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RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 04/14/2015 01:46 PM Pg: 1 of 11

**PREPARED BY AND WHEN
RECORDED MAIL TO:**

Allen C. Balk, Esq.
Meltzer Putrill & Stelle
300 South Wacker Drive
Suite 3500
Chicago, Illinois 60606-6704

**SUBORDINATION, NONDISTURBANCE
AND ATTORNMENT AGREEMENT**

This Agreement is dated as of December 22nd, 2014 and is made by and between MARNAT, INC., an Illinois corporation d/b/a. Lora Malnati's Pizzeria ("Tenant"), CORNERSITE PALOS, LLC, an Illinois limited liability company ("Landlord"), and FIRST MIDWEST BANK, a national banking association ("Lender").

P R E A M B L E:

Pursuant to that certain Lease more fully described on Exhibit B attached hereto (said lease, as amended, and as may from time to time be amended, modified, substituted, extended, renewed or restated shall be referred to as the "Lease"), Landlord, the owner of the property more fully described on Exhibit A attached hereto ("Property") and located at 12801 South Harlem, Palos Heights, Illinois, leased to Tenant the portion of the Property described in the Lease (the "Premises").

Lender is the holder of a certain note (the "Note") and the mortgagee under a mortgage (the "Mortgage") dated February 25 2014, in which Landlord is named as the mortgagor, which Mortgage was recorded on March 4 2014, in the Recorder's Office of Cook County, State of Illinois, as Document No. 1406346135 against the Property. The Note evidences, and the Mortgage secures, a loan from Lender to Landlord (the "Financing"). The Note, Mortgage and all other documents and instruments evidencing, securing and relating to the Financing are referred to as the "Loan Documents."

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. Representations Regarding Lease. Tenant represents and warrants to Lender that (a) except as described on Exhibit B hereto, there have been no changes, modifications, alterations or amendments to the Lease; (b) to Tenant's knowledge, no default or event of default (howsoever such terms are defined) exists under the Lease; (c) to Tenant's knowledge, all parties to the Lease are in full compliance with the terms and provisions of the Lease; (d) all rent and other payments required to be paid by Tenant under the Lease as of the date of this Agreement have been paid in full; and (e) to Tenant's knowledge, Tenant has no offsets or defenses to Tenant's performance under the Lease except as

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expressly set forth in the Lease. Lender acknowledges receipt of a copy of, and hereby approves, the Lease

2. **Attornment.** Subject to the terms of this Agreement, in the event Lender or its successors and assigns (any such party is referred to as the "Purchaser") acquires the interest of Landlord or comes into the possession of or acquires title to the Premises by reason of the foreclosure or enforcement of the Mortgage (including a private power of sale) or the Note or obligations secured thereby or by a conveyance in lieu thereof or other conveyance or as a result of any other means (any or all of the foregoing referred to as a "Foreclosure"), Tenant covenants and agrees to attorn to Lender or such Purchaser as a result of any Foreclosure as Tenant's new landlord and upon such event the Lease shall continue in full force and effect as a direct lease between the Tenant and Lender or such Purchaser, upon all terms, covenants, conditions and agreements set forth in the Lease, and Lender or such Purchaser shall be bound to Tenant under all of the terms, covenants, conditions and agreements set forth in the Lease; provided, however, that in no event shall Lender or such Purchaser be (a) liable for any act or omission of the Landlord, provided the foregoing shall not be deemed to relieve Lender or such Purchaser from the obligation to perform any non-monetary obligation of the Landlord under the Lease which remains unperformed at the time Lender or such Purchaser succeeds to the interest of Landlord under the Lease; (b) subject to any offsets (except those expressly permitted under the Lease) or deficiencies which the Tenant might be entitled to assert against Landlord, provided the foregoing shall not limit Tenant's right to exercise against Lender or such Purchaser any offset right otherwise available to Tenant because of events occurring after the date Lender or such Purchaser succeeds to the interest of Landlord under the Lease; or (c) bound by any payment of rent or additional rent made by the Tenant to Landlord for more than thirty (30) days in advance of the due date under the Lease.

3. **Subordination of Lease.** Tenant covenants and agrees that all of Tenant's right, title and interest in and under the Lease is and shall be subordinated to the lien or interest of Lender in and to the Property, and to all right, title and interest granted to Lender in and to the Property, in the same manner as if the Lease had been executed after execution, delivery and recording of Lender's interest in the Property.

