

ALAN SPRIGGS, SUMMIT CO RECORDER
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REQUEST: HIGH COUNTRY TITLE
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WHEN RECORDED, RETURN TO:

Cottonwood Newpark Two, L.C.
2855 E. Cottonwood Parkway, Suite 560
Salt Lake City, Utah 84121
Attention: John L. West

EASEMENT AND MAINTENