

UNOFFICIAL COPY

RECORDING REQUESTED BY
Wells Fargo Bank, National Association
Walnut Creek Business Banking
1255 Treat Blvd, Ste 240
Walnut Creek, CA 94597



Doc# 1923106138 Fee \$88.00

THSP FEE: \$9.00 RPRF FEE: \$1.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 08/19/2019 11:52 AM PG: 1 OF 12

WHEN RECORDED MAIL TO:

Wells Fargo Bank, National Association
BBOCS Business Lending Loan
Operations Center LDI
P.O. Box 65119
San Antonio, TX 78265

AP 190 4212 10F2

[SPACE ABOVE THE LINE IS FOR RECORDER'S USE]

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement ("Agreement") is made as of the 22 day of July, 2019, among (i) WELLS FARGO BANK, a national banking association having a place of business at Walnut Creek Business Banking, 1255 Treat Boulevard, Suite 240, Walnut Creek, California ("Lender"), (ii) MARKS GROUP PARK RIDGE, LLC, an Illinois limited liability company having an address of 3417 N BELL AVE CHICAGO, IL 60618 ("Landlord" or "Borrower"), and Mattress Firm, Inc. having an address at 10201 S. Main Street, Houston, Texas 77025, ATTN: Real Estate Department ("Tenant").

Introductory Provisions

A. Lender is relying on this Agreement as an inducement to Lender in making and maintaining a loan ("Loan") secured by, among other things, a Mortgage and Security Agreement dated as of July 22, 2019 ("Mortgage") given by Borrower covering property located in Cook County, IL and commonly known as 112 South Northwest Highway, Park Ridge, IL ("Property"), which Mortgage is recorded with the land records of Cook County, IL as Document No. 1922517191 Lender is also the "Assignee" under an Assignment of Leases and Rents dated as of N/A ("Assignment") from Borrower with respect to the Property, which Assignment is recorded with the land records of Cook County, IL as Document No. N/A. The legal description of the Property is attached hereto and made a part hereof as Exhibit A.

B. Tenant is the tenant under that certain lease dated as of April 11, 2016 as amended by that certain First Amendment to Lease dated September 27, 2016 (hereinafter, collectively, referred to "Lease"), made with Landlord, or Landlord's predecessor in title, covering certain premises ("Premises") at the Property as more particularly described in the Lease.

Near North National Title
222 N. LaSalle
Chicago, IL 60601

#119277



S Y
P 12
S L
M —
SC —
E —
INT B

UNOFFICIAL COPY

C. Lender requires, as a condition to the making and maintaining of the Loan, that the Mortgage be and remain superior to the Lease and that its rights under the Assignment be recognized.

D. Tenant requires as a condition to the Lease being subordinate to the Mortgage that its rights under the Lease be recognized.

E. Lender, Landlord and Tenant desire to confirm their understanding with respect to the Mortgage and the Lease.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, and with the understanding by Tenant that Lender shall rely hereon in making and maintaining the Loan, Lender, Landlord and Tenant agree as follows:

1. Subordination. Subject to the terms of this Agreement, the Lease and the rights of Tenant thereunder are subordinate and inferior to the Mortgage and any amendment, renewal, substitution, extension or replacement thereof and each advance made thereunder as though the Mortgage, and each such amendment, renewal, substitution, extension or replacement were executed and recorded, and the advance made, before the execution of the Lease. Without limiting the foregoing and notwithstanding any other term or provision of this Agreement, Tenant's rights with respect to proceeds of insurance and of eminent domain awards are expressly made subordinate to the rights of Lender, and the disposition of such proceeds shall be governed in all respects by the Mortgage and all other documents evidencing and securing the Loan (the "Loan Documents").

