



## AGENDA REPORT

**Meeting Date:** December 15, 2009

**Item Number:** F-2

**To:** Honorable Public Financing Authority

**From:** Brenda Lavender, Real Estate & Property Manager

**Subject:** NONDISTURBANCE AGREEMENT AND SUBORDINATION AGREEMENT – LEASE BY AND AMONG THE CITY OF BEVERLY HILLS PUBLIC FINANCING AUTHORITY AND PARTICIPANT MEDIA, LLC.

**Attachments:**

1. Nondisturbance Agreement
2. Subordination Agreement - Lease

---

### **RECOMMENDATION**

Staff recommends approval of the Nondisturbance Agreement and Subordination Agreement – Lease between the Public Finance Authority and Participant Media, LLC.

### **INTRODUCTION**

A Nondisturbance Agreement and Subordination Agreement have been prepared for Public Financing Authority approval. Both of these agreements are Exhibits to the Participant Media lease which was approved on December 1, 2009. The Nondisturbance and Subordination Agreements require the approval of the Public Finance Authority, and the City Council in addition to City Council's approval of the Lease agreement. On February 17, 2009 a Ground Lease between the City of Beverly Hills Public Finance Authority ("Owner") and the City of Beverly Hills ("Landlord") was approved.

### **DISCUSSION**

Through the lease approved on December 1, 2009 Participant has leased space in the 331 Foothill Road building. This lease is condition up the further execution of the Nondisturbance Agreement and the Subordination Agreement.

The Nondisturbance Agreement provides that so long as Tenant is not in default under the Space Lease, Owner will not disturb Tenant's possession of the premises leased to Tenant under the Space Lease nor shall the Space Lease be terminated or extinguished by reason of any termination of the Ground Lease under the terms of the Ground Lease and owner agrees to assume all of the obligations of the Landlord under the Space Lease for the benefit of Tenant. This agreement is to be executed by the City of Beverly Hills as Landlord, the City of Beverly Hills Public Finance Authority as Owner and Participant Media as Tenant. Participant has so signed.

The Subordination Agreement – Lease provides that so long as Tenant is not in default under the Space lease, Owner will not disturb Tenant's possession of the premises leased to Tenant under the Space Lease, nor shall the Space Lease be terminated or extinguished by reason of any termination of the Ground Lease under the terms of the Ground Lease and Owner agrees to assume all of the obligations of the Landlord under the Space Lease for the benefit of Tenant. This agreement is to be signed by City National Bank, Pubic Finance Authority and the City of Beverly Hills.

### **FISCAL IMPACT**

There is no fiscal impact from the execution of these agreements beyond the Lease impacts approved December 1, 2009.



Scott G. Miller, Director of  
Administrative Services, CFO

---

Approved By

# **Attachment 1**

## Nondisturbance Agreement

**Recording Requested By  
And When Recorded Mail To:**

City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attn: City Clerk

**NONDISTURBANCE AGREEMENT**

This Nondisturbance Agreement (“Agreement”) is made as of December \_\_\_\_, 2009, by and among the CITY OF BEVERLY HILLS PUBLIC FINANCING AUTHORITY, a California corporation (“Owner”), owner of the land described on Exhibit “A”, and PARTICIPANT MEDIA, LLC, a Delaware limited liability company (“Tenant”).

**RECITALS**

A. The City of Beverly Hills (“Landlord”) has executed an Office Lease in favor of Tenant dated November 5, 2009 (the “Space Lease”), a memorandum of which was recorded on \_\_\_\_\_ as Document No. \_\_\_\_\_ in the Official Records of Los Angeles County (“Official Records”).

B. Landlord has a leasehold interest in the Land by virtue of a Ground Lease dated February 17, 2009 between Landlord and Owner (“Ground Lease”), a memorandum of which was recorded on November \_\_, 2009 as Instrument No. \_\_\_\_\_, in the Official Records.

C. It is a condition to the effectiveness of the Lease that Owner execute this Agreement.

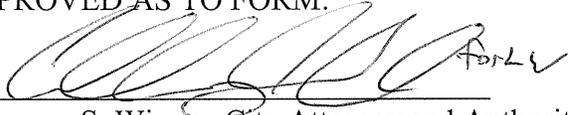
NOW THEREFORE, in consideration of the Lease, the foregoing recitals and other consideration, the sufficiency of which is hereby acknowledged, Owner hereby agrees that so long as Tenant is not in default under the Space Lease (beyond any period given in the Space Lease to cure such default), Owner will not disturb Tenant’s possession of the premises leased to Tenant under the Space Lease, nor shall the Space Lease be terminated or extinguished by reason of any termination of the Ground Lease under the terms of the Ground Lease and Owner agrees to assume all of the obligations of the Landlord under the Space Lease for the benefit of Tenant.