4. **Nondisturbance.** Lender covenants and agrees that in the event that Lender or any other person exercises any of its rights, powers or remedies pursuant to any of the Loan Documents, and/or Lender or any Purchaser who acquires title to the Property pursuant to a Foreclosure, and provided that the Tenant is not then in default under the Lease beyond any applicable notice and cure periods, then (i) Tenant's leasehold and right to quiet enjoyment and possession of the Premises shall not be disturbed by Lender's, Purchaser's or any third parties' exercise of any of such rights, powers or remedies, (ii) the Lease shall not be extinguished by any such exercise or any Foreclosure, and (iii) Tenant will not be joined in any action or proceeding brought pursuant to the Loan Documents.

5. **Rent Payments.** Tenant shall be under no obligation to pay rent to Lender or any Purchaser until Tenant receives written notice from Lender or such Purchaser stating that Lender or such Purchaser is entitled to receive the rents under the Lease directly from Tenant. Landlord, by its execution hereof, hereby (a) authorizes Tenant to (i) accept such direction from Lender or such Purchaser, (ii) pay the rents due under the Lease directly to Lender or such Purchaser, and (iii) conclusively rely upon any written notice Tenant receives from Lender or any Purchaser notwithstanding any claims by Landlord contesting the validity of such notice; and (b) waives all claims against Tenant for any sums so paid at Lender's or such Purchaser's direction. Tenant shall have no duty to inquire into the validity or appropriateness of any such notice from Lender or any Purchaser.

6. **Casualty.** In the event of a casualty at the Premises, Lender shall release its interest in any insurance proceeds applicable to the nonstructural improvements installed by Tenant which are

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insured under Tenant's policies of insurance. Lender acknowledges that it has no interest and waives any interest in Tenant's personal property, signs and equipment installed at or about the Premises, or any insurance proceeds are payable with respect thereto under Tenant's policies.

7. Lender Right to Cure. Tenant shall notify Lender of any default by Landlord under the Lease at the same time such notice is sent to Landlord ("**Default Notice**") and agrees that, notwithstanding any provisions of the Lease to the contrary, before exercising any right to cancel or terminate the Lease arising from Landlord's breach or default under the Lease, Tenant shall provide Lender with such Default Notice and, thereafter, the opportunity to cure such breach or default as provided for below: (i) in the case of any such default that can be cured by the payment of money, until ten (10) days shall have elapsed following the giving of such Default Notice; or (ii) in the case of any other such default, until a reasonable period for remedying such default shall have elapsed following the giving of such Default Notice and following the time when Lender shall have become entitled under the Loan Documents to remedy the same, including such time as may be necessary to acquire possession of the Property if possession is necessary to effect such cure; provided (a) Lender, with reasonable diligence, shall (I) pursue such remedies as are available to it under the Loan Documents so as to be able to remedy the default, and (II) thereafter shall have commenced and continued to remedy such default or cause the same to be remedied, but in no event shall such period of time exceed one hundred twenty (120) days, and (b) the continuation of the Landlord default in question neither unreasonably interferes with Tenant's use of the Leased Premises nor imposes any additional obligations on Tenant. Notwithstanding the foregoing to the contrary, in the event that the cure of such default is an emergency (i. e., any work which must be performed promptly in order to avoid damage to the Leased Premises or to the merchandise or equipment in the Leased Premises, or any threat to human life, or the immediate imposition of a civil or criminal fine or penalty), Tenant shall be permitted to cure such default without being required to provide Landlord or Lender with notice and a cure period. Nothing herein shall obligate Lender to cure any such default, and in the event Lender elects to cure any default of Landlord, it shall notify Tenant of such election within ten (10) days after Tenant provides Mortgage with a Default Notice.

8. Exculpation of Lender or Purchaser. Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement, the Lease shall be deemed to have been automatically amended to provide that the obligations and liability of Lender or Purchaser, as applicable ("**Successor Landlord**"), under the Lease shall never extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in the Property from time to time, including all rents and other income therefrom, insurance and condemnation proceeds, security deposits, escrows, Successor Landlord's interest in the Lease, and the proceeds from any sale, lease or other disposition of the Property (or any portion thereof) by Successor Landlord (collectively, the "**Successor Landlord's Interest**"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord. The limitations on Tenant's right of recovery against the Successor Landlord set forth in this Section shall not limit or impair (a) Tenant's right to seek and obtain other equitable, declaratory, injunctive or other forms of relief against Successor Landlord, or (b) any other remedy or action against Successor Landlord which does not involve the personal liability of Successor Landlord for monetary damages.

