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This Document Prepared by  
and after Recording Return to:

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Chicago, Illinois 60602-4207  
Attn: Terrence E. Budny



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Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 08/12/2016 12:28 PM Pg: 1 of 10

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made as of the 1 day of Jul, 2016, by and among NARE WOODFIELD CORNERS, LLC, a(n) Illinois limited liability company ("Buyer and Successor Landlord"), Mattress Firm, Inc., a(n) Delaware corporation ("Tenant"), and THE PRIVATEBANK AND TRUST COMPANY, an Illinois state chartered bank ("Mortgagee").

### Recitals

A. Mortgagee has agreed to make a loan to Successor Landlord in the maximum principal amount of \$3,000,000.00 (the "Loan") on the terms and conditions contained therein. Landlord has executed and delivered to Mortgagee a certain Promissory Note (as hereafter amended, restated, replaced or supplemented, the "Note") dated as of Jul 1, 2016, payable to the order of Mortgagee in the original principal amount of \$3,000,000.00, with interest and principal payable as therein provided. The Loan and Note are secured by a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing (as hereafter amended, restated, replaced or supplemented, the "Mortgage") dated Jul 1, 2016, encumbering, among other things, the property described in Exhibit A attached hereto and made a part hereof and all improvements thereon (the "Real Estate").

B. Tenant has entered into that certain Shopping Center Lease between PSJ, Inc. ("Landlord") and Mattress Firm, Inc., as successor-in-interest to Back To Bed, Inc, dated September 27, 2001, as amended by that certain First Amendment to Lease dated February 25, 2002, as further amended by that certain Second Amendment to Lease dated July 24, 2002, as further amended by that certain Third Amendment to Lease date November 27, 2006, as further amended by that certain Fourth Amendment to Lease dated February 12, 2009, as further amended by that certain Fifth Amendment to Lease dated December 6, 2011, and as further amended by that certain Sixth Amendment to Lease dated August 10, 2015 (collectively, the "Lease"), with Landlord as landlord pursuant to which Landlord has leased a portion of the Real Estate (the "Tenant's Premises") to Tenant for the term and on the terms and conditions set forth in the Lease.

C. The parties desire to agree upon the relative priority of their interests in the Real Estate and their rights and obligations if certain events occur.

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NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties, the parties do hereby covenant and agree as follows:

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

(a) "Foreclosure Event" means (i) foreclosure under the Mortgage, (ii) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Note and/or the Mortgage, as a result of which Successor Landlord becomes owner of the Real Estate, or (iii) delivery by Landlord to Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord's interest in the Real Estate in lieu of any of the foregoing.

(b) "Successor Landlord" means any party that becomes owner of the Real Estate as the result of a Foreclosure Event.

(c) Initially capitalized terms used in this Agreement and not expressly defined herein have the meanings given them in the Loan Agreement.

2. Subordination of Lease. The parties acknowledge and agree that the Lease is and shall be subordinate, in right, interest and lien and for all purposes, to the Mortgage, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to any subsequent mortgage with which the Mortgage may be spread or consolidated, to the full extent of the principal sum and all other amounts secured thereby and interest thereon.

3. Non-Disturbance and Attornment.

(a) No Exercise of Mortgage Remedies Against Tenant. So long as the Lease is in full force and effect and Tenant is not in default under the Lease beyond any applicable cure period, Mortgagee shall not name or join Tenant as a defendant in any exercise of Mortgagee'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 pursuing such rights and remedies. In the latter case, Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action.

(b) Nondisturbance and Attornment. Subject to the terms of this Agreement, if the Lease has not been terminated, then, when Successor Landlord takes title to the Real Estate: (a) Successor Landlord shall not terminate or disturb Tenant's possession of Tenant's Premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (b) Successor Landlord shall be bound to Tenant under all terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as provided in paragraph 4 herein; 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.

(c) Further Documentation. The provisions of this Article shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents.

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Tenant and Successor Landlord shall, however, confirm the provisions of this Article in writing upon written request by either of them.

