



Loan No. 1760394-9001

E# 2864103 PG 1 OF 13
Leann H. Kilts, WEBER COUNTY RECORDER
22-Jun-17 12:35 PM FEE \$38.00 DEP JC
REC FOR: NORTH AMERICAN TITLE - SALT LAKE
ELECTRONICALLY RECORDED

WHEN RECORDED, RETURN TO:

Zions First National Bank
Real Estate Banking Group
One South Main Street, Suite 470
Salt Lake City, Utah 84133
Attn: Real Estate Banking Group Manager

bst

**AMENDED AND RESTATED SUBORDINATION, NON-DISTURBANCE AND
ATTORNMEN T AGREEMENT AND ESTOPPEL CERTIFICATE**

This Amended and Restated Subordination, Non-Disturbance and Attornment Agreement and Estoppel Certificate (the "Agreement") is made and executed as of the 30 day of May, 2017, by and between ZB, N.A., dba Zions First National Bank ("Lender"), Ogden-Wasatch Holdings, LLC, a Utah limited liability company ("Landlord"), and Cardinia Real Estate LLC, a Delaware limited liability company ("Tenant").

RECITALS

A. Marketstar Corporation ("Marketstar") and Landlord entered into a Net Office Lease dated February 12, 1998, as amended by (i) a First Amendment to Lease Agreement for Net Office Lease dated May 2008, (ii) a Second Amendment to Lease Agreement for Net Office Lease dated March 30, 2010, and (iii), together with Tenant, a Third Amendment to Lease Agreement for Net Office Lease (the "Third Amendment") dated February 2017, (together with any and all additional amendments, modifications and extensions, and including all guarantees of the lease, the "Lease"), whereby the Lease was assigned by Marketstar to Tenant, and Tenant has agreed to lease the real property described in the Lease as the leased or demised premises, which leased or demised premises are located in Weber County, State of Utah, together with the improvements now or hereafter located on the leased or demised premises, and are more particularly described in Exhibit A attached hereto and incorporated into this Agreement by this reference (the "Property"). On the conditions that the Lease and all of Tenant's rights in the Property (the "Lease Rights") be subordinated as provided below, and that Tenant enter into this Agreement, Lender has agreed to make a term loan (the "Loan") in the principal amount of Eight Million Three Hundred Thousand Dollars (\$8,300,000.00) to provide term financing for Landlord. In connection with the Loan, Landlord has or will be executing a Term Loan Agreement (the "Loan Agreement"), a Promissory Note (the "Note"), a Term Loan Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing (the "Trust Deed"), an Assignment of Leases (the "Assignment of Leases"), and any and all other documents required by Lender to evidence and/or secure Landlord's obligations under the Loan and the Loan Documents.

01-021-0067, 0070, 0072, 0078, KL

AGREEMENT

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Lender, Landlord, and Tenant agree as follows:

1. **Estoppel Certificate.** Tenant and Landlord hereby certify to and agree with Lender that, as of the date of this Agreement, Lender is relying on all of the following certifications and agreements of Tenant and Landlord as consideration for Lender executing this Agreement, and in the making of the Loan evidenced by the Note and secured by the Trust Deed, Assignment of Leases, and other collateral identified in the Loan Documents:

a. The Lease is in full force and effect and is the valid and binding obligation of Tenant, enforceable in accordance with its terms.

b. All requirements for the commencement and validity of the Lease have been satisfied.

c. To Tenant's actual knowledge, neither Tenant nor Landlord is in default under the Lease and no event has occurred and no condition exists, which with the giving of notice, the passage of time, or both, would constitute a default by Tenant or Landlord under the Lease.

