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RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 07/27/2016 09:51 AM Pg: 1 of 13

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

Glen R. Cornblath, Esq.  
Strategic Leasing Law Group, LLP  
120 South Riverside Plaza  
Suite 2190  
Chicago, Illinois 60606

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

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (this "Agreement") dated this 18<sup>th</sup> day of July, 2016, is made by and among **MARNAT, LLC**, an Illinois limited liability company ("Tenant"), **FREP FLOSSMOOR, LLC**, a Delaware limited liability company ("Landlord"), and **BYLINE BANK** ("Mortgagee").

WHEREAS, on or about July 29, 2014, Mortgagee made a loan (the "Loan") to Landlord ("Borrower"), secured by, among other things, a Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents (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, Tenant is the tenant under that certain Store Lease from Landlord dated July 18<sup>th</sup>, 2016 (herein, as may from time to time be extended, amended, restated or supplemented, the "Lease"), covering 3315 E. Vollmer Road, Flossmoor, Illinois 60422, which is 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 property covered by the Lease, are and shall be subject, subordinate and inferior in all respects to (a) 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

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hereafter securing payment of the Loan which cover or affect all or any portion of the Property (collectively, together with the Mortgage, the "Loan 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. Without limiting the generality of the foregoing subordination provision, the Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Property, shall be subject and subordinate to the Mortgagee's right, title and interest in and to such proceeds and awards pursuant to the Loan Documents, provided Lender shall release its interest in any insurance proceeds applicable to the nonstructural improvements installed by Tenant. 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 payable with respect thereto under either Landlord's or Tenant's policies.

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 shall not be disturbed or interfered with by Mortgagee or any other party in the exercise of any of the foreclosure rights or other remedies under the Loan Documents or in connection with the conveyance of the Property through foreclosure or by deed in lieu of foreclosure, and

(b) Neither Mortgagee nor any other party exercising rights under the Loan Documents will join Tenant as a party defendant for any purpose in any proceeding for foreclosure of the Mortgage or exercise of any rights under the Loan Documents, unless such joinder is required by law for Mortgagee or such other party to exercise its rights under the Loan Documents and in such event, neither Mortgagee nor such other party will join Tenant as a party defendant for the purpose of terminating Tenant's interest and estate under 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 and this Agreement, except for provisions which are personal to Landlord and therefore impossible for New Owner to perform; provided, however, as long as the New Owner is

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not an entity that controls, is controlled by, or is under common control with Landlord, 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, except to the extent such act, omission or default is a failure of Landlord to perform a non-monetary obligation under the Lease and such failure is of an ongoing and continuing nature and Tenant shall have provided the Mortgagee with notice of the applicable failure;

(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) for more than one (1) month in advance of the date when due under the Lease;

(iv) bound by any modification or amendment of the Lease that would reduce any economic obligations of Tenant under or shorten the term of the Lease or materially impair Landlord's rights or increase Landlord's obligations under the Lease, or any waiver of any material terms of the Lease, made without Mortgagee's written consent (except to the extent contemplated by the Lease such as a term commencement agreement), which consent shall not be unreasonably withheld, conditioned or delayed, and only if Mortgagee's consent is required under the terms of the Loan Documents. Such modification or amendment shall be deemed to have been approved by Mortgagee and New Owner if Lender fails to deny (and, in the case of denial, state the specific reasons for such denial) such modification or amendment by written notice to Tenant within ten (10) days after Mortgagee's receipt thereof of the notice and proposed amendment; or

(v) liable for the performance of any covenant of Landlord under the Lease which is capable of performance only by the party named as Landlord on page 1 of this Agreement.

(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 for the unexpired term of the Lease.

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

(a) Except to the extent contemplated by the Lease such as a term commencement agreement, Tenant will not agree to any amendment or modification of the Lease which would reduce any economic obligations of Tenant under or shorten the term of the Lease or materially impair Landlord's rights or increase Landlord's obligations under the Lease, or would waive of any material terms of the Lease, without the prior written consent of Mortgagee, unless such amendment is permitted pursuant to the Loan 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 will not exercise any such right (i) until it has given written notice of such act or omission to the Mortgagee; and (ii) until Tenant has given Mortgagee a period of thirty (30) days after the expiration of Landlord's applicable cure period to cure such default (but not to exceed ninety (90) days in any event), or such longer period of time as may be necessary to cure or remedy such default, during which period of time Mortgagee shall be permitted to cure or remedy such default; provided, however, that Mortgagee shall have no duty or obligation to cure or remedy any default. It is specifically agreed that Tenant shall not, as to Mortgagee, require cure of any such default which is personal to Landlord, and therefore not susceptible to cure by Mortgagee.

