



W2377592

When Recorded Return To:

Brian D. Cunningham, Esq.
SNELL & WILMER L.L.P.
Beneficial Tower
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101

E# 2377592 PG 1 OF 14
ERNEST D ROWLEY, WEBER COUNTY RECORDER
26-NOV-08 2:41 PM FEE \$40.00 DEP SC
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Subordination, Nondisturbance and Attornment Agreement

This SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT AGREEMENT (this "Agreement") is entered into as of November 26, 2008 (the "Effective Date"), between BANK OF AMERICA, N.A., a national banking association, whose address is Real Estate Banking, NV1-119-04-08, 300 South Fourth Street, 4th Floor, Las Vegas, Nevada 89101, Attention: Real Estate Group ("Beneficiary"), and MARKETSTAR CORPORATION, a Delaware corporation as successor in interest to Marketstar, Inc., a Utah corporation ("Tenant"), whose address is 2475 Washington Boulevard, Ogden, Utah 84401, with reference to the following facts:

A. OGDEN-WASATCH HOLDINGS, LLC, a Utah limited liability company as successor in interest to AUSA Life Insurance Company, Inc., a New York life insurance company ("Landlord"), whose address is c/o Wasatch Commercial Management, 595 S. Riverwoods Parkway, Suite 400, Logan, Utah 84321, owns the real property located in the City of Ogden, Utah and commonly known and the Ogden City Centre Building (such real property, including all buildings, improvements, structures and fixtures located thereon, "Landlord's Premises"), as more particularly described in Schedule A.

B. Beneficiary has made one or more loans to Landlord in the original aggregate principal amount of up to NINE MILLION AND NO/100 DOLLARS (\$9,000,000.00) (the "Loan").

C. To secure the Loan, Landlord has encumbered Landlord's Premises by entering into that certain Deed of Trust, Assignment, Security Agreement and Fixture Filing dated November 26, 2008, for the benefit of Beneficiary (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the "Deed of Trust") to be recorded in the official records of Weber County, Utah (the "Official Records").

D. Pursuant to a Net Office Lease, dated as of July 13, 2007, as amended by the certain First Amendment to Lease Agreement for Net Office Lease, dated as of May 9, 2008 (as amended, the "Lease"), Landlord demised to Tenant approximately 82,650 total gross square feet of Landlord's Premises ("Tenant's Premises").

E. Tenant and Beneficiary desire to agree upon the relative priorities of their interests in Landlord's Premises and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration, Tenant and Beneficiary agree:

1. Definitions.

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

1.1 Construction-Related Obligation. A "Construction-Related Obligation" means any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any alterations, demolition, or other improvements or work at Landlord's Premises, including

Tenant's Premises. "Construction-Related Obligations" shall not include: (a) reconstruction or repair following fire, casualty or condemnation; or (b) day-to-day maintenance and repairs.

1.2 Foreclosure Event. A "Foreclosure Event" means: (a) foreclosure under the Deed of Trust; (b) any other exercise by Beneficiary of rights and remedies (whether under the Deed of Trust or under applicable law, including bankruptcy law) as holder of the Loan and/or the Deed of Trust, as a result of which Successor Landlord becomes owner of Landlord's Premises; or (c) delivery by Landlord to Beneficiary (or its designee or nominee) of a deed or other conveyance of Landlord's interest in Landlord's Premises in lieu of any of the foregoing.

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

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

1.5 Rent. The "Rent" means any fixed rent, base rent or additional rent under the Lease.

1.6 Successor Landlord. A "Successor Landlord" means any party that becomes owner of Landlord's Premises as the result of a Foreclosure Event.

1.7 Termination Right. A "Termination Right" means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord's breach or default under the Lease.

2. Subordination.

The Lease shall be, and shall at all times remain, subject and subordinate to the Deed of Trust, the lien imposed by the Deed of Trust, and all advances made under the Deed of Trust.

3. Nondisturbance, Recognition and Attornment.

3.1 No Exercise of Deed of Trust Remedies Against Tenant. So long as the Lease has not been terminated on account of Tenant's default that has continued beyond applicable cure periods (an "Event of Default"), Beneficiary shall not name or join Tenant as a defendant in any exercise of Beneficiary's rights and remedies arising upon a default under the Deed of Trust unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Beneficiary 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.

3.2 Nondisturbance and Attornment. If the Lease has not been terminated on account of an Event of Default by Tenant, then, when Successor Landlord takes title to Landlord's Premises: (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 the terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease as affected by this Agreement; and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant.