d. Except for (i) Tenant's right to offset the "Unreimbursed TIA" against "Monthly Rental" (as such terms are defined in the Third Amendment), as provided in Section 6 of the Third Amendment, and (ii) Tenant's right to a return of the Security Deposit as provided in Section 12 of the Third Amendment, to Tenant's actual knowledge there are no defenses, counterclaims or setoffs against rents or charges due or which may become due under the Lease and no claim by Tenant of any nature exists against Landlord under the Lease. All obligations of Landlord have been fully performed except (x) Landlord's obligation to perform certain work as provided in Section 7 of the Third Amendment and (y) Landlord's obligation to reimburse Tenant the sum of Thirty-Three Thousand Eight Hundred Eight and 76/100 Dollars (\$33,808.76) for overpayment of Monthly Rental (as such term is defined in the Third Amendment) under Section 5 of the Third Amendment.

e. None of the rent which Tenant is required to pay under the Lease has been prepaid, or will in the future be prepaid, more than one month in advance.

f. Tenant has no right or option contained in the Lease or in any other document to purchase all or any portion of the Property.

g. The Lease has not been modified, terminated, or amended, by "side letter" or otherwise, and shall not after the date of this Agreement be modified, terminated, or amended, by "side letter" or otherwise, without the prior written consent of Lender for any termination and each such amendment or modification. Any attempted modification, termination, or amendment without the prior written consent of Lender shall be void.

h. Except as permitted under the Lease, Tenant has not assigned, mortgaged, sublet, encumbered or otherwise transferred any or all of its interest under the Lease and, during the term of the Loan, as extended or modified, agrees to not assign, mortgage, sublet, encumber, or otherwise transfer any or all of its interest under the Lease without the prior written consent of Lender.

2. **Subordination to Loan Documents.** Notwithstanding anything in the Lease to the contrary, the Lease and Lease Rights are hereby made subject, subordinate, inferior, and junior to the Loan Documents and the liens created by the Loan Documents, and to all sums advanced on the security for the Loan Documents, including all sums advanced or costs incurred in connection with the Loan Documents or the Loan, and including all renewals, modifications, consolidations, replacements, and extensions of the Loan and any of the Loan Documents, including, without limitation, any increases in the principal amount of the Loan and changes in the interest rate of the Loan, and any future lien or liens affecting the Property held by or made for the benefit of Lender. The Lease and Lease Rights are hereby subordinated to the Loan Documents and the liens created by the Loan Documents, the same and as fully as if the Loan Documents had been executed and delivered, and recorded, where applicable, prior to execution, delivery, and recording of the Lease. If there is any inconsistency between the provisions of the Loan Documents and the provisions of the Lease, the provisions of the Loan Documents shall prevail and govern the Lease.

Tenant will not cause the Lease to be subordinated to any interests other than those held by or made for the benefit of Lender, and its successors and assigns, without the prior written consent of Lender.

3. **Acknowledgement of Assignment of Rents.** Tenant agrees and acknowledges that it has notice, and notwithstanding anything to the contrary in the Lease hereby consents, that the Lease, the Lease Rights, the rents, and all other sums due under the Lease have been assigned or are to be assigned to Lender. Specifically, but without limitation, Tenant consents to the Assignment of Leases executed by Landlord to Lender. In the event that Lender notifies Tenant of a default under any of the Loan Documents and demands that Tenant pay its rent and all other sums due under the Lease to Lender, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Lender or as otherwise required pursuant to such notice.

4. **Notice and Opportunity to Cure.** Tenant agrees to deliver to Lender, within five (5) days of delivery to Landlord, a copy of all notices and other documents delivered to Landlord in connection with the Lease, specifically including, but without limitation, any notices of default or termination. If any default occurs under the Lease, Lender shall have the right for a period of thirty (30) days after receipt of notice of the default to cure such default. If the nature of the default is such that it cannot reasonably be cured within such thirty (30) day period, then Lender shall have such longer period as is reasonably necessary to cure such default. No default shall be deemed to exist under the Lease so long as Lender is seeking, in good faith, to cure the default.