(c) In the event that Mortgagee notifies Tenant of a default under the Mortgage or Loan 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 (except as expressly set forth in the Lease), or as otherwise required pursuant to such notice beginning with the payment next due after such notice of default, without inquiry as to whether a default actually exists under the Mortgage or other Loan Documents, and notwithstanding any contrary instructions of or demands from Landlord.

(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, and to the extent that Tenant has had, or hereafter acquires, any such right or option, the same is hereby acknowledged to be subject and subordinate to the Mortgage and is hereby waived and released as against Mortgagee and New Owner.

(e) Mortgagee and any New Owner shall have no obligation nor incur any liability with respect to the erection or completion of any improvements in which the Premises are located or for completion of the Premises or any improvements for Tenant's use and occupancy, either at the commencement of the term of the Lease or upon any renewal or extension thereof or upon the addition of additional space, pursuant to any

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expansion rights contained in the Lease, provided the foregoing shall not alter or modify any rights and remedies of Tenant under the Lease for Landlord's failure to erect or complete any improvements as provided under the Lease.

(f) 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 or exercise any other rights pursuant to the terms of the Lease, Tenant shall retain such right to terminate and exercise such other rights pursuant to the terms of the Lease.

(g) 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 then equity interest, if any, in the Property or the Premises, and Tenant shall look exclusively to such equity interest of Mortgagee or New Owner, if any, 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, and in no event shall Mortgagee, New Owner, nor any of their respective officers, directors, shareholders, agents, representatives, servants, employees or partners ever be personally liable for such judgment.

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 Loan 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 Loan Documents; (b) the provisions of the Mortgage and the other Loan 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 and that Tenant is not obligated to inquire as to whether a default actually exists under the Mortgage or any of the other Loan Documents. 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.

6. Lease Status. Landlord and Tenant represent and warrant to Mortgagee that neither Landlord nor Tenant has knowledge of any default on the part of the other under the Lease, 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.

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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 Loan 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.

(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

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to or affect any other provision hereof, but this Agreement shall be construed as if such invalidity, illegality, or unenforceability did not exist.

(h) 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.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

Property of Cook County Clerk's Office

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Loan No. 21000143

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:**

180 N. LaSalle  
Chicago, Illinois 60601

**MORTGAGEE:**

**BYLINE BANK**

By: *[Signature]*  
Name: John Barkodija  
Title: SVP

**ADDRESS OF TENANT:**

3685 Woodhead Drive  
Northbrook, IL 60022  
Attention: Mark Agnew

**TENANT:**

**MARNAT, LLC**, an Illinois limited liability company

See below for additional  
notice addresses for Tenant.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ADDRESS OF LANDLORD:**

477 Elm Place  
Highland Park, Illinois 60035

**LANDLORD:**

**FREP FLOSSMOOR, LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Copies of all notices to Tenant shall be sent to:

Marnat, LLC  
3685 Woodhead Drive  
Northbrook, IL 60022  
Attention: ~~John Stoneburner~~ *Sasha Milosavljevic*  
and *Stuart Cohen*

Strategic Leasing Law Group, LLP  
120 South Riverside Plaza  
Suite 2190  
Chicago, Illinois 60606



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Loan No. 21000143

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:**

180 N. LaSalle  
Chicago, Illinois 60601

**MORTGAGEE:**

**BYLINE BANK**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

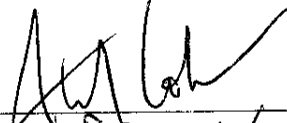
**ADDRESS OF TENANT:**

3685 Woodhead Drive  
Northbrook, IL 60022  
Attention: Mark Agnew

**TENANT:**

**MARNAT, LLC**, an Illinois limited liability company

See below for additional  
notice addresses for Tenant.