9. Notices. All notices or other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed by United States Postal Service certified mail, postage prepaid, return receipt requested or sent by a recognized overnight service, to the respective addresses set forth below, or at such other address as the parties may from time to time, designate to the other in a written

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notice pursuant to this Section 9. Notice shall be deemed given on the third business day after deposit with the United States Postal Service or on the first business day after deposit with a recognized overnight service.

To Landlord:	Comersite Palos, LLC 3190 Doolittle Dr. Northbrook, IL 60062 Attn: David Schwartz	With a copy to:	Dubin Singer PC 123 North Wacker Drive Suite 1600 Chicago, Illinois 60606 Attn: Richard M. Dubin
To Tenant:	Marnat, Inc. 3685 Woodhead Drive Northbrook, IL 60022 Attention: Mark Agnew	With a copy to:	Marnat, Inc. 3685 Woodhead Drive Northbrook, IL 60022 Attention: John Stoneburner
		And with a copy to:	Strategic Leasing Law Group, LLP 120 South Riverside Plaza Suite 2190 Chicago, IL 60606 Attn: Ellen B. Friedler
To Lender:	First Midwest Bank	With a copy to:	Meltzer Putrill & Stelle 300 South Wacker Dr., Ste 3500 Chicago, Illinois 60606 Attn: Allen C. Balk

10. Amendment, Modifications. This Agreement may not be modified other than by agreement in writing signed by Lender and Tenant, or by their respective successors in interest.

11. Binding Agreement. This Agreement shall inure to the benefit of and shall be binding upon Lender and its successors and assigns, and be binding upon Tenant and its successors and assigns.

12. Counterparts. This Agreement may be executed in any number of counterparts, each of which counterparts, once executed and delivered, shall be deemed to be an original and all of which counterparts taken together, shall constitute but one and the same Agreement.

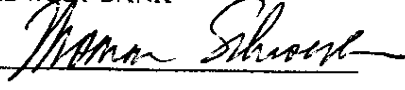
13. Governing Laws. This Agreement shall be deemed to be a contract made under the laws of the State of Illinois and for all purposes shall be construed in accordance with the internal laws, and not the conflict of laws provisions, of the State of Illinois.

**[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]**

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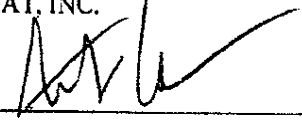
IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement on the day and year first set forth above.

FIRST MIDWEST BANK

By: 

Title: VICE PRESIDENT
THOMAS SCHROEDER

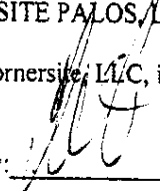
MARNAT, INC.

By: 

Title: VICE-CHAIRMAN

CORNER SITE PALOS, LLC

By: Cornersite, LLC, its manager

By: 

Title: Manager
David Schwartz

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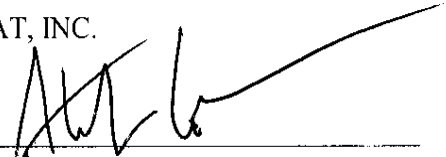
IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement on the day and year first set forth above.

FIRST MIDWEST BANK

By: _____

Title: _____

MARNAT, INC.

By: 

Title: Vice Chairman
STUART COHEN

CORNER SITE PALOS, LLC

By: Cornersite, LLC, its manager

By: _____

Title: _____

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EXHIBIT A LEGAL DESCRIPTION

THE NORTH 150 FEET OF THE WEST 250 FEET OF THE NORTH 300 FEET OF THE SOUTH 647 FEET OF THE WEST 650 FEET OF THE NORTH 32.52 ACRES OF THE WEST HALF OF THE NORTH WEST QUARTER OF SECTION 31, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, EXCEPTING THEREFROM WEST 50 FEET THEREOF, TAKEN AND USED FOR ROAD PURPOSES.

Common Address: 12801 South Harlem Avenue, Palos Heights, Illinois 60463

PIN #24-31-100-036-0000

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EXHIBIT B
LEASE

Store Lease dated February 24, 2014 between Cornersite Palos, LLC, as landlord, and Marnat, Inc., as tenant, for premises located at 12801 South Harlem Avenue, Unit D, Palos Heights, Illinois.

4812-7286-1473, v. 1

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