5. **Requirement of Non-Disturbance.** Tenant agrees and acknowledges that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

6. **Non-Disturbance.** In the event of foreclosure of the Trust Deed, or upon a sale of the Property pursuant to the trustee's power of sale contained in the Trust Deed, or upon a transfer of the Property by conveyance in lieu of foreclosure (collectively, a "Transfer"), then so long as Tenant complies with this Agreement and is not in default under any of the terms, covenants, or conditions of the Lease beyond applicable notice and grace periods, Lender shall not name or join Tenant in any foreclosure proceeding, unless such joinder is necessary, in Lender's discretion, to complete the foreclosure, nor shall Lender disturb the possession of Tenant, its successors and assigns. In the event of a Transfer, Lender will perform and be bound by all of the obligations imposed on Landlord by the Lease for the balance of the term of the Lease, and any extension or renewals of the Lease, as long as no event of default has occurred under the Lease, which has continued to exist for such period of time, after notice and opportunity to cure, if any, required by the Lease, as would entitle Landlord under the Lease to terminate the Lease, or would cause, without any further action of Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant under the Lease.

7. **Attornment.** Upon the occurrence of a Transfer, Tenant hereby agrees to attorn to, adhere to and accept any such successor owner as landlord under the Lease, and to be bound by and perform all of the obligations imposed by the Lease, such attornment to be self-operative without the execution of any further instruments.

8. **No Liability for Lender.** Lender, or any successor owner of the Property resulting from a Transfer, shall not be (a) liable for any obligations under the Lease which arise or accrue prior to a Transfer or which arise or accrue at any time after Lender ceases to be the owner of the Property; (b) liable for any damages or other relief attributable to any act or omission of a prior landlord, including Landlord; (c) liable for any damages or other relief attributable to any latent or patent defect in the Property; (d) liable for any damages or other relief attributable to any breach by any prior landlord, including Landlord, under the Lease or any representation or warranty made in connection with the Lease; (e) subject to any offsets or defenses which Tenant might have against any prior landlord, including Landlord; (f) bound by any rent or additional rent which Tenant might have paid in advance to any prior landlord, including Landlord, for a period in excess of one month or by any security deposit, cleaning deposit or other prepaid charge which Tenant might have paid in advance to any prior landlord, including Landlord; (g) bound by any assignment, renewal, extension or any other agreement or modification of the Lease made without the prior written consent of Lender; or (h) liable for any indirect or consequential damages, including loss of sublet rentals, loss of profits, or damage to goodwill or reputation.

Nothing in this Agreement is intended to constitute an agreement by Lender to perform any obligation of Landlord as landlord under the Lease prior to the time Lender obtains title to the Property by Transfer or otherwise obtains possession of the Property pursuant to the terms of the Loan Documents. Specifically, but without limitation, Lender shall have no obligations with

respect to the erection or completion of any improvements on the Property, either at the commencement of the term of the Lease or upon any renewal or extension of the term of the Lease, or upon the addition of additional space, pursuant to any expansion rights contained in the Lease.

In the event that Lender shall acquire title to the Property, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Property, and Tenant shall look exclusively to such equity interest of Lender, if any, in the Property, and the rental income derived therefrom, for the payment and discharge of any obligations imposed upon Lender under this Agreement or under the Lease, and upon such payment Lender is hereby released and relieved of any other obligations under this Agreement and the Lease.

9. No Assignment or Subletting. Except as permitted under the Lease, Tenant agrees not to assign, transfer, mortgage, or otherwise encumber the Lease or Lease Rights or any interest in the Lease or the Lease Rights.

10. New Lease. Upon the written request of Lender to Tenant after a Transfer, Tenant shall execute and deliver to Lender a lease of the Property upon exactly the same terms and conditions as the Lease between Landlord and Tenant, which lease shall cover any unexpired term of the Lease existing prior to such Transfer.

11. Acknowledgment and Agreement by Landlord. Landlord, as landlord under the Lease and trustor under the Trust Deed, acknowledges and agrees for itself and its heirs, successors, and assigns agrees to each of the following:

a. This Agreement does not constitute a waiver by Lender of any of its rights under the Trust Deed, Assignment of Leases, or any of the other Loan Documents, and/or in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Trust Deed.

b. The provisions of the Trust Deed, Assignment of Leases, and all other Loan Documents remain in full force and effect and must be complied with by Landlord.

c. In the event of a default under the Trust Deed, Assignment of Leases, or any of the other Loan Documents, Tenant shall pay all rent and all other sums due under the Lease to Lender as provided in the Loan Documents.