By:  \_\_\_\_\_  
Name: **STUART COHEN**  
Title: **VECC - CHAIRMAN**

**ADDRESS OF LANDLORD:**

477 Elm Place  
Highland Park, Illinois 60035

**LANDLORD:**

**FREP FLOSSMOOR, LLC**, a Delaware limited liability company

By:  \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Copies of all notices to Tenant shall be sent to:

Marnat, LLC  
3685 Woodhead Drive  
Northbrook, IL 60022  
Attention: ~~John Stoneburner~~ **SASHA MELOSAVLJEVICH**

and

Strategic Leasing Law Group, LLP  
120 South Riverside Plaza  
Suite 2190  
Chicago, Illinois 60606



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Loan No. 21000143

## TENANT

STATE OF ILLINOIS )  
  )SS.  
COUNTY OF COOK )

The Undersigned, a Notary Public in and for said County in the state aforesaid, DO HEREBY CERTIFY THAT STUART COHEN, VICE-CHAIRMAN, of MARNAT, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such VICE-CHAIRMAN, such person appeared before me this day in person and acknowledged that such person signed and delivered said instrument as such person's own free and voluntary act, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 6<sup>th</sup> day of July, 2016.

Scott B Rosen  
NOTARY PUBLIC

My Commission Expires:

April 29, 2019



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Loan No. 21000143

## LANDLORD

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF Lake )

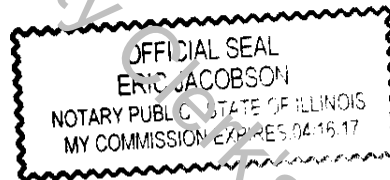
The Undersigned, a Notary Public in and for said County in the state aforesaid, DO HEREBY CERTIFY THAT Mitchell Kahn, the Member of FREP FLOSSMOOR, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such member, appeared before me this day in person and acknowledged that such person signed and delivered said instrument as such person's own free and voluntary act, and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 18<sup>th</sup> day of July, 2016.

  
NOTARY PUBLIC

My Commission Expires:

9/16/17



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## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

#### PARCEL 1:

LOTS 2 AND 3 (EXCEPT THAT PART OF LOT 3 FALLING WITHIN KEDZIE AVENUE) IN FLOSSMOOR COMMONS, BEING A SUBDIVISION OF THAT PART OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 (EXCEPT THE NORTH 60 ACRES) OF SECTION 11, TOWNSHIP 35 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE EAST LINE OF GOVERNOR'S HIGHWAY, AS RECORDED FEBRUARY 27, 1929 AS DOCUMENT 10294759 (EXCEPTING THEREFROM THE SOUTH 50.00 FEET TAKEN FOR VOLLMER ROAD, AS RECORDED JANUARY 18, 1935 AS DOCUMENT 11549019) ALL IN COOK COUNTY, ILLINOIS.

Commonly known as: 3235 Vollmer Road, Flossmoor, Illinois, 60422

P.I.N.S: 31-11-402-022-0000  
31-11-402-023-0000

#### PARCEL 2:

LOT 1 (EXCEPTING THAT PART OF SAID LOT 1, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTHEASTERLY ALONG THE WESTERLY LINE OF SAID LOT 1, A DISTANCE OF 40.00 FEET; THENCE SOUTHEASTERLY TO A POINT ON THE SOUTH LINE OF SAID LOT 1, THAT IS 60.00 FEET EAST OF THE POINT OF BEGINNING; THENCE WEST ALONG THE SOUTH LINE TO THE PLACE OF BEGINNING, AS CONVEYED TO THE COUNTY OF COOK BY DEED RECORDED OCTOBER 17, 1994 AS DOCUMENT 94887991) IN FLOSSMOOR COMMONS, BEING A SUBDIVISION OF THAT PART OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 (EXCEPT THE NORTH 60 ACRES) OF SECTION 11, TOWNSHIP 35 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE EAST LINE OF GOVERNOR'S HIGHWAY, AS RECORDED FEBRUARY 27, 1929 AS DOCUMENT 10294759, (EXCEPTING THEREFROM THE SOUTH 50.00 FEET TAKEN FOR VOLLMER ROAD, AS RECORDED JANUARY 18, 1935 AS DOCUMENT 11549019), ALL IN COOK COUNTY, ILLINOIS.

Commonly known as: 3307-3347 Vollmer Road, Flossmoor, Illinois, 60422

P.I.N. 31-11-402-021-0000  
31-11-402-023-0000