected by Mortgagee or any Purchaser in any other manner, in any foreclosure or any action or proceeding instituted under or in connection with the Mortgage or in case Mortgagee or any Purchaser takes title to and possession of the Property pursuant to any provision of the Mortgage or by any other manner.

3. If the interests of Landlord in the Property shall be transferred to and owned by Mortgagee or by any other person who acquires title to the Property at a foreclosure sale by reason of foreclosure or other proceedings brought by Mortgagee, or by acceptance of a deed in lieu of foreclosure, or by any other manner (a "Purchaser"), Tenant shall be bound to Mortgagee or to such Purchaser under all of the terms, covenants and conditions of the Lease for the balance of the Term thereof remaining and any extensions or renewals thereof which may be effected in accordance with the Lease, with the same force and effect as if Mortgagee or such Purchaser were the original Landlord under the Lease, and Tenant does hereby attorn to Mortgagee or any Purchaser as its landlord, such attornment to be effective upon notice and without the execution of any further instruments on the part of any of the parties hereto immediately upon Mortgagee's or such Purchaser's succeeding to the interest of Landlord in the Property.

4. If Mortgagee or any Purchaser shall succeed to the interest of Landlord under the Lease, Mortgagee and such Purchaser shall not be: (a) liable for any act or omission of any prior landlord (including Landlord) under the Lease, except for (i) any right Tenant may have for Rent offset or rent credit pursuant to specific provisions of the Lease, and (ii) any act or omission that is of a continuing nature and has not been cured or remedied, provided that Tenant shall have provided Mortgagee with (A) notice of the Landlord's Default that gave rise to such offset or defense to the extent required by Section 5 below and (B) if such notice is required, the opportunity to cure the same, all in accordance with the terms of Section 5 below; (b) bound by any Rent which Tenant might have paid more than thirty (30) days in advance of the due date for such Rent to any prior landlord (including Landlord) under the Lease; (c) responsible for any deposit or security which was delivered to Landlord but was not subsequently delivered to Mortgagee or such Purchaser; or (d) personally liable or obligated to perform any such term, covenant or provision of the Lease, to the extent that recovery for any applicable default is not recoverable from the income and proceeds from the Lease and/or the equity interest of the Mortgagee or any Purchaser in and to the Property.

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5. Tenant shall provide a duplicate copy of any notice of a default that would entitle Tenant to terminate the Lease, which Tenant is required to provide to Landlord under the Lease, to Mortgagee. Mortgagee shall have the right, but not the obligation, to cure the specified default within the time periods allowed Landlord under the Lease, calculated from Mortgagee's receipt of Tenant's notice. If Mortgagee decides to exercise such rights to cure, Mortgagee shall notify Tenant within thirty (30) days after service of Tenant's notice. If Mortgagee elects not to cure the default, or does not notify Tenant of its election to cure within the thirty (30) day period referenced above, or does not cure within the required period, Tenant may without liability to Mortgagee exercise Tenant's rights under the Lease relating to Landlord's default. Nothing contained in this Section 5 shall require Mortgagee to commence or continue any foreclosure or other proceedings. Possession by a receiver, or other similar official appointed at the insistence, or with the consent, of Mortgagee shall constitute possession by Mortgagee for all purposes under this Section 5. Notwithstanding the foregoing, in the event either Mortgagee or Landlord does not cure or commence curing such default within the time provided in this Section 5 and the nature of the default threatens Tenant's ability to conduct its daily business or threatens to materially or adversely damage Tenant's property located on the Premises, then Tenant shall be permitted to exercise its rights under the Lease.

6. If Mortgagee shall, pursuant to Mortgagee's rights under the Mortgage, elect to require Tenant to pay to Mortgagee the Rent and other charges payable by Tenant under the Lease, Tenant shall do so upon receipt of notice from Mortgagee. Landlord irrevocably authorizes and directs Tenant, upon receipt from Mortgagee of written notice to do so, to pay all Rents and other monies payable by Tenant under the Lease to or at the direction of Mortgagee, and Landlord irrevocably releases Tenant of any liability to Landlord for all payments so made, and agrees to defend, indemnify and hold Tenant harmless from and against any and all claims, demands, losses or liabilities asserted by, through or under Landlord for any and all payments so made. Such payments shall continue until Mortgagee directs Tenant otherwise in writing. Neither Mortgagee's receipt of such payments, nor Mortgagee's exercising any other right, remedy, privilege, power or immunity granted by the Mortgage, will operate to impose any liability upon Mortgagee for performance of any obligation of Landlord under the Lease unless and until Mortgagee elects otherwise in writing or unless Mortgagee holds title to and/or takes possession of the Property.