12. Right to Sublease and Mortgage. Notwithstanding anything to the contrary in the Lease, upon the occurrence of a Transfer, Tenant agrees that Lender, its successor or assign, or any purchaser at a foreclosure sale, may mortgage, lien, encumber, or otherwise transfer its interest in the Property or assign all of its or Landlord's rights in the Lease without the consent of Tenant.

13. Intentionally Omitted

14. **Memorandum of Lease.** If required by Lender, Tenant agrees to execute and cause to be recorded in the county recorder's office of the county in which the Property is located, a memorandum of lease for the Lease in a form reasonably acceptable to Lender and Tenant.

15. **Future Estoppel Certificates.** Tenant agrees to execute and deliver to Lender, within ten (10) days of request by Lender, estoppel certificates in a form similar to the estoppel certificate required in Section 1 of this Agreement and regarding such matters as Lender otherwise reasonably requests. Tenant shall not be obligated to deliver an estoppel certificate more often than one (1) time per calendar year, unless Lender determines, in its reasonable discretion, that an estoppel certificate is required more often.

16. **No Merger.** If any lien granted on the Property or assignment of any lease of the Property made to Lender and the fee title to the Property shall at any time become vested in one owner, the lien created under any trust deed granted or assignment made to Lender shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Lender shall continue to have and enjoy all of the rights and privileges of Lender, beneficiary, and assignee and, if applicable, fee title owner, as to the separate estates. --In addition, upon the foreclosure of any such lien or assignment, any leases or subleases then existing and created by Tenant shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Lender, its successor or assign, or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Lender, its successor or assign, or any such purchaser shall constitute a termination of any lease or sublease unless Lender, its successor or assign, or such purchaser shall give written notice of such termination to such tenant or subtenant.

17. **Unlawful Use, Medical Marijuana, Controlled Substances and Prohibited Activities.** Tenant shall not use or occupy or permit the use or occupancy of the Property in any manner that would be a violation of federal, state or local law or regulation, regardless of whether such use or occupancy is lawful under any conflicting law, including without limitation, any law relating to the use, sale, possession, cultivation manufacture, distribution or marketing of any controlled substances or other contraband or any law relating to the medicinal use or distribution of marijuana.

18. **Notices.** All notices shall be in writing and shall be deemed to have been sufficiently given or served when personally delivered, deposited in the United States mail, by registered or certified mail, or deposited with a reputable overnight mail carrier which provides delivery of such mail to be traced, addressed as follows:

Lender:

Zions First National Bank
Real Estate Banking Group
One South Main Street, Suite 470
Salt Lake City, Utah 84133
Attn: Jeffrey A. Holt

With copies to: Prince, Yeates & Geldzahler
15 West South Temple, Suite 1700
Salt Lake City, Utah 84101
Attn: John B. Lindsay

Landlord: Ogden-Wasatch Holdings, LLC
595 South Riverwoods Parkway, Suite 400
Logan, Utah 84321
Attn: Joel Larson

With copies to: Wasatch Acquisitions and Capital, Inc.
595 South Riverwoods Parkway, Suite 400
Logan, Utah 84321
Attn: Robert B. Funk

Tenant: Cardinia Real Estate LLC
One East Weaver Street
Greenwich, CT 06831
Attn: Steven Azzopardi, Managing Director

With copies to: Omnicom Group Inc.
437 Madison Avenue
New York, New York 10022
Attn: General Counsel

Such addresses may be changed by notice to the other party given in the same manner provided in this Section.

19. Attorneys' Fees. Upon the occurrence of a default under this Agreement by Tenant, Lender may employ an attorney or attorneys to protect Lender's rights under this Agreement, and Tenant shall pay Lender reasonable attorneys' fees and costs actually incurred by Lender, whether or not action is actually commenced against Tenant by reason of such breach. Tenant shall also pay to Lender any attorneys' fees and costs incurred by Lender with respect to any insolvency or bankruptcy proceeding or other action involving Tenant or any guarantor of the Lease as a debtor.

