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EDWARD M. HOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 01/23/2020 02:16 PM PG: 1 OF 15

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

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SUBORDINATION, NON-DISTURBANCE

AND ATTORNMENT AGREEMENT

Recorder's Cover Sheet

Preparer Information:

Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700
Atlanta, GA 30363
Attn: Rusty A. Fleming, Esq.

Taxpayer Information:

WIM FMB Portfolio Owner, LLC
3414 Peachtree Road NE, Suite 250
Atlanta, Georgia 30326

Return Document To:

Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
Attention: William P. McInerney, Esq.

Legal description: *See Exhibit A*

Document or instrument number of previously recorded documents: N/A

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**FIRST MIDWEST BANK, AN ILLINOIS STATE CHARTERED BANK
(Tenant)**

to

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
(Mortgagee)**

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

Dated: *January 15*, 2020

Location: 1030 Dixie Hwy., Chicago Heights, Illinois

County: Cook

State: Illinois

Site No. 14

Property of Cook County Clerk's Office

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Common Property Address: 1030 Dixie Hwy., Chicago Heights, Illinois

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("**Agreement**") is made as of ~~January 5~~ 2020, by and between JPMORGAN CHASE BANK, NATIONAL ASSOCIATION (together with its successors and assigns, "**Mortgagee**"), WIM FMB PORTFOLIO OWNER, LLC, a Delaware limited liability company, its successors, participants and assigns ("**Borrower**"), whose address is 3414 Peachtree Road NE, Suite 250, Atlanta, GA 30326 and FIRST MIDWEST BANK, an Illinois state chartered bank, whose address is One Pierce Place, Suite 1500, Itasca, IL 60143, ("**Tenant**").

RECITALS

A. Tenant leases all or a portion of the property more particularly described on Exhibit A attached hereto (the "**Property**") pursuant to the provisions of those leases dated September 27, 2016, between Borrower, as landlord, and Tenant, as tenant (as amended, supplemented, or extended, individually or collectively as the context may require, the "**Lease**"). The portion of the Property leased by Tenant pursuant to each Lease is referred to herein as the "**Leased Property**."

B. Borrower is the owner in fee simple of the Property and is either the landlord under the Lease or has acquired the original landlord's interest as landlord under the Lease.

C. Mortgagee is making or has made a loan to Borrower and certain affiliates evidenced or to be evidenced by a promissory note made by Borrower and certain affiliates to the order of Mortgagee (the "**Note**") and secured or to be secured by a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "**Security Instrument**") granted by Borrower to or for the benefit of Mortgagee recorded against the Property. The Note, Security Instrument, and all other documents evidencing, governing, or securing the Loan are collectively referred to herein as the "**Loan Documents**."

D. Tenant has agreed to subordinate the Lease to the lien of the Security Instrument, and Mortgagee has agreed not to disturb Tenant's tenancy under the Lease on the terms and conditions set forth below.

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AGREEMENT

For good and valuable consideration, Tenant and Mortgagee agree as follows:

1. **SUBORDINATION.** Subject to the terms and conditions of this Agreement, the Lease and all of the terms, covenants and provisions thereof and all rights, remedies, and options of Tenant thereunder, including, without limitation, any rights to payment following a default by Borrower under the Lease or casualty or condemnation with respect to the Property, are and shall at all times continue to be subject and subordinate in all respects to the lien of the Security Instrument and to the lien thereof, including, without limitation, all renewals, increases, modifications, spreading agreements, consolidations, replacements and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Security Instrument had been executed, delivered and recorded prior to the execution and delivery of the Lease; provided that, solely as between Borrower and Tenant and except as expressly stated herein, nothing contained in this Agreement shall be deemed to affect the obligations of Borrower or Tenant under the Lease, and any renewal, modification, or extension of the Lease shall be subject to and entitled to the benefits of this Agreement. This Agreement is not intended and shall not be construed to subordinate the Lease to the lien of any mortgage or other security document other than the Security Instrument.