2. Non-Disturbance. So long as Tenant is not in default (beyond any period expressed in the Lease within which Tenant may cure such default) in the payment of rent or in the performance or observance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed or observed, (i) Tenant's occupancy of the Premises shall not be disturbed by Lender in the exercise of any of its rights under the Mortgage during the term of the Lease, or any extension or renewal thereof made in accordance with the terms of the Lease, and (ii) Lender will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease because of any default under the Mortgage.

3. Attornment and Certificates. In the event Lender succeeds to the interest of Borrower as Landlord under the Lease, or if the Property or the Premises are sold pursuant to the power of sale under the Mortgage, Tenant shall attorn to Lender, or a purchaser upon any such foreclosure sale, and shall recognize Lender, or such purchaser, thereafter as Landlord under the Lease. Such attornment shall be effective and self-operative without the execution of any further instrument. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of any holder(s) of any of the indebtedness or other obligations secured by the Mortgage, or upon request of any such purchaser, (a) any instrument or certificate which, in the reasonable judgment of such holder(s), or such purchaser, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment, and (b) an instrument or certificate regarding the status of the Lease, consisting of statements, if true (and if not true,

UNOFFICIAL COPY

specifying in what respect), (i) that the Lease is in full force and effect, (ii) the date through which rentals have been paid, (iii) the duration and date of the commencement of the term of the Lease, (iv) the nature of any amendments or modifications to the Lease, (v) to Tenant's current, actual knowledge, that no default, or state of facts, which with the passage of time, or notice, or both, would constitute a default, exists on the part of either party to the Lease, and (vi) the dates on which payments of additional rent, if any, are due under the Lease.

4. Limitations. If Lender exercises any of its rights under the Assignment or the Mortgage, or if Lender shall succeed to the interest of Landlord under the Lease in any manner, or if any purchaser acquires the Property, or the Premises, upon or after any foreclosure of the Mortgage, or any deed in lieu thereof, Lender or such purchaser, as the case may be, shall have the same remedies by entry, action or otherwise in the event of any default by Tenant (beyond any period expressed in the Lease within which Tenant may cure such default) in the payment of rent or in the performance or observance of any of the terms, covenants and conditions of the Lease on Tenant's part to be paid, performed or observed that Landlord had or would have had if Lender or such purchaser had not succeeded to the interest of the present Landlord. From and after any such attornment, Lender or such purchaser shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from and after such attornment to Lender, or to such purchaser, have the same remedies against Lender, or such purchaser, for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord, if Lender or such purchaser had not succeeded to the interest of Landlord; provided, however, that Lender or such purchaser shall only be bound during the period of its ownership, and that in the case of the exercise by Lender of its rights under the Mortgage, or the Assignment, or any combination thereof, or a foreclosure, or deed in lieu of foreclosure, all Tenant claims shall be satisfied only out of the interest, if any, of Lender, or such purchaser, in the Property, and Lender and such purchaser shall not be (a) liable for any act or omission of any prior landlord (including Landlord); or (b) liable for or incur any obligation with respect to the construction of the Property or any improvements of the Premises or the Property; or (c) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); or (d) bound by any rent or additional rent which Tenant might have paid for more than the then current rental period to any prior landlord (including Landlord); or (e) bound by any amendment or modification of the Lease, or any consent to any assignment or sublet, made without Lender's prior written consent, such consent not to be unreasonably withheld, delayed or conditioned; or (f) bound by or responsible for any security deposit not actually received by Lender; or (g) liable for or incur any obligation with respect to any breach of warranties or representations of any nature under the Lease or otherwise including without limitation any warranties or representations respecting use, compliance with zoning, landlord's title, Landlord's authority, habitability and/or fitness for any purpose, or possession; or (h) liable for consequential damages. The foregoing shall not, however: (i) relieve Lender or such purchaser, of the obligation to remedy or cure any conditions at the Premises the existence of which constitutes a Landlord default under the Lease and which continue at the time of such succession or acquisition, or (ii) deprive Tenant of the right to terminate the Lease for a breach of Landlord covenant which is not cured as provided for herein and in the Lease and as a result of which there is a material interference with Tenant's Permitted Use and occupancy of the Premises or any permitted business conducted therein.