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

4. Protection of Successor Landlord.

Notwithstanding anything to the contrary in the Lease or the Deed of Trust, Successor Landlord shall not be liable for or bound by any of the following matters:

4.1 Claims Against Former Landlord. Except for Tenant's offset rights set forth in Section 8 of the First Amendment to Lease Agreement for Net Office Lease, dated as of May 9, 2008, any Offset Right that Tenant may have against any Former Landlord relating to any event or occurrence before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the date of attornment. (The foregoing shall not limit either (a) Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of events occurring after the date of attornment or (b) Successor Landlord's obligation to correct any conditions that existed as of the date of attornment and violate Successor Landlord's obligations as landlord under the Lease.)

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

4.3 Payment; Security Deposit. Any obligation: (a) to pay Tenant any sum(s) that any Former Landlord owed to Tenant or (b) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Beneficiary. This paragraph is not intended to apply to Landlord's obligation to make any payment that constitutes a "Construction-Related Obligation."

4.4 Modification, Amendment, or Waiver. Any modification or amendment of the Lease, or any waiver of any terms of the Lease, made without Beneficiary's written consent.

4.5 Surrender, Etc. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

4.6 Construction-Related Obligations. Any Construction-Related Obligation of Landlord under the Lease, except as expressly provided for in Schedule B (if any) attached to this Agreement.

5. Intentionally Omitted

6. Beneficiary's Right to Cure.

6.1 Notice to Beneficiary. Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any Termination Right or Offset Right, Tenant shall provide Beneficiary 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.

6.2 Other Lease Notices and Approvals. Tenant shall concurrently provide to Beneficiary, a copy of any notice or approval delivered or otherwise provided to Landlord, including, but not limited to, any notice under Section 5, Section 8 and Section 11(a) of the Amendment to Lease Agreement for Net Office Lease, dated as of May 9, 2008.

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

6.4 Extended Cure Period. In addition, as to any breach or default by Landlord the cure of which requires possession and control of Landlord's Premises, provided only that Beneficiary undertakes to Tenant by written notice to Tenant within thirty days after receipt of the Default Notice to exercise reasonable efforts to cure or cause to be cured by a receiver such breach or default within the period permitted by this paragraph, Beneficiary's cure period shall continue for such additional time (the "Extended Cure Period") as Beneficiary may reasonably require to either (a) obtain possession and control of Landlord's Premises and thereafter cure the breach or default with reasonable diligence and continuity or (b) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default.

7. Payment of EDTIF Funds to Beneficiary.

Landlord and Tenant acknowledge that Tenant shall be applying for certain tax increment financing through the EDTIF program as more particularly described in Section 13 of the Amendment to Lease Agreement for Net Office Lease, dated as of May 9, 2008. In the event that Tenant receives such financing and is required to pay to Landlord the amounts described in Section 13 of the Amendment to Lease Agreement for Net Office Lease, dated as of May 9, 2008, Tenant shall pay such amounts to Beneficiary and not to Landlord. Beneficiary shall apply such amounts to the outstanding balance of the Note and such payment to Beneficiary shall satisfy in all respect the requirements to pay such amounts to Landlord to the extent of such payment actually received by Beneficiary.

8. Confirmation of Facts.

Tenant represents to Beneficiary and to any Successor Landlord, in each case as of the Effective Date:

8.1 Effectiveness of Lease. The Lease is in full force and effect, has not been modified, and constitutes the entire agreement between Landlord and Tenant relating to Tenant's Premises. Tenant has no interest in Landlord's Premises except pursuant to the Lease.

8.2 Rent. Tenant has not paid any Rent that is first due and payable under the Lease after the Effective Date.

8.3 No Landlord Default. To the best of Tenant's knowledge, no breach or default by Landlord exists and no event has occurred that, with the giving of notice, the passage of time or both, would constitute such a breach or default.

8.4 No Tenant Default. To Tenant's knowledge Tenant is not in default under the Lease and has not received any uncured notice of any default by Tenant under the Lease.

8.5 No Termination. To Tenant's knowledge Tenant has not commenced any action nor sent or received any notice to terminate the Lease. Tenant has no presently exercisable Termination Right(s) or Offset Right(s).

8.6 Commencement Date. The "Commencement Date" of the Lease has already occurred.

8.7 Acceptance. Except as set forth in Schedule B (if any) attached to this Agreement: (a) Tenant has accepted possession of Tenant's Premises; and (b) Landlord has performed all Construction-Related Obligations related to Tenant's initial occupancy of Tenant's Premises and Tenant has accepted such performance by Landlord.

8.8 No Transfer. Tenant has not transferred, encumbered, mortgaged, assigned, conveyed or otherwise disposed of the Lease or any interest therein, other than sublease(s) made in compliance with the Lease.