2. **NON-DISTURBANCE.** If any action or proceeding is commenced by Mortgagee for the foreclosure of the Security Instrument or the sale of the Property, Tenant shall not be named as a party therein unless Tenant is in default under the Lease beyond all applicable notice and cure periods at the time such action or proceeding is commenced or unless joinder is required by law. As long as Tenant is not in default under any of the terms, covenants or conditions of the Lease or of this Agreement beyond any applicable cure period both at the time of the commencement of any such action or proceeding and at the time of any foreclosure sale or the exercise of any other rights or remedies of Mortgagee under the Security Instrument, (a) Mortgagee shall not disturb the Tenant's possession or use of the Leased Property, and (b) the sale of the Property in any such action or proceeding and the exercise by Mortgagee of any of its other rights under the Loan Documents shall be made subject to all rights of Tenant under the Lease; and (c) Tenant's occupancy of the Leased Property shall not be disturbed, terminated, diminished, or interfered with by Mortgagee (or any party acting on behalf of Mortgagee) in the exercise of its rights under the Loan Documents during the term of the Lease or any extensions or renewals thereof or by any party who acquires the Leased Property from Lender as a result of the exercise by Lender of any such rights.

3. **ATTORNMENMENT.**

3.1 If (a) Mortgagee or any other purchaser of the Property becomes the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security Instrument (Mortgagee or such other purchaser being hereinafter referred to as "**Purchaser**"), and (b) there was no default by Tenant beyond applicable notice and cure periods permitting Purchaser to terminate the Lease in accordance with the terms of the Lease, then upon Purchaser's acquisition of the Property, the Lease shall not be terminated or affected by Purchaser's acquisition, but shall continue in full force and effect as a direct lease between

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Purchaser and Tenant upon all of the terms, covenants and conditions set forth in the Lease. Tenant agrees to attorn to Purchaser, and Purchaser, by virtue of acquiring the Property, shall be deemed to have agreed to accept such attornment.

3.2 Subject to the observance and performance by Tenant of all the terms, covenants and conditions of the Lease, Purchaser shall recognize the leasehold estate of Tenant for the remaining balance of the term and all renewals and extensions thereof with the same force and effect as if Purchaser were the lessor under the Lease; *provided, however*, that Purchaser shall not be:

3.2.1 liable for the failure of any prior landlord (any such prior landlord, including Borrower and Borrower's successors-in-interest, being hereinafter referred to as a "*Prior Landlord*") to perform any of its obligations under the Lease that accrued prior to the date on which Purchaser became the owner of the Property, but this limitation of liability does not limit Purchaser's obligations under the Lease to correct any conditions that (i) existed as of the date Purchaser became the owner of the Property, (ii) violate Purchaser's obligations as landlord under the Lease, and (iii) Purchaser received written notice of such condition and had GEE:

Agreement;

3.2.2 subject to any offsets or other monetary obligations, defenses, abatements, or counterclaims that have accrued in favor of Tenant against any Prior Landlord prior to Purchaser's acquisition of the Property;

3.2.3 liable for the return of security deposits, if any, paid by Tenant to any Prior Landlord in accordance with the Lease unless Purchaser actually receives such security deposits from a Prior Landlord;

3.2.4 bound by any payment of rents, additional rents or other sums Tenant may have prepaid more than one (1) month in advance to any Prior Landlord unless (i) such sums are actually received by Purchaser and (ii) such prepayment was expressly approved by Purchaser in writing;

3.2.5 bound by any agreement terminating the Lease or any voluntary surrender of the Leased Property made without Mortgagee's or Purchaser's prior written consent prior to Purchaser's acquisition of the Property, except to the extent such termination or surrender right is expressly contemplated by the Lease;

3.2.6 bound by any amendment or modification of the Lease made without Mortgagee's or Purchaser's prior written consent prior to the time Purchaser succeeded to Borrower's interest in the Property;

3.2.7 responsible for the making of repairs in or to the Property in the case of damage or destruction to the Property or any part thereof due to fire or other casualty or by reason of condemnation;

3.2.8 bound by any representations or warranties of any Prior Landlord;

or

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3.2.9 bound by any indemnity or defense obligations of any Prior Landlord to the extent such obligation accrued prior to the time Purchaser succeeded to Borrower's interest in the Property.