**“LANDLORD”**

CITY OF BEVERLY HILLS

By: \_\_\_\_\_  
Nancy Krasne,  
Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Laurence S. Wiener, City Attorney and Authority  
Counsel

**“OWNER”**

CITY OF BEVERLY HILLS PUBLIC  
FINANCING AUTHORITY

By: \_\_\_\_\_  
Nancy Krasne  
Chairman of Board of Directors

ATTEST:

\_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
Byron Pope  
Secretary to Board of Directors

**ACKNOWLEDGMENT**

State of California )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,  
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.

Signature \_\_\_\_\_  
Signature of Notary Public

(Seal)

**ACKNOWLEDGMENT**

State of California )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,  
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.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

**ACKNOWLEDGMENT**

State of California )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,

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.

Signature \_\_\_\_\_  
Signature of Notary Public

(Seal)

**ACKNOWLEDGMENT**

State of California )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,  
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.

Signature \_\_\_\_\_  
Signature of Notary Public

(Seal)

**EXHIBIT "A"**

**DESCRIPTION OF LAND**

A PORTION OF LOT 1 OF TRACT NO. 13349, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 311, PAGE 14 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND A PORTION OF LOT 1 OF BLOCK 17 OF TRACT NO. 5647, IN SAID CITY, AS PER MAP RECORDED IN BOOK 60, PAGE 88 OF MAPS, IN SAID OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID LOT 1 OF TRACT NO. 13349, DISTANT THEREON SOUTH 0°09'01" EAST 263.51 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT 1; THENCE SOUTH 89°51'04" WEST 120.00 FEET; THENCE SOUTH 0°09'01" EAST 240.00 FEET TO THE NORTH LINE OF 3RD STREET, 60.00 FEET WIDE, AS SHOWN ON SAID TRACT NO. 13349; THENCE EASTERLY ALONG SAID NORTH LINE, NORTH 88°42'51" EAST 120.00 FEET TO THE EAST LINE OF SAID LOT 1 OF SAID TRACT NO. 5647; THENCE NORTHERLY ALONG SAID EAST LINE, NORTH 0°09'01" WEST 237.62 FEET TO THE POINT OF BEGINNING.

## **Attachment 2**

Subordination Agreement - Lease

**Recording Requested By  
And When Recorded Mail To:**

City National Bank  
[2100 Park Place, Suite 150  
El Segundo, CA 90245  
Attn: Ofelia Paterra]

Account No. \_\_\_\_\_

A. P. N.: \_\_\_\_\_

**SUBORDINATION AGREEMENT - LEASE**

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR  
LEASEHOLD ESTATE IN THE PROPERTY BECOMING SUBJECT TO  
AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR  
LATER SECURITY INTEREST.**

This Subordination Agreement (“Agreement”) is made as of \_\_\_\_\_ 2010, by and among CITY OF BEVERLY HILLS PUBLIC FINANCING AUTHORITY, a California corporation (“Owner”) owner of the land hereinafter described and the CITY OF BEVERLY HILLS (“Tenant”), and CITY NATIONAL BANK (“CNB”).

**RECITALS**

A. Owner, as landlord (“Landlord”) did execute a lease in favor of Tenant dated February 17, 2009 (“Lease”), a memorandum of which was recorded on \_\_\_\_\_, 2009, in the Office of the County Recorder of Los Angeles as Instrument No. \_\_\_\_\_ covering that certain real property (“Property”) located in the County of Los Angeles, more particularly described on Exhibit “A”.

B. Owner has executed, or is about to execute, a deed of trust (“Deed of Trust”) securing the obligation referred to therein dated \_\_\_\_\_, 2010, in favor of CNB, which Deed of Trust is to be recorded substantially concurrently herewith;

C. It is a condition precedent to obtaining the extension of credit secured by such Deed of Trust that the Deed of Trust shall unconditionally be and remain at all times a lien or charge upon the Property prior and superior to the Lease;

D. CNB is willing to make the extension of credit secured by such Deed of Trust, provided that the Deed of Trust is a lien or charge upon the Property prior and superior to the Lease, and provided that Tenant will specifically and unconditionally subordinate the Lease to the lien of the Deed of Trust.

E. It is to the mutual benefit of the parties hereto that CNB make the extension of credit secured by such Deed of Trust; and Tenant is willing that the Deed of Trust shall, when

recorded, constitute a lien or charge upon the Property which is unconditionally prior and superior to the Lease.

**1. AGREEMENT:**

THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce CNB to make the extension of credit secured by such Deed of Trust, it is hereby declared, understood and agreed as follows:

1.1 That the Deed of Trust, and any renewals or extensions thereof, shall unconditionally be and remain at all times a lien or charge upon the Property prior and superior to the Lease and for all purposes, the Deed of Trust shall be deemed recorded prior to the execution of the Lease and Lender shall be deemed not to have notice of the Lease within the meaning of California Civil Code 1217;

1.2 That any estate in the Property acquired by Tenant shall be fully subject to the Deed of Trust;

1.3 That CNB would not make the extension of credit secured by such Deed of Trust without this Agreement; and

1.4 That this Agreement shall be the whole and only agreement with regard to the subordination of the Lease to the lien or charge of the Deed of Trust, and shall supersede and cancel, but only insofar as would affect the priority between the Deed of Trust, and the Lease, any prior agreements as to such subordination including, but not limited to, those provisions, if any, contained in the Lease which provide for the subordination of the lien or charge thereof to a deed or deeds of trust or to a mortgage or mortgages.