20. No Derogation of Liens. Nothing contained in this Agreement shall be construed to derogate from or in any way impair or affect the lien and charge or provisions of the Trust Deed, Assignment of Leases, or any other lien created by the Loan Documents.

21. Governing Law. This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of Utah.

22. **Successors and Assigns.** This Agreement is and shall be binding upon and shall inure to the benefit of Tenant, Lender and their respective successors and assigns.

23. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes, but all of which taken together shall constitute only one agreement. The production of any executed counterpart of this Agreement shall be sufficient for all purposes without producing or accounting for any other counterpart. Copies of this Agreement, and fax signatures thereon, shall have the same force, effect and legal status as an original.

24. **Defined Terms.** Unless otherwise defined in this Agreement, capitalized terms used herein have the meanings given them in the Loan Agreement. The term Loan Documents shall include all amendments and modifications to the Loan Documents.

*[SIGNATURE PAGE(S) AND EXHIBIT(S),
IF ANY, FOLLOW THIS PAGE]*

DATED: May 30, 2017.

LENDER

ZB, N.A.,
dba Zions First National Bank

By: *Jeffrey A. Holt*
Jeffrey A. Holt
Senior Vice President

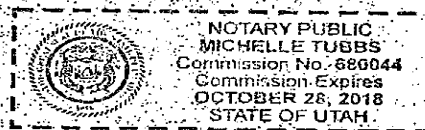
STATE OF UTAH)

ss:

COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 30 day of May, 2017, by Jeffrey A. Holt, Senior Vice President of ZB, N.A., dba Zions First National Bank.

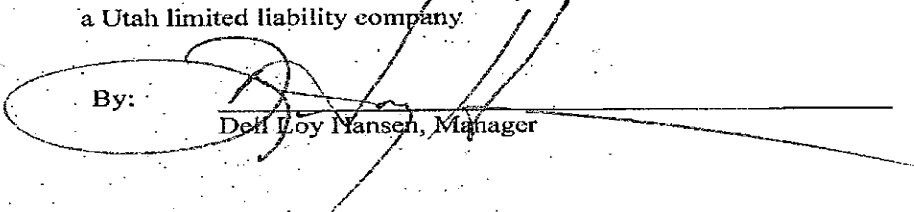
Michelle Tubbs
NOTARY PUBLIC
Residing at: *Salt Lake City*



LANDLORD

OGDEN-WASATCH HOLDINGS, LLC,
a Utah limited liability company

By:


Dell Loy Hansen, Manager

STATE OF UTAH)

: ss.

COUNTY OF CACHE)

The foregoing instrument was acknowledged before me this 26th day of May, 2017, by Dell Loy Hansen, Manager of Ogden-Wasatch Holdings, LLC, a Utah limited liability company.




NOTARY PUBLIC

Residing at: Logan, Utah

TENANT

CARDINIA REAL ESTATE LLC
a Delaware limited liability company

By: _____

Name: Steven Azzopardi
Title: Managing Director

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.

The foregoing instrument was acknowledged before me this THU one day of May, 2017, by Steven Azzopardi, Managing Director of Cardinia Real Estate LLC, a Delaware limited liability company.

Mia Wiltshire
NOTARY PUBLIC

MIA WILTSHIRE
Notary Public, State of New York
No. 60-4797401
Qualified in Westchester County
Term Expires Nov. 30, 2017

EXHIBIT A

REAL PROPERTY DESCRIPTION

The real property located in Weber County, State of Utah, and more particularly described as follows:

PARCEL 1: 01-021-0078 *KU*

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°04'23" 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 2:

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 REAL 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 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.

PARCEL 3: 01-021-0072¹W

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 4: 01-021-0070^W /

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.

PARCEL 5: 01-021-0067^{K1}

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.