In the event that any liability of Purchaser arises pursuant to this Agreement or under the Lease, such liability shall be limited and restricted to Purchaser's interest in the Property and the proceeds thereof and shall in no event exceed such interest. Notwithstanding the foregoing, such limitation on Purchaser's liability shall not prohibit Tenant from pursuing such claims and causes of action against Borrower for the full amount of any applicable losses and damages.

4. NOTICE TO TENANT. After notice is given to Tenant by Mortgagee that Borrower is in default under the Loan Documents and that the amounts due from Tenant under the Lease should be paid to Mortgagee pursuant to the terms of the Security Instrument, Tenant shall thereafter pay directly to Mortgagee or as otherwise directed by Mortgagee, all rents and other amounts due or to become due to Borrower under the Lease, and Borrower hereby expressly authorizes Tenant to make such payments to Mortgagee and hereby releases and discharges Tenant from any liability to Borrower on account of any such payments. Borrower agrees to indemnify, defend, and save Tenant harmless from any claims, actions, losses, damages or expenses (including, without limitation, reasonable attorneys fees) arising from Tenant's compliance with this Section 4.

5. NOTICE TO MORTGAGEE AND RIGHT TO CURE. Tenant agrees to notify Mortgagee, pursuant to Section 6 of this Agreement, of any default of Borrower under the Lease that would entitle Tenant to cancel or terminate the Lease or to abate or reduce the rent payable thereunder. Tenant further agrees that, notwithstanding any provisions of the Lease, no cancellation or termination of the Lease due to a default by Borrower, and no abatement or reduction of the rent payable thereunder due to a default by Borrower, shall be effective unless (a) Mortgagee has received notice of the default and (b) Mortgagee has failed, within thirty (30) days after both Mortgagee's receipt of such notice and the time when Mortgagee became entitled under the Security Instrument to remedy such default, to (i) commence to cure the default and thereafter diligently prosecute such cure to completion or (ii) if Mortgagee cannot commence a cure without possession of the Property, to commence judicial or non-judicial proceedings within the 30-day period to obtain possession of the Property and thereafter diligently prosecute such efforts and cure to completion. Notwithstanding the foregoing, Mortgagee shall have no obligation to cure any default by Borrower except as specifically provided in Section 3.2.1 upon Mortgagee's acquisition of the Property.

6. NOTICES. Any notice, demand, request, or other communication that any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing; (c) if by Federal Express or other nationally recognized overnight courier service, on the next Business Day after delivered to such courier service for delivery on the next Business Day; or (d) if by facsimile or e-mail transmission, on the day of transmission so long as a copy is sent on the same day by Federal Express or other nationally recognized overnight courier, to the addresses set forth below, or at such other address as the party to be served with notice has furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice:

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If to Borrower:

WIM FMB Portfolio Owner, LLC
3414 Peachtree Road NE, Suite 250
Atlanta, Georgia 30326
Attention: WIM Portfolio Servicing

If to Tenant:

First Midwest Bank
One Pierce Place
Suite 1500
Itasca, IL 60143
Attn: Chief Financial Officer

With a copy to:

First Midwest Bank
One Pierce Place
Suite 1500
Itasca, IL 60143
Attn: Corporate Secretary

If to Mortgagee:

JPMorgan Chase Bank, National Association
383 Madison Avenue, 31st Floor
New York, New York 10179
Attention: Thomas Nicholas Cassiro
Facsimile No.: (212) 834-6029

with a copy to:

JPMorgan Chase Bank, National Association
4 Chase Metrotech Center, 4th Floor
SPG Middle Office/CIB
Brooklyn, New York 11245-0001
Attention: Nancy Alto
Facsimile No.: (917) 546-2564

For purposes of this Section 6, the term "***Business Day***" means any day other than Saturday or Sunday on which commercial banks are required or authorized to be open in Chicago, Illinois.