UNOFFICIAL COPY

5. Rights Reserved. Nothing herein contained is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of: (a) Landlord under the Lease, or any subsequent Landlord, against Tenant in the event of any default by Tenant (beyond any period expressed in the Lease within which Tenant may cure such default) in the payment of rent or in the performance or observance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed or observed; or (b) Tenant under the Lease against the original or any prior Landlord in the event of any default by the original Landlord to pursue claims against such original or prior Landlord whether or not such claim is barred against Lender or a subsequent purchaser.

6. Notice and Right to Cure. Tenant agrees to provide Lender with a copy of each notice of default given to Landlord under the Lease, at the same time as such notice of default is given to Landlord, and that in the event of any default by Landlord under the Lease, Tenant will take no action to terminate the Lease (a) if the default is not curable by Lender (so long as the default does not interfere with Tenant's use and occupation of the Premises), or (b) if the default is curable by Lender, unless the default remains uncured for a period of thirty (30) days after written notice thereof shall have been given, postage prepaid, to Landlord at Landlord's address, and to Lender at the address provided in Section 7 below; provided, however, that if any such default is such that it reasonably cannot be cured within such thirty (30) day period, such period shall be extended for such additional period of time as shall be reasonably necessary (including, without limitation, a reasonable period of time to obtain possession of the Property and to foreclose the Mortgage), if Lender gives Tenant written notice within such thirty (30) day period of Lender's election to undertake the cure of the default and if curative action (including, without limitation, action to obtain possession and foreclose) is instituted within a reasonable period of time and is thereafter diligently pursued. Lender shall have no obligation to cure any default under the Lease.

7. Notices. Any notice or communication required or permitted hereunder shall be in writing, and shall be given or delivered: (i) by United States mail, registered or certified, postage fully prepaid, return receipt requested, or (ii) by recognized courier service or recognized overnight delivery service; and in any event addressed to the party for which it is intended at its address set forth below:

To Lender:

Wells Fargo Bank, N.A.
P.O. Box 65119
SAN ANTONIO, TX
 Attention: Operations Center 401

To Landlord:

Larks Group Park Ridge, LLC
2417 W. Bell Ave
Chicago, IL 60618
 Attention: SUNAVD DASSGUPTA

To Tenant:

Mattress Firm, Inc. (Store #19277)
 10201 S. Main Street
 Houston, TX 77025
 Attention: Real Estate Department

UNOFFICIAL COPY

With Copy of default notices to: Mattress Firm, Inc. (Store #19277)
10201 S. Main Street
Houston, TX 77025
Attention: Real Estate Department

or such other address as such party may have previously specified by notice given or delivered in accordance with the foregoing. Any such notice shall be deemed to have been given and received on the date delivered or tendered for delivery during normal business hours as herein provided.

8. No Oral Change. This Agreement may not be modified orally or in any manner than by an agreement in writing signed by the parties hereto or their respective successors in interest.

9. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, personal representatives, successors and assigns, and any purchaser or purchasers at foreclosure of the Property or any portion thereof, and their respective heirs, personal representatives, successors and assigns.

10. Payment of Rent To Lender. Tenant acknowledges that it has notice that the Lease and the rent and all sums due thereunder have been assigned to Lender as part of the security for the obligations secured by the Mortgage. In the event Lender notifies in writing to Tenant of a default under the Loan and demands that Tenant pay its rent and all other sums due under the Lease to Lender, Tenant agrees that it will honor such demand and pay its rent and all other sums due under the Lease to Lender, or Lender's designated agent, until otherwise notified in writing by Lender. Borrower unconditionally authorizes and directs Tenant to make rental payments directly to Lender following receipt of such notice and further agrees that Tenant may rely upon such notice without any obligation to further inquire as to whether or not any default exists under the Mortgage or the Assignment, and that Borrower shall have no right or claim against Tenant for or by reason of any payments of rent or other charges made by Tenant to Lender following receipt of such written notice.