4. Attornment. In the event that Successor Landlord shall succeed to the interest of the Landlord under the Lease, and the Lease shall not have expired or been terminated in accordance with the terms of the Lease or this Agreement, Tenant shall, from and after such event, attorn to the Successor Landlord, all rights and obligations under the Lease to continue as though the interest of Landlord had not terminated or such foreclosure proceedings had not been brought. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of the parties hereto. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the written request of Successor Landlord, any instrument or certificate which, in the reasonable judgment of Successor Landlord, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment.

5. Rights and Obligations of Successor Landlord under Lease. Successor Landlord in the event of attornment shall have the same remedies in the event of any default by Tenant (beyond any period given Tenant to cure such default) in the payment of rent or in the performance of any of the terms, covenants and conditions of the Lease on Tenant's part to be performed that are available to Landlord under the Lease. The Tenant shall have the same remedies against the Successor Landlord for the breach of an agreement contained in the Lease that the Tenant might have had against the Landlord if the Successor Landlord had not succeeded to the interest of the Landlord; provided, however, that the Successor Landlord shall not be:

- (a) liable for any act or omission of or any claims against any prior landlord (including the Landlord), provided that the foregoing shall not limit Successor Landlord's obligations to correct any conditions that existed as of the date of attornment and that violate Successor Landlord's obligations as Landlord under the lease; or
- (b) subject to any offsets or defenses which the Tenant might have against any prior landlord (including the Landlord), provided that the foregoing shall not limit Tenant's right to exercise offsets or defenses against Successor Landlord because of events occurring after the date of attornment; or
- (c) bound by any rent or additional rent which the Tenant might have paid for more than the current month to any prior landlord (including the Landlord); or
- (d) bound by any amendment or modification of the Lease, or waiver of any of its terms after the date of this Agreement, made without its written consent, such consent not to be unreasonably withheld, conditioned or delayed; or
- (e) liable for any sum that any prior landlord (including the Landlord) owed to Tenant, including without limitation any security deposit, unless the amount owed was actually delivered to Successor Landlord;
- (f) bound by any surrender, cancellation or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant;

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- (g) liable for any construction obligation of any prior landlord, including Landlord; or
- (h) liable for any breach of representation or warranty of any prior landlord, including Landlord.

6. Exculpation of Successor Landlord. 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 Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in the Real Estate from time to time, including insurance and condemnation proceeds and Successor Landlord's interest in the Lease (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 amended or 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.

7. Mortgagee's Right to Cure.

(a) Notice to Mortgagee. Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any remedies under the Lease, Tenant shall provide Mortgagee with notice of the breach or default by Landlord giving rise to same (the "Default Notice") and, thereafter, the opportunity to cure such breach or default as provided for below.

(b) Mortgagee's Cure Period. After Mortgagee receives a Default Notice, Mortgagee shall have a period of thirty (30) days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord. Mortgagee 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 Mortgagee agrees or undertakes otherwise in writing.

(c) Extended Cure Period. In addition, as to any breach or default by Landlord the cure of which requires Mortgagee to possess and control the Real Estate, provided only that Mortgagee undertakes to Tenant by written notice to Tenant within thirty (30) days after receipt of the Default Notice to exercise reasonable efforts to cure such breach or default within the period permitted by this paragraph, Mortgagee's cure period shall continue for such additional time (the "Extended Cure Period") as Mortgagee may reasonably require to obtain possession and control of the Real Estate and to thereafter cure the breach or default with reasonable diligence and continuity. So long as any receiver of the Real Estate has been appointed and is continuing to serve, Mortgagee shall be deemed to have possession and control of the Real Estate.

8. Miscellaneous.

(a) Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the



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assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

(b) Entire Agreement. This Agreement constitutes the entire agreement among Mortgagee, Landlord and Tenant regarding the rights and obligations of Tenant, Landlord and Mortgagee as to the subject matter of this Agreement.

(c) Interaction with Lease and with Mortgage. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for delivery of nondisturbance agreements by the holder of the Mortgage.

(d) Mortgagee's Rights and Obligations. Except as expressly provided for in this Agreement, Mortgagee shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Mortgagee under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement, or the amendments to the Lease set forth herein.

