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Prepared By +

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First Tech Federal Credit Union
PO Box 2100
Beaverton, OR 97075

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Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 08/06/2015 11:44 AM Pg: 1 of 14

WHEN RECORDED MAIL TO:

First Tech Federal Credit Union
PO Box 2100
Beaverton, OR 97075

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (Agreement) is made by and among FIRST ~~TECH~~ FEDERAL CREDIT UNION (the "Lender"), MATTRESS FIRM, INC., a Delaware corporation (the "Tenant"), and KB ENTERPRISES, a California corporation (successor in interest to FREP Melrose Park, LLC) (the "Landlord"), with reference to the following facts:

Landlord is the fee simple owner of those certain lots, tracts or parcels of land located at 1413 W. North Ave., Melrose Park, Illinois, legally described on Exhibit "A" attached hereto (collectively, the "Building").

Lender has made or is about to make a loan to Landlord in the original principal amount of One Million Three Hundred Twenty Thousand Dollars (\$1,320,000.00) (the "Loan").

To secure the Loan, Landlord has encumbered or intends to encumber the Building by entering into a mortgage in favor of Lender (as amended, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the "Mortgage").

Pursuant to that certain Lease Agreement effective as of September 12, 2014 (the "Lease"), Landlord demised to Tenant a retail premises within the Building consisting of approximately 5,040 leasable square feet of space (the "Premises").

Tenant and Lender desire to agree upon the relative priorities of their interests in the Premises and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration, and intending to be legally bound, Tenant, Lender and Landlord hereby agree as follows:

1. **Definitions.** The following terms shall have the following meanings for purposes of this Agreement:

1.1 **Foreclosure Event.** A "Foreclosure Event" means: (a) foreclosure under the Mortgage; (b) any other exercise by Lender of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as

#119119
PHONE 1-468-2691x.2
2618192 1-13937.017

Box 400

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a result of which Successor Landlord becomes owner of the Building; or (c) delivery by Landlord to Lender (or its designee or nominee) of a deed or other conveyance of Landlord's interest in the Building in lieu of any of the foregoing.

1.2 **Former Landlord.** A "**Former Landlord**" means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

1.3 **Offset Right.** An "**Offset Right**" means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant's payment of Rent or performance of Tenant's other obligations under the Lease, arising (whether under the Lease or under applicable law) from Landlord's breach or default under the Lease.

1.4 **Rent.** The "**Rent**" means all sums payable by Tenant under the Lease, whether or not stated to be Minimum Rent or Additional Rent (as such terms are defined by the Lease) or otherwise denominated as Rent.

1.5 **Successor Landlord.** A "**Successor Landlord**" means any party that becomes owner of the Building as the result of a Foreclosure Event.

1.6 **Termination Right.** A "**Termination Right**" means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord's breach or default under the Lease; except that said term expressly excludes any right of Tenant to terminate the Lease which may be exercised by Tenant prior to the Rent Commencement Date.

1.7 **Other Capitalized Terms.** If the initial letter of any other term used in this Agreement is capitalized and no separate definition is contained in this Agreement, then such term shall have the same respective definition as set forth in the Lease.

2. **Subordination.** Subject to the terms of this Agreement, on condition that all of Tenant's rights under the Lease shall not be impaired or disturbed, the Lease shall be, and shall at all times remain, subordinate to the lien imposed by the Mortgage and all advances made thereunder.

3. **Non-disturbance, Recognition and Attornment.**

3.1 **No Exercise of Mortgage Remedies Against Tenant.** So long as no Event of Default of Tenant's obligation to pay Rent exists under the Lease, beyond the expiration of all applicable notice and cure rights, Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease, pursue remedies

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against Tenant or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

3.2 **Non-disturbance and Attornment.** If an Event of Default by Tenant of its obligation to pay Rent is not in existence, then, when Successor Landlord takes title to Building: (a) Successor Landlord shall not terminate or disturb Tenant's possession of the Premises under the Lease, except in strict accordance with the terms of the Lease and this Agreement; (b) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease as affected by this Agreement; and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant. Subject to the terms of the Lease, Tenant agrees to continue making payments of Rents and other amounts owed by Tenant under the Lease to the Landlord and to otherwise recognize the rights of Landlord under the Lease until notified otherwise in writing by Lender (as provided in the Mortgage), and after receipt of such notice the Tenant agrees thereafter to make all such payments to Lender, without any further inquiry on the part of the Tenant. Landlord agrees that Tenant may rely upon such notice and upon Tenant's receipt thereof, Landlord consents to Tenant making such payments directly to Lender, all such amounts being deemed paid in satisfaction of Tenant's corresponding obligations under the Lease.