**2. TENANT DECLARES, AGREES AND ACKNOWLEDGES THAT:**

2.1 CNB, in making disbursements pursuant to any such extension of credit Deed of Trust, is under no obligation or duty to, nor has CNB represented that it will, see to the application of such proceeds by the person or persons to whom CNB disburses such proceeds and any application or use of such proceeds for the purposes other than those provided in such agreement or agreements shall not defeat the subordination herein made in whole or in part;

2.2 Tenant intentionally and unconditionally waives, relinquishes and subordinates the Lease in favor of the lien or charge upon the Property and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made pursuant to the extension of credit secured by such Deed of Trust and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination; and

2.3 Without limiting the provisions of this Agreement, in the event that CNB shall acquire title to the Property, Tenant agrees to look solely to CNB's interest in the Property for the satisfaction of any remedy of Tenant for the collection of a judgment (or other judicial

process) requiring the payment of money by CNB in the event of any default by CNB or any claim, cause of action, obligation, contractual, statutory or otherwise, by Tenant against CNB arising from or in any manner related to the Lease, and no other property or assets of CNB, or any officer, director, shareholder, partner, trustee, agent, servant or employee of CNB shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease, CNB's obligations to Tenant whether contractual, statutory or otherwise, the relationship of CNB and Tenant hereunder, or Tenant's use or occupancy of the Property.

**3. NON-DISTURBANCE AND ATTORNMENT IN FAVOR OF THIRD PARTY TENANTS.**

3.1 So long as any lessee under a space lease with Tenant or any other sublessee of Tenant with respect to space in the improvements or the Property or any portion thereof (a "Sublessee"), which is not the City of Beverly Hills or any instrumentality thereof, is not in default under the sublease they are a party to (beyond any period given such sublease to cure such default) as would entitle Owner to terminate the sublease or would cause, without any further action of Owner, the termination of the sublease, or would entitle Owner to dispossess the sublease thereunder, CNB agrees CNB will not disturb the peaceful and quiet possession of the applicable subleased premises by such Sublessee, nor shall the sublease or its appurtenances be extinguished by reason of any Foreclosure of the Deed of Trust or otherwise, nor join the Sublessee as a party in any action or proceeding brought pursuant to the Deed of Trust. Each Sublessee shall be a third party beneficiary of this Section 3.1.

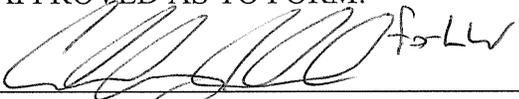
**NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS PERSON OBLIGATED ON YOUR REAL PROPERTY LEASE TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE PROPERTY.**

**"TENANT"**

CITY OF BEVERLY HILLS

By: \_\_\_\_\_  
Nancy Krasne,  
Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Laurence S. Wiener, City Attorney and Authority  
Counsel

**“OWNER”**

CITY OF BEVERLY HILLS PUBLIC  
FINANCING AUTHORITY

By: \_\_\_\_\_  
Nancy Krasne  
Chairman of Board of Directors

ATTEST:

\_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
Byron Pope  
Secretary to Board of Directors

**“CNB”**

CITY NATIONAL BANK,  
a national banking association

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC)

EXHIBIT "A"

DESCRIPTION OF LAND

A PORTION OF LOT 1 OF TRACT NO. 13349, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 311, PAGE 14 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND A PORTION OF LOT 1 OF BLOCK 17 OF TRACT NO. 5647, IN SAID CITY, AS PER MAP RECORDED IN BOOK 60, PAGE 88 OF MAPS, IN SAID OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID LOT 1 OF TRACT NO. 13349, DISTANT THEREON SOUTH 0°09'01" EAST 263.51 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT 1; THENCE SOUTH 89°51'04" WEST 120.00 FEET; THENCE SOUTH 0°09'01" EAST 240.00 FEET TO THE NORTH LINE OF 3RD STREET, 60.00 FEET WIDE, AS SHOWN ON SAID TRACT NO. 13349; THENCE EASTERLY ALONG SAID NORTH LINE, NORTH 88°42'51" EAST 120.00 FEET TO THE EAST LINE OF SAID LOT 1 OF SAID TRACT NO. 5647; THENCE NORTHERLY ALONG SAID EAST LINE, NORTH 0°09'01" WEST 237.62 FEET TO THE POINT OF BEGINNING.