11. No Amendment or Cancellation of Lease. So long as the Mortgage remains undischarged of record, Tenant shall not amend, modify, cancel or terminate the Lease, or consent to an amendment, modification, cancellation or termination of the Lease, or agree to subordinate the Lease to any other mortgage, without Lender's prior written consent in each instance, such consent not to be unreasonably withheld, delayed or conditioned.

12. Captions. Captions and headings of sections are not parts of this Agreement and shall not be deemed to affect the meaning or construction of any of the provisions of this Agreement.

13. Counterparts. This Agreement may be executed in several counterparts each of which when executed and delivered is an original, but all of which together shall constitute one instrument.

UNOFFICIAL COPY

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

15. Parties Bound. The provisions of this Agreement shall be binding upon and inure to the benefit of Tenant, Lender and Borrower and their respective successors and assigns; provided, however, reference to successors and assigns of Tenant shall not constitute a consent by Landlord or Borrower to an assignment or sublet by Tenant, but has reference only to those instances in which such consent is not required pursuant to the Lease or for which such consent has been given.

[Remainder of page intentionally left blank. Signature page(s) follow.]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

LENDER:

WELLS FARGO BANK, N.A.

By: _____

Name: _____

Title: _____

TENANT:

MATTRESS FIRM, INC.

By: *[Signature]*

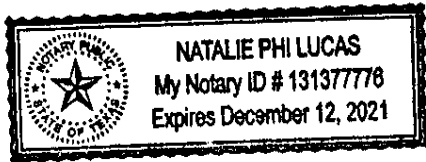
Name: Randy Carlin

Title: Chief Real Estate Officer

STATE OF TEXAS

COUNTY OF HARRIS

On this 12 day of July, 2019, before me, the undersigned notary public, personally appeared Randy Carlin, as Chief Real Estate Officer of Mattress Firm, Inc. ~~proved to me through satisfactory evidence of identification, which was~~ who is personally known to me to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



[Signature]

Notary Public [Affix Seal]

My commission expires:

12/12/21

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

LENDER:

WELLS FARGO BANK, N.A.

By: [Signature]

Name: MICHAEL P. LYNCH

Title: VICE PRESIDENT

TENANT:

MATTRESS FIRM, INC.

By: [Signature]

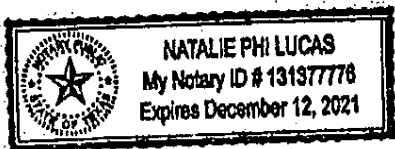
Name: Randy Carlin

Title: Chief Real Estate Officer

STATE OF TEXAS

COUNTY OF HARRIS

On this 12 day of July, 2019, before me, the undersigned notary public, personally appeared Randy Carlin, as Chief Real Estate Officer of Mattress Firm, Inc., ~~proved to me through satisfactory evidence of identification, which was~~ who is personally known to me to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



[Signature]

Notary Public [Affix Seal]

My commission expires:

12/12/21

UNOFFICIAL COPY

CALIFORNIA NOTARY ACKNOWLEDGMENT

For An Individual Acting In His/Her Own Right:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Contra Costa) ss.

On July 19, 2019 before me, EDINA ALIBEGIC Notary Public, personally appeared
NICHAEEL PHILLIP LYNCH

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

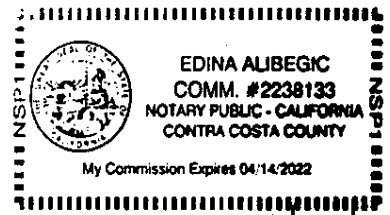
I certify under PENALTY OF PERJURY under the laws of the state of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Edina Alibegic
Signature

EDINA ALIBEGIC
Print Name

[NOTARIAL SEAL]