3.3 **Further Documentation.** The provisions of this Article 3 shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall however, confirm the provisions of this Article 3 in writing upon the written request by either of them.

4. **Protection of Successor Landlord.** Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Landlord shall not be liable for or bound by any of the following matters:

4.1 **Claims Against Former Landlord.** Any Offset Right that Tenant may have against any Former Landlord relating to any event or occurrence before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the date of attornment; provided, however, the foregoing shall not limit or preclude either: (a) Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of: (i) breaches, defaults or events which first occurred before the date of attornment but are of a continuing nature, or (ii) breaches, defaults or events occurring after the date of attornment; or (b) Successor Landlord's obligation to correct any conditions that existed as of the date of attornment and violate Successor Landlord's obligations as landlord under the Lease.

4.2 **Prepayments.** Any payment of Rent that Tenant may have made to Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period after the date of attornment other than, and only to the extent that, the Lease expressly required such a prepayment.

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4.3 **Payment.** Any obligation: (a) to pay Tenant any sum(s) that any Former Landlord owed to Tenant; or (b) to restore improvements following a casualty not required to be insured against under the Lease. This paragraph is not intended to apply to the following Landlord obligations, all of which Successor Landlord shall be liable for or bound to perform: (i) performing the Landlord's Work, including without limitation construction of the Building, improvements to the Premises and expansions thereof as contemplated by the Lease; (ii) making any payment to Tenant that constitutes a construction or other type of allowance under the Lease; (iii) reconstructing or repairing the Building, including the Premises, following fire, casualty or condemnation; (iv) performing day-to-day maintenance, repairs and replacements of the Common Areas; (v) repayment of any security deposit paid by Tenant to Landlord, if any; and (vi) repayment of any overpayment of Real Estate Taxes or Operating Expenses.

4.4 **Modification, Amendment.** Any material modification or material amendment of the Lease made without Lender's written consent (such consent not to be unreasonably withheld, delayed or conditioned) and which consent shall be deemed given by Lender if Lender fails to object to the same within ten (10) Business Days following the date on which Lender receives from Landlord or Tenant a written request for such consent. An amendment or modification shall be deemed to be material, if such modification or amendment would shorten the term of the Lease, materially increase Landlord's obligations under the Lease, or decrease Tenant's monetary obligations under the Lease.

5. **Exculpation of Successor Landlord.** Notwithstanding anything to the contrary in this Agreement or the Lease, upon any assignment pursuant to this Agreement, the Lease shall be deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the Lease shall never extend beyond (i) Successor Landlord's (or its successors' or assigns') interest, if any, in the Building and the rents and revenues deriving therefrom, including without limitation insurance and condemnation proceeds, (ii) Successor Landlord's interest in the Lease, (iii) and the proceeds from any sale, lease or other disposition of the Building (or any portion thereof) by Successor Landlord (collectively, "**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.

Notwithstanding any provision of the Lease, this Agreement or any other agreement between Landlord and Lender to the contrary, Lender, for itself and any Successor Landlord, hereby waives any and all contractual, statutory and common law lien rights which Lender or any Successor Landlord may have, if any, (whether directly or derivatively) relating to Tenant's personal property, including without limitation Tenant's inventory, trade fixtures, furnishings, furniture, equipment, machinery, and other personal property located at the Premises. Landlord agrees to execute such written waiver and release of liens with respect to said items as Tenant may reasonably require.

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6. **Lender's Right to Cure.** Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any Termination Right:

6.1 **Notice to Lender.** Tenant shall provide Lender with written notice of the breach or default by Landlord giving rise to a Termination Right (the "**Default Notice**") and, thereafter, the opportunity to cure such breach or default as provided for below.

6.2 **Lender's Cure Period.** After Lender receives a Default Notice, Lender shall have a period of thirty (30) days in which to cure the breach or default by Landlord. Lender shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Lender agrees or undertakes otherwise in writing. In addition, as to any breach or default by Landlord the cure of which requires possession and control of the Building, provided only that Lender agrees by written notice to Tenant within thirty (30) days after receipt of the Default Notice to exercise reasonable efforts to cure or cause to be cured by a receiver such breach or default within the period permitted by this paragraph, Lender's cure period shall continue for such additional time (the "**Extended Cure Period**") as Lender may reasonably require (but in no event more than thirty (30) additional days) to either: (a) obtain possession and control of the Building and thereafter cure the breach or default with reasonable diligence and continuity; or (b) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default.