7. Any notices, communications, and waivers required under this Agreement shall be in writing and shall be deemed to be properly served if delivered in person to the intended recipient or sent by registered or certified mail or by reputable overnight express carrier or courier service to the intended recipient at the address for the intended recipient set forth hereinbelow, or to any subsequent address as a party hereto may designate from time to time by notice to each other party hereto given in writing as set forth in this Section 7. All such notices shall be deemed given upon receipt or upon refusal to accept same, as evidenced by the return receipt or the records of the messenger or overnight courier service.

Mortgagee: LAKESIDE BANK
 1350 S. Michigan Avenue
 Chicago, IL 60605
 Attention: Justin P. Newhuis, Senior Vice
 President

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With a copy to: CLARK HILL PLC
130 East Randolph Street, Suite 3900
Chicago, IL 60601
Attention: Chad M. Poznansky, Esq.

Tenant: Five Below, Inc. (#00714)
701 Market Street, Suite 555
Philadelphia, Pennsylvania 19106
Attention: Lease Audit & Analysis Department

With a copy to: Five Below, Inc. (#00714)
701 Market Street, Suite 555
Philadelphia, Pennsylvania 19106
Attention: General Counsel

With a copy to: LegalNotices@fivebelow.com
Subject line: Legal Notice to Five Below
(#00714/Chicago, IL (Kennedy Plaza Shopping
Center))

Landlord: KENNEDY PLAZA BK, L.L.C.
c/o CFZ Management LLC
225 W Hubbard Street, Suite 501
Chicago, IL 60654
Attention: Legal Department

With a copy to: Mason Wenk & Berman LLC
630 Dundee Road, Suite 220
Northbrook, IL 60062
Attention: Adam E. Berman

8. This Agreement shall become effective on, and only on, its execution and delivery by each party hereto.

9. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns, including, without limitation, any Purchaser of the Real Estate.

10. The parties each represent and warrant to the other that this Agreement has been duly authorized, executed, and delivered by and on behalf of each party hereto and constitutes the valid and binding agreement of each party in accordance with the terms hereof.

11. This Agreement shall be governed by and construed in accordance with the laws of the jurisdiction in which the Property is located.

12. This Agreement represents the complete understanding among the parties hereto as to the subject matter hereof, and supersedes all prior negotiations, representations,

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guaranties, warranties, promises, statements, or agreements, either written or oral, among them as to the same.

13. This Agreement may be amended by, and only by, an instrument executed and delivered by each party hereto.

14. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Purchaser, including upon any attornment pursuant to this Agreement.

15. All references made: (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders; (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well; and (c) to any Section, subsection, paragraph or subparagraph shall, unless therein expressly indicated to the contrary, be deemed to have been made to such Section, subsection, paragraph or subparagraph of this Agreement.

16. No determination by any court, governmental body or otherwise that any provision of this Agreement or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

17. This Agreement may be executed in any number of counterparts and each of such counterparts shall, for all purposes, be deemed to be an original, and when each of the parties hereto has executed one or more of such counterparts, this Agreement shall be deemed fully executed and effective in accordance with its terms. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures. This Agreement, any other document necessary for the consummation of the transaction contemplated by this Agreement may be accepted, executed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act, Title 15, United States Code, Sections 7001 *et seq.*, the Uniform Electronic Transaction Act and any applicable state law. Any document accepted, executed or agreed to in conformity with such laws will be binding on each party as if it were physically executed.

NOTE: THIS AGREEMENT BY TENANT SHALL NOT BE EFFECTIVE UNLESS AND UNTIL ANY PRIOR MORTGAGES OR SIMILAR SECURITY AGREEMENTS ON THE PREMISES OR PROPERTY HAVE BEEN SATISFIED OR ASSIGNED TO LENDER SO THAT TENANT'S PRIOR AGREEMENTS TO ATTORN TO SAID MORTGAGES OR SIMILAR SECURITY AGREEMENTS AND/OR TO SUBORDINATE ITS LEASE TO SAID MORTGAGES OR SIMILAR SECURITY AGREEMENTS SHALL HAVE BEEN EXTINGUISHED.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers, on the day and year first above written.