My commission expires: 4/14/2022

UNOFFICIAL COPY

LARKS GROUP PARK RIDGE, LLC; an Illinois limited liability company, as "Landlord" under the Lease and as "Borrower" or "Mortgagor" under the Mortgage and the other Loan Documents, agrees for itself and its successors and assigns that:

1. The above Agreement does not:
 - (a) constitute a waiver by Lender of any of its rights under the Mortgage or any of the other Loan Documents; or
 - (b) in any way release Borrower from its obligations to comply with the terms, provisions, conditions, covenants and agreements and clauses of the Mortgage and other Loan Documents;
2. The provisions of the Mortgage remain in full force and effect and must be complied with by Borrower;
3. Tenant shall have the right to rely on any notice or request from Lender which directs Tenant to pay rent to Lender without any obligation to inquire as to whether or not a default exists and notwithstanding any notice from or claim of Borrower to the contrary. Borrower shall have no right or claim against Tenant for rent paid to Lender after Lender so notifies Tenant to make payment of rent to Lender; and
4. The Borrower shall be bound by all of the terms, conditions and provisions of the foregoing Agreement in all respects.

Executed and delivered as a sealed instrument as of the 22 day
of July, 2019.

BORROWER:

LARKS GROUP PARK RIDGE, LLC

**LARKS Group Holdings, LLC Manager /
Member of LARKS GROUP PARK RIDGE,
LLC**

By: Sailakshmi Gollapudi
Sailakshmi Gollapudi, Managing Member of
LARKS Group Holdings, LLC

By: Ramakrishna Gollapudi
Ramakrishna Gollapudi, Managing Member of
LARKS Group Holdings, LLC

By: Sunavo Dasgupta
Sunavo Dasgupta, Manager / Member of
LARKS GROUP PARK RIDGE, LLC

UNOFFICIAL COPY

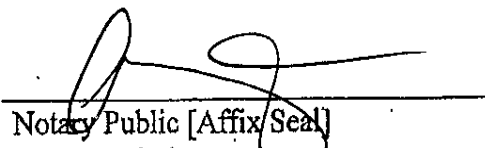
STATE OF IL

COUNTY OF COOK

On this 22ND day of July, 2019, before me, the undersigned notary public, personally appeared SARLA KSHMI GOLLAPUDI, RAMAKRISHNA GOLLAPUDI, AND
INDIVIDUALS of _____, SUNAVO

proved to me through satisfactory evidence of identification, which was _____
WHO ~~ARE~~ PERSONALLY KNOWN TO ^{ME} to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

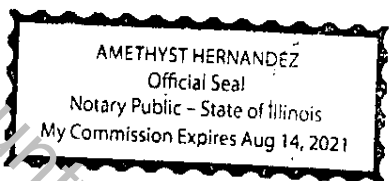
DASGUPTA



Notary Public [Affix Seal]

My commission expires:

08/14/21



Property of Cook County Clerk's Office

UNOFFICIAL COPY

Exhibit A

PARCEL 1:

THE EAST 25 FEET OF LOT 3, ALL OF LOT 4 AND LOT 5 (EXCEPT THE EAST 42 1/2 FEET THEREOF) IN BLOCK 2 IN OUTHET'S SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF SECTION 35, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR INGRESS AND EGRESS CREATED BY A DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED AS DOCUMENT NO. 27249361 DESCRIBED AS FOLLOWS: ALL OF THAT PART OF THE 12 FOOT PUBLIC ALLEY LYING NORTHWESTERLY OF THE SOUTHEASTERLY LINE OF LOT ONE, EXTENDED SOUTHWESTERLY TO THE NORTHEASTERLY LINE OF LOT 20, ALL IN BLOCK 2 IN OUTHET'S SUBDIVISION AS PART OF THE NORTHEAST QUARTER OF SECTION 35, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINIOS.

PIN 09-35-207-019-0000

Property of Cook County Clerk's Office