7. **Miscellaneous.**

7.1 **Notices.** Any notice or request given or demand made under this Agreement by one party to the other shall be in writing, and shall be given or be served by hand delivered personal service, or by depositing the same with a nationally recognized overnight courier service or by deposit in the United States mail, postpaid, certified mail, and addressed to the party to be notified, with return receipt requested. Notice deposited in the mail in the manner hereinabove described shall be effective upon receipt; however, delivery by overnight courier service shall be deemed effective on the next succeeding business day after it is so deposited. For purposes of notice, the addresses of the parties shall, until changed as herein provided, be as follows:

If to Lender, at:

First Tech Federal Credit Union
PO Box 2100
Beaverton, OR 97075
Attn: Commercial Lending

If to Landlord, at:

KB Enterprises, a California corporation
3271 Judy Lane
Lafayette, CA 94549

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With copy of default notices, if any, to:

Newman & Marcus Law Corp.
31 Capitola Ave., Suite K
Capitola, CA 95010
Attn: Edward W. Newman

If to the Tenant, at:

Mattress Firm, Inc. (Store #119119)
5815 Gulf Freeway
Houston, Texas 77023
Attention: Real Estate Department

7.2 **Successors and Assigns.** This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Lender assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

7.3 **Entire Agreement.** This Agreement constitutes the entire agreement between Lender, Landlord and Tenant regarding the subordination of the Lease to the lien of the Mortgage and the rights and obligations of Tenant, Landlord and Lender as to the subject matter of this Agreement.

7.4 **Interaction with Lease and with Mortgage.** If this Agreement conflicts with the Lease, then this Agreement shall govern as between the Landlord and Tenant and between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of non-disturbance agreements by the holder of, the Mortgage. Lender confirms that Lender has consented to Landlord's entering into the Lease.

7.5 **Interpretation; Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Delaware. Any action brought to enforce or interpret this Agreement shall be brought in the court of appropriate jurisdiction in Delaware. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who itself or through its agent prepared the same. It is agreed and stipulated that all parties hereto have participated equally in the preparation of this Agreement and that legal counsel was consulted by each responsible party before the execution of this Agreement.

7.6 **Amendments.** This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

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7.7 **Due Authorization**. Tenant represents to Lender and Landlord that it has full authority to enter into this Agreement, which has been duly authorized by all necessary actions. Lender represents to Tenant and Landlord that it has full authority to enter into this Agreement, which has been duly authorized by all necessary actions. Landlord represents to Tenant and Lender that it has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

7.8 **Waiver**. The failure of any party hereto in any one or more instances to insist upon the strict performance of any one or more of the agreements, terms, covenants, conditions or obligations of this Agreement, or to exercise any right, remedy or election herein contained, shall not be construed as a waiver or relinquishment of the right to insist upon such performance or exercise in the future, and such right shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

7.9 **Execution**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

LENDER:

Technology

FIRST TECH FEDERAL CREDIT UNION

By: _____

Name: Chee Xiong

Title: Commercial Lending Specialist

LANDLORD:

KB ENTERPRISES, a California corporation

By: _____

Name: _____

Title: _____

TENANT:

MATRRESS FIRM, INC., a Delaware corporation

By: _____

Name: Kindel L. Elam

Title: General Counsel and Secretary

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

LENDER:

FIRST TECH FEDERAL CREDIT UNION

By: _____
Name: _____
Title: _____

LANDLORD:

KB ENTERPRISES, a California corporation

By: Martin A. Brown
Name: MARTIN A. BROWN
Title: PARTNER

TENANT:

MATTRESS FIRM, INC., a Delaware corporation

By: Kindel L. Elam
Name: Kindel L. Elam
Title: General Counsel and Secretary

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

LENDER:

FIRST TECH FEDERAL CREDIT UNION

By: _____
Name: _____
Title: _____

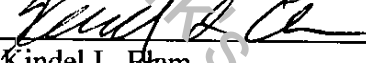
LANDLORD:

KB ENTERPRISES, a California corporation

By: _____
Name: _____
Title: _____

TENANT:

MATRRESS FIRM, INC., a Delaware corporation

By: 
Name: Kindel L. Etam
Title: General Counsel and Secretary

Property of Cook County Clerk's Office

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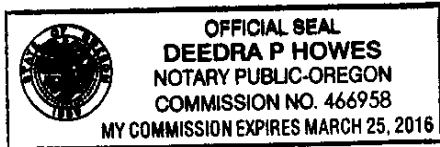
Acknowledgment of Lender

STATE OF Oregon)
COUNTY OF Washington) §

On this 8th day of July, 2015, before me, the undersigned Notary Public in and for said County and State, personally appeared Chee Ziong, as Commercial Lending Specialist of FIRST TECH FEDERAL CREDIT UNION, who executed the foregoing instrument on behalf of said Credit Union for the purposes therein expressed. He/She is either () personally known to me or () has produced _____ as identification, and () did or (X) did not take an oath. In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