8.9 Due Authorization. Tenant has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

9. Miscellaneous.

9.1 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Each party's address is as set forth in the opening paragraph of this Agreement, subject to change by notice under this paragraph. Notices shall be effective the next business day after being sent by overnight courier service, and five business days after being sent by certified mail (return receipt requested).

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

9.3 Entire Agreement. This Agreement constitutes the entire agreement between Beneficiary and Tenant regarding the subordination of the Lease to the Deed of Trust and the rights and obligations of Tenant and Beneficiary as to the subject matter of this Agreement.

9.4 Interaction with Lease and with Deed of Trust. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the

Lease to, or for delivery of nondisturbance agreements by the holder of, the Deed of Trust. Beneficiary confirms that Beneficiary has consented to Landlord's entering into the Lease.

9.5 Beneficiary's Rights and Obligations. Except as expressly provided for in this Agreement, Beneficiary 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 Beneficiary under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement.

9.6 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 Utah, excluding its principles of conflict of laws.

9.7 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.

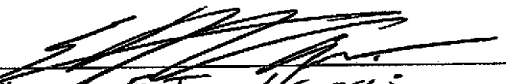
9.8 Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

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

IN WITNESS WHEREOF, this Agreement has been duly executed by Beneficiary and Tenant as of the Effective Date.

TENANT:

MARKETSTAR CORPORATION
a Delaware corporation

By: 
Name: EST HARRIS
Title: EVP / CFO

BENEFICIARY:

BANK OF AMERICA, N.A.
a national banking association

By: _____
Name: Ricky G. Monroe
Title: Senior Vice President

Lease to, or for delivery of nondisturbance agreements by the holder of, the Deed of Trust. Beneficiary confirms that Beneficiary has consented to Landlord's entering into the Lease.

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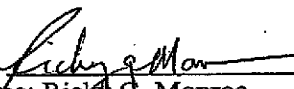
TENANT:

MARKETSTAR CORPORATION
a Delaware corporation

By: _____
Name: _____
Title: _____

BENEFICIARY:

BANK OF AMERICA, N.A.
a national banking association

By:  _____
Name: Rick G. Monroe
Title: Senior Vice President

STATE OF UTAH)
COUNTY OF Salt Lake) :ss.

The foregoing instrument was acknowledged before me this 25 day of November 2008, by EJ HARRIS, the EVP / CFO of MARKETSTAR CORPORATION, a Delaware corporation, for and on behalf of such corporation.

Scott E. Nebeker
NOTARY PUBLIC
Residing at Salt Lake City, UT

[SEAL]



STATE OF UTAH)
COUNTY OF _____) :ss.

The foregoing instrument was acknowledged before me this _____ day of November 2008, by RICKY G. MONROE, a Senior Vice President of BANK OF AMERICA, N.A., a national banking association, for and on behalf of such national banking association.

NOTARY PUBLIC
Residing at _____

[SEAL]

STATE OF UTAH)
)
) :ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of November 2008, by _____ the _____ of MARKETSTAR CORPORATION, a Delaware corporation, for and on behalf of such corporation.

NOTARY PUBLIC
Residing at _____

[SEAL]

STATE OF UTAH)
)
) :ss.
COUNTY OF Utah)

The foregoing instrument was acknowledged before me this 25 day of November 2008, by RICKY G. MONROE, a Senior Vice President of BANK OF AMERICA, N.A., a national banking association, for and on behalf of such national banking association.

Cory Stone

NOTARY PUBLIC
Residing at Spanish Fork, UT

[SEAL]

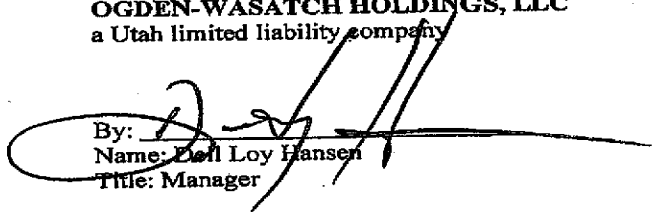


LANDLORD'S CONSENT

Landlord consents and agrees to the foregoing Agreement, which was entered into at Landlord's request. The foregoing Agreement shall not alter, waive or diminish any of Landlord's obligations under the Mortgage or the Lease. The above Agreement discharges any obligations of Beneficiary under the Mortgage and related loan documents to enter into a nondisturbance agreement with Tenant. Landlord is not a party to the above Agreement.

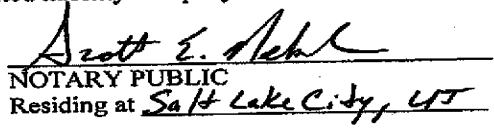
LANDLORD:

OGDEN-WASATCH HOLDINGS, LLC
a Utah limited liability company

By: 
Name: Dell Loy Hansen
Title: Manager

STATE OF UTAH)
COUNTY OF Salt Lake)ss.