MORTGAGEE:

LAKESIDE BANK,
an Illinois state chartered bank

By: [Signature]
Name: Justin P. Newhuis
Title: Senior Vice President

Property of Cook County Clerk's Office

MORTGAGEE ACKNOWLEDGMENT:

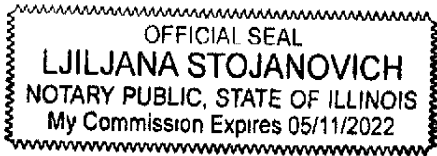
STATE OF ILLINOIS :
: ss
COUNTY OF COOK :

On this 4th day of APRIL, 2022, before me, the undersigned Notary Public, personally appeared Justin P. Newhuis, known to me to be the Senior Vice President of LAKESIDE BANK, an Illinois chartered state bank, who executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of such bank, for the uses and purposes mentioned herein, and on oath stated that s/he is authorized to execute the said instrument on behalf of such corporation.

WITNESS MY HAND and official seal affixed hereto the day and year in this certificate first above mentioned.

[Signature]

Notary Public
My commission expires: 05/11/22



[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

TENANT:
FIVE BELOW, INC., a Pennsylvania corporation

By: *Justin Lilien*
Name: Justin Lilien
Title: Manager, Compliance

TENANT ACKNOWLEDGMENT:

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF PHILADELPHIA :

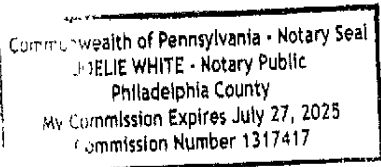
On this 17th day of March, 2022, before me, the undersigned Notary Public, personally appeared:

Justin Lilien
Manager, Compliance

of FIVE BELOW, INC., a Pennsylvania corporation, who executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of such corporation, for the uses and purposes mentioned herein, and on oath stated that s/he is authorized to execute the said instrument on behalf of such corporation.

WITNESS MY HAND and official seal affixed hereto the day and year in this certificate first above mentioned.

Judith
Notary Public
My commission expires: 7/27/25



[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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KENNEDY PLAZA RL, L.L.C.,
an Illinois limited liability company

By: NRG Centrum Manager, Inc.,
an Illinois corporation,
its Manager

By: Barbara McLinden
Name: Barbara McLinden
Title: Sole Officer and Director

LANDLORD ACKNOWLEDGMENT:

[STATE OF ILLINOIS :
: ss
COUNTY OF COOK :

On this 21 day of MARCH, 2022, before me, the undersigned Notary Public, personally appeared BARBARA MCLINDEN, known to me to be the Sole Officer and Director of NRG Centrum Manager, Inc., an Illinois corporation, Sole Manager of KENNEDY PLAZA RL, L.L.C., an Illinois limited liability company, who executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of such corporation on behalf of the company, for the uses and purposes mentioned herein, and on oath stated that she is authorized to execute the said instrument on behalf of such corporation.

WITNESS MY HAND and official seal affixed hereto the day and year in this certificate first above mentioned.

Stephanie Bengtsson
Notary Public
My commission expires: 1.5.2026



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EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

PARCEL 1:

THAT PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF WEST BELMONT AVENUE (BEING A LINE 33 FEET NORTH OF AND MEASURED AT RIGHT ANGLES, AND PARALLEL WITH THE SOUTH LINE OF SECTION 23, AFORESAID), AND THE EAST LINE OF NORTH KIMBALL AVENUE (BEING A LINE 43 FEET EAST OF AND MEASURED AT RIGHT ANGLES AND PARALLEL WITH THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 23); THENCE NORTH ALONG SAID EAST LINE OF NORTH KIMBALL AVENUE, 351 FEET; THENCE NORTHEASTERLY 56.98 FEET TO A POINT IN A LINE 386.4 FEET NORTH OF AND PARALLEL WITH SAID NORTH LINE OF WEST BELMONT AVENUE, 44.78 FEET EAST OF SAID EAST LINE OF NORTH KIMBALL AVENUE; THENCE EAST ALONG SAID PARALLEL LINE, 162.03 FEET TO A POINT 206.81 FEET EAST OF THE EAST LINE OF NORTH KIMBALL AVENUE; THENCE SOUTHEASTERLY 96.55 FEET TO A POINT IN A LINE 360.67 FEET NORTH OF AND PARALLEL WITH SAID NORTH LINE OF WEST BELMONT AVENUE; THENCE EAST ALONG SAID PARALLEL LINE 75 FEET TO A POINT IN A LINE 374.76 FEET EAST OF AND PARALLEL WITH THE EAST LINE OF NORTH KIMBALL AVENUE, AFORESAID; THENCE SOUTHEASTERLY 122.59 FEET ALONG A LINE DRAWN TO A POINT IN A LINE 485.02 FEET EAST OF AND PARALLEL WITH THE SAID EAST LINE OF NORTH KIMBALL AVENUE, 307.50 FEET NORTH OF THE NORTH LINE OF WEST BELMONT AVENUE; THENCE CONTINUE SOUTHEASTERLY 111.44 FEET ALONG A LINE DRAWN TO A POINT IN A LINE, 585.02 FEET EAST OF AND PARALLEL WITH THE EAST LINE OF NORTH KIMBALL AVENUE, 258.68 FEET NORTH OF SAID NORTH LINE OF WEST BELMONT AVENUE; THENCE CONTINUE SOUTHEASTERLY 41.90 FEET TO A POINT IN A LINE 616.99 FEET EAST OF AND PARALLEL WITH THE EAST LINE OF NORTH KIMBALL AVENUE, 231.71 FEET NORTH OF SAID NORTH LINE OF WEST BELMONT AVENUE; THENCE SOUTH PERPENDICULAR TO THE NORTH LINE OF WEST BELMONT AVENUE, A DISTANCE OF 94.16 FEET; THENCE SOUTHWESTERLY ON AN ANGLE, 30 DEGREES, 00 MINUTES, 00 SECONDS, MEASURED FROM SOUTH TO WEST, A DISTANCE OF 48.00 FEET; THENCE SOUTH PERPENDICULAR TO THE NORTH LINE OF WEST BELMONT AVENUE, A DISTANCE OF 96.00 FEET TO THE NORTH LINE OF WEST BELMONT AVENUE; THENCE WEST ALONG THE SAID NORTH LINE, A DISTANCE OF 592.10 FEET TO THE POINT OF BEGINNING (EXCEPT THEREFROM THAT PART OF THE ABOVE DESCRIBED TRACT OF LAND DEDICATED FOR PUBLIC STREET BY PLAT OF DEDICATION RECORDED MAY 12, 1982 AS DOCUMENT 26227331, IN COOK COUNTY, ILLINOIS.

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PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THE DECLARATION OF RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED APRIL 13, 2007 AS DOCUMENT 0710342139 FOR EASEMENTS FOR INGRESS AND EGRESS, UTILITIES, TEMPORARY CONSTRUCTION, PARKING AND REASONABLE USE OVER AND UPON THE COMMON AREAS ON THE PROPERTY LYING EAST OF AND ADJOINING LAND MORE PARTICULARLY DESCRIBED AS FOLLOWS: THAT PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 40 NORTH, RANGE 13, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE EAST LINE OF KIMBALL AVENUE AND THE NORTH LINE OF BELMONT AVENUE, THENCE EAST ALONG SAID NORTH LINE 592.10 FEET TO THE POINT OF BEGINNING, THENCE NORTH AT RIGHT ANGLES 96 FEET, THENCE NORTHEASTERLY AT AN ANGLE OF 30 DEGREES 00 MINUTES 00 SECONDS, MEASURED FROM NORTH TO EAST, 48 FEET, THENCE NORTH PERPENDICULAR TO THE NORTH LINE OF BELMONT AVENUE 94.16 FEET TO THE SOUTHERLY LINE OF THE NORTHWEST EXPRESSWAY, THENCE SOUTHEASTERLY ALONG SAID SOUTHERLY LINE TO A POINT 765.97 FEET EAST OF KIMBALL AVENUE AND 106.05 FEET NORTH OF THE NORTH LINE OF BELMONT AVENUE, THENCE SOUTH PARALLEL WITH SAID EAST LINE 36.05 FEET, THENCE SOUTHEASTERLY 106.50 FEET TO A POINT ON THE NORTH LINE OF BELMONT AVENUE 845.97 FEET EAST OF THE EAST LINE OF KIMBALL AVENUE, THENCE WEST ALONG SAID NORTH LINE 253.87 FEET TO THE POINT OF BEGINNING.

Address of Property: 3262-3348 W Belmont, Chicago, IL 60618

PIN: 13-23-410-029-0000