7. **FINANCIALS.** In the event the parent of Tenant ceases to be a publicly reporting company under the Securities Exchange Act of 1934, as amended, then Tenant shall furnish to

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Mortgagee within one hundred twenty (120) days after the close of such Tenant's fiscal year its complete financial statements, including a balance sheet, profit and loss statement, statement of changes in financial condition and all other related schedules for the fiscal period then ended.

8. PURCHASE RIGHTS. Any option or right of first refusal that Tenant may have to purchase the Leased Property shall not apply in the context of a sale by foreclosure or a deed in lieu of foreclosure but such option or right of first refusal shall continue in full force and effect to future transfers following such sale by foreclosure or a deed or assignment in lieu of foreclosure. Tenant shall execute promptly whatever documents Mortgagee may request from time to time in order to confirm the foregoing.

9. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of Mortgagee, Tenant and Purchaser and their respective successors and assigns.

10. GOVERNING LAW. This Agreement shall be construed in accordance with and governed by the laws of the state of Illinois, without regard to that state's choice of law rules.

11. Intentionally Omitted.

12. AUTHORITY. The individuals signing this Agreement represent and warrant that they are authorized to do so on behalf of the parties for whom they are signing.

13. MISCELLANEOUS. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any provision of this Agreement is finally adjudicated to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement.

14. LEGAL INTERPRETATION. Each of Mortgagee, Borrower and Tenant hereby agree that the State of Illinois has a substantial relationship to the parties and to the underlying transaction embodied hereby, and in all respects (including, without limiting the foregoing, matters of construction, validity and performance), this Agreement and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of Illinois applicable to contracts made and performed therein and all applicable law of the United States of America; except that, at all times, the provisions for the creation of the leasehold estate, enforcement of Mortgagee's and Borrower's rights and remedies with respect to right of re-entry and repossession, surrender, delivery, ejectment, dispossession, eviction or other in-rem proceeding or action regarding the Leased Property shall be governed by and construed in accordance with the laws of the State in which the Premises is located, it being understood that, to the fullest extent permitted by law of such State, the law of the State of Illinois shall govern the validity and enforceability of this Agreement, and the obligations arising hereunder. To the fullest extent permitted by law, the parties hereby unconditionally and irrevocably waive any claim to assert that the law of any other jurisdiction governs this Agreement. Words of any gender shall be construed to include any other gender, and words in the singular number shall be

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construed to include the plural, unless the context otherwise requires. The headings of the sections have been inserted for convenience only and are not to be considered in any way in the construction or interpretation of this Agreement. Except as otherwise herein expressly provided, the terms of this Agreement shall apply to, inure to the benefit of, and be binding upon, the parties and their respective assigns, successors and legal representatives. Any legal suit, action or proceeding against Tenant arising out of or relating to this Agreement may be instituted in any federal court in the Northern District of Illinois or state court sitting in the County of DuPage, State of Illinois, and the parties each waive any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding in such federal district or County and State, and the parties each hereby expressly and irrevocably submit to the jurisdiction of any such court in any suit, action or proceeding. Notwithstanding the foregoing, nothing herein shall prevent or prohibit Mortgagee or Borrower from instituting any suit, action or proceeding in any other proper venue or jurisdiction in which Tenant is located or where service of process can be effectuated.

**[Remainder of page intentionally left blank;
signatures appear on the following page]**

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Executed as of the date of this Agreement.