(e) Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State of Illinois, excluding its principles of conflicts of law.

(f) 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.

(g) 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.

(h) Mortgagee's Representation. Mortgagee represents that Mortgagee has full authority to enter into this Agreement, and Mortgagee's entry into this Agreement has been duly authorized by all necessary actions.

9. Notices. All notices, waivers, demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (i) if delivered by messenger, when delivered, (ii) if mailed, on the third business day after deposit in the United States Mail, certified or registered, postage prepaid, return receipt requested, (iii) if telexed, telegraphed or telecopied, six (6) hours after being dispatched by telex, telegram or telecopy, if such sixth hour falls on a business day within the hours of 9:00 a.m. through 4:00 p.m. of the time in effect at the place of receipt, or at 9:00 a.m. on the next business day thereafter if such sixth hour is later than 4:00 p.m. or (iv) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier; in every case addressed to the party to be notified as follows:

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In the case of Mortgagee, to: The PrivateBank and Trust Company  
8<sup>th</sup> Floor  
70 West Madison Street  
Chicago, Illinois 60602  
Attn: Jacob Noble  
Fax: 312-683-0446

with copy to: Terrence E. Budny, Esq.  
Sheppard, Mullin, Richter & Hampton, LLP  
70 West Madison Street  
Suite 4800  
Chicago, Illinois 60602

In the case of Tenant, to: Mattress Firm, Inc (Store #119012)  
Real Estate Department  
5815 Gulf Freeway  
Houston, TX 77023

-Copy of default Notices, if any to:

Klehr, Harrison, Harvey & Branzburg LLP  
1335 Market Street, Suite 1400  
Philadelphia, PA19103  
Attn: Jeffery D. Spann, ESP

In the case of Landlord, to: NARE WOODFIELD CORNERS, LLC  
1901 N. Roselle Rd., Suite 650  
Schaumburg, IL 60195  
Attn: Savas Er

or such other address or in care of such other person as hereafter shall be designated in writing by the applicable party and shall be deemed to have been given as of the date of receipt.

SIGNATURE PAGES FOLLOWS

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## EXHIBIT A Legal Description

THE EAST 242.50 FEET OF THE WEST 910.00 FEET OF THE SOUTH 330.00 FEET OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 10, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS (EXCEPT THAT PART TAKEN FOR GOLF ROAD AS SHOWN ON DOCUMENT 10488002 AND EXCEPT THE SOUTH 20 FEET THEREOF.)

PIN: 07-10-400-011

COMMON ADDRESS: 100-130 EAST GOLF ROAD, SCHAUMBURG, ILLINOIS  
60193

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STATE OF ILLINOIS )  
 )  
COUNTY OF COOK ) ss.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that SAVATSKER, a Manager of NARE WOODFIELD LOGSERS a(n) ILLINOIS LLC, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 6 day of June, 2016.

Graham Conatser  
Notary Public

Commission expires 5/9/17.







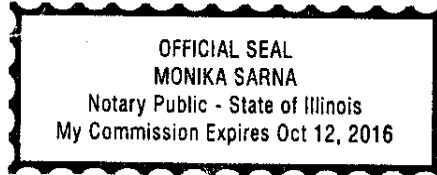
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STATE OF ILLINOIS )  
 )  
 ) SS.  
COUNTY OF COOK )

I, Monika Sarna, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that JP Keeley, Officer of THE PRIVATEBANK AND TRUST COMPANY, an Illinois state chartered bank, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Officer President, appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 10<sup>th</sup> day of June, 2016  
Monika Sarna  
Notary Public

My commission expires 10/12/16



STATE OF TEXAS )  
 )  
 ) SS.  
COUNTY OF HARRIS )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that ALEX WEISS, the CHIEF FINANCIAL OFFICER AND ASSISTANT TREASURER of MATTRESS FIRM, INC., a(n) Delaware corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that (s)he signed and delivered the said instrument as his free and voluntary act, and as the free and voluntary act of said MATTRESS FIRM, INC., for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 20<sup>th</sup> day of May, 2016.  
Caroline Buchalter  
Notary Public

Commission expires March 21, 2020