The foregoing instrument was acknowledged before me this 21 day of November 2008, by **DELL LOY HANSEN**, the manager of **OGDEN-WASATCH HOLDINGS, LLC**, a Utah limited liability company, for and on behalf of such limited liability company.


NOTARY PUBLIC
Residing at Salt Lake City, UT

[SEAL]



SCHEDULE A

Description of Landlord's Premises

[See attached.]

Parcel 1: ✓

Part of Lots 1 and 10, Block 25, Plat A, OGDEN CITY SURVEY: Beginning at a point on the West line of Washington Boulevard, said point being 66.06 feet North 0°58' East along said West line from the Southeast corner of said Lot 1; running thence North 89°06'42" West 84.86 feet along an existing building wall to a building corner; thence North 1°56'53" East 14.75 feet along an existing building wall to a building corner; thence North 88°54'59" West 81.21 feet to the East line of Merchants Alley extended; thence North 0°58' East 144.00 feet along said East line extended and East line; thence South 89°04'22" East 165.82 feet to the West line of Washington Boulevard; thence South 0°58' West 158.92 feet along said West line to the point of beginning.

Parcel 1A: ✓

Together with an easement and right-of-way appurtenant to said property for ingress and egress for vehicular and pedestrian traffic over and across the following described property contiguous thereto: Part of Lot 1, Block 25, Plat A, OGDEN CITY SURVEY: Beginning at a point on the East line of Kiesel Avenue, said point being 301.65 feet North 89°02' West and 91.75 feet North 0°58' East from the Southeast corner of said Lot 1; running thence North 0°58' East 24.01 feet along said East line; thence South 87°49'04" East 135.86 feet to the East line of Merchants Alley; thence South 0°58' West 24.01 feet along said East line; thence North 87°49'04" West 135.86 feet along the North line of existing building and building line extended to the point of beginning, as created by that certain Declaration of Easements, Covenants and Restrictions; recorded June 09, 1987 as Entry No. 1014284 in Book 1519 at Page 908 of Official Records.

Parcel 2: ✓

Part of Lot 10, Block 25, Plat A, OGDEN CITY SURVEY, Weber County, Utah: Beginning on the West line of Washington Boulevard, said point being 224.98 feet North 0°58' East along the West line of Washington Boulevard from the Southeast corner of Lot 1 of said Block 25, North 89°04'22" West 165.82 feet to the East line of Merchants Alley; thence North 13.86 feet; thence East 34 feet; thence North 10.64 feet; thence South 89°04'22" East 99.86 feet; thence South 6.58 feet; thence East 31.25 feet to the West line of Washington Boulevard; thence South 0°58' West 17.92 feet to the point of beginning.

Together with that portion of vacated Merchants Alley abutting said property on the West.

Parcel 3: ✓

Part of Lot 8, Block 25, Plat A, OGDEN CITY SURVEY, Weber County, Utah: Beginning on the East line of Kiesel Avenue and the South line of said Lot 8; running thence East 100 feet, more or less, thence North 66 feet; thence West 100 feet, more or less, thence South 66 feet to beginning.

And part of Lots 9 and 10, Block 25, Plat A, OGDEN CITY SURVEY, Weber County, Utah: Beginning at a point 30 feet East and 85.5 feet South from the Northwest corner of said Lot 10; running thence East 128 feet, more or less, to the center of Merchants Alley; thence

North 58 feet, more or less; thence North 89°04'22" West 26 feet, more or less; thence North 0°57'44" East 95 feet, more or less, to the West line of vacated Merchants Alley; thence Northerly along said West side to the North line of Lot 9; thence West to the East side of Kiesel Avenue; thence South along said East line 217.5 feet, more or less, to the point of beginning.

Together with that portion of vacated Merchants Alley abutting said property on the East.

Situated in WEBER County

Parcel Identification Numbers: 01-021-0078, 01-021-0072, 01-021-0067 and 01-021-0070 *rd*

SCHEDULE B

Construction-Related Obligations

A. *Construction-Related Obligations Remaining to be Performed as of Effective Date.*

See Section 5 of the Amendment to Lease Agreement for Net Office Lease, dated as of May 9, 2008.

B. *Successor Landlord's Construction-Related Obligations After Attornment.*

The obligations of Landlord to construction tenant improvements and improvements to the parking structure as described in Sections 5, 6, 8 and 13 of the First Amendment to Lease Agreement for Net Office Lease, dated as of May 9, 2008.