TENANT:

FIRST MIDWEST BANK,
an Illinois state-chartered bank

By: *Kenneth J Kadleck*
Name: Kenneth J Kadleck _____
Title: Director of Corporate Real Estate _____

STATE OF Illinois _____)
) ss.
COUNTY OF Cook _____)

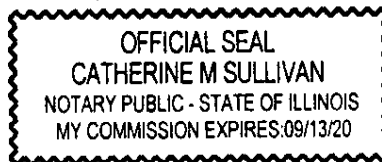
On this 13th Day of August, 2019, before me appeared Kenneth J. Kadleck to me personally known, who, being by me duly sworn (or affirmed) did say that he is the Director of Corporate Real Estate of First Midwest Bank, an Illinois state-chartered bank, and acknowledged said instrument to be the free act and deed of said state chartered bank.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Catherine M Sullivan
Notary Public in and for Said County and State

Catherine M. Sullivan
(Type, print or stamp the Notary's name below his or her signature.)

My Commission Expires:
09/13/2020




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Executed as of the date of this Agreement.

MORTGAGEE:

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION

By: 
Name: _____
Title: Simon B. Burce
Vice President

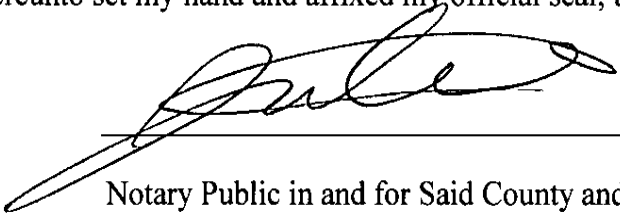
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STATE OF New York)
COUNTY OF New York) ss.

On this January 9th, 2020, before me appeared Simon Bure to me personally known, who, being by me duly sworn (or affirmed) did say that he/she is the vice president of JPMorgan Chase Bank, national association, and acknowledged said instrument to be the free act and deed of said national association.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.



Notary Public in and for Said County and State

James Considine

(Type, print or stamp the Notary's name below his or her signature.)

My Commission Expires:
4/22/2023

James W. Considine
Notary Public, State of New York
Qualified in Ulster County
No. 01000390913
My Commission Expires April 22, 2023

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Executed as of the date of this Agreement.

BORROWER:

WIM FMB PORTFOLIO OWNER, LLC,
a Delaware limited liability company

By: *William I. Markwell, III*
Name: William I. Markwell, III
Title: President

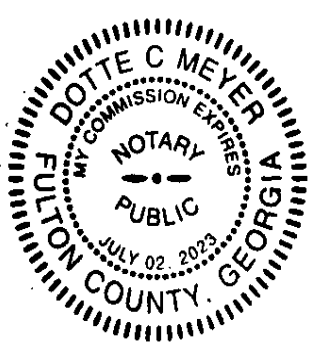
STATE OF Georgia)
) ss.
COUNTY OF Fulton)

On this January 14, 2020, before me appeared William I. Markwell, III to me personally known, who, being by me duly sworn (or affirmed) did say that he/she is the President of WIM FMB Portfolio Owner, LLC, a Delaware limited liability company, and acknowledged said instrument to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Dotte C Meyer
Notary Public in and for Said County and State
Dotte C. Meyer
(Type, print or stamp the Notary's name below his or her signature.)

My Commission Expires:
7/2/2023



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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL 1:

LOT 1 IN THE 1030 DIXIE HIGHWAY SUBDIVISION ACCORDING TO THE FINAL PLAT OF RE-SUBDIVISION RECORDED FEBRUARY 19, 2016 AS DOCUMENT 1605029013 IN COOK COUNTY, ILLINOIS, *Section 20, Township 35 North, Range 14 East of the Third Principal Meridian.*

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THAT CERTAIN EASEMENT AGREEMENT DATED DECEMBER 15, 1973 AND RECORDED FEBRUARY 6, 1974 AS DOCUMENT 22622505 FROM CHICAGO HEIGHTS NATIONAL BANK TO JETCO PROPERTIES, INC., FOR THE PURPOSE OF INGRESS AND EGRESS.

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