Deedra P. Howes
Notary Public Signature
Printed/Typed Name: Deedra P. Howes
My Commission Expires: March 25, 2016
Commission Number: 466958

(SEAL)

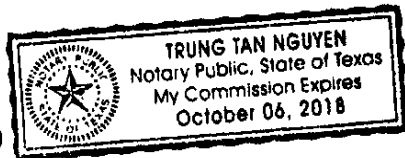


Acknowledgment of Tenant

STATE OF TEXAS)
COUNTY OF HARRIS) §

On this 1st day of July, 2015, before me, the undersigned Notary Public in and for said County and State, personally appeared Kindel L. Elam, as General Counsel and Secretary of MATTRESS FIRM, INC., a Delaware corporation, who executed the foregoing instrument on behalf of said corporation for the purposes therein expressed. He/She is either (X) personally known to me or () has produced _____ as identification, and () did or (X) did not take an oath. In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

(SEAL)



Trung T. Nguyen
Notary Public Signature
Printed/Typed Name: Trung T. Nguyen
My Commission Expires: 10/6/2018
Commission Number: 129983151

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Acknowledgment of Lender

STATE OF _____)
) §
COUNTY OF _____)

On this ___ day of _____, 2015, before me, the undersigned Notary Public in and for said County and State, personally appeared _____, as _____ of **FIRST TECH FEDERAL CREDIT UNION** _____, who executed the foregoing instrument on behalf of said _____ for the purposes therein expressed. He/She is either () personally known to me or () has produced _____ as identification, and () did or () did not take an oath. In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

(SEAL)

Notary Public Signature
Printed/Typed Name: _____
My Commission Expires: _____
Commission Number: _____

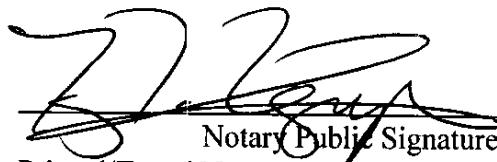
Acknowledgment of Tenant

STATE OF TEXAS)
) §
COUNTY OF HARRIS)

On this 1st day of July, 2015, before me, the undersigned Notary Public in and for said County and State, personally appeared Kindel L. Elam, as General Counsel and Secretary of **MATTRESS FIRM, INC.**, a Delaware corporation, who executed the foregoing instrument on behalf of said corporation for the purposes therein expressed. He/She is either (X) personally known to me or () has produced _____ as identification, and () did or (X) did not take an oath. In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

(SEAL)





Notary Public Signature
Printed/Typed Name: Trung T. Nguyen
My Commission Expires: 10/6/2018
Commission Number: 129983151

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Acknowledgment of Landlord

STATE OF California

COUNTY OF Contra Costa

On this 9 day of July, 2015, before me, the undersigned Notary Public in and for said County and State, personally appeared Martin A Brown as Partner of KB ENTERPRISES, a California corporation, who executed the foregoing instrument on behalf of said company for the purposes therein expressed. He/She is either () personally known to me or (x) has produced CA Drivers as identification, and (x) did or () did not take an oath. In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

Sean Tedlock
Notary Public Signature

(SEAL)

Printed/Typed Name: Sean Patrick Tedlock
My Commission Expires: 04-19-2016
Commission Number: 1975468



Notary Public of Cook County Clerk's Office

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Exhibit "A" to Non-Disturbance Agreement

(Legal Description of Premises)

THE EAST 100 FEET OF THE WEST 2 ACRES OF THE SOUTH 33 FEET OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPTING THERE FROM THAT PART LYING SOUTH OF A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WEST LINE OF SAID WEST 2 ACRES OF THE EAST 4 ACRES OF THE SOUTH 333 FEET, SAID POINT BEING 104.22 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 34 MEASURED ALONG SAID WEST LINE; THEN EAST TO A POINT IN THE EAST LINE OF THE SAID WEST 2 ACRES OF THE EAST 4 ACRES, SAID POINT BEING 104.36 FEET NORTH OF THE AFOREMENTIONED SOUTH LINE OF SAID SECTION 34 MEASURED ALONG SAID EAST LINE LYING NORTH OF THE SOUTH 33 FEET OF THE SAID WEST 2 ACRES OF THE EAST 4 ACRES OF THE SOUTH 333 FEET OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 34 AFORESAID,) IN COOK COUNTY, ILLINOIS

Property Address: 1413 W. North Ave., Melrose Park, Illinois 60160

PIN: 12-34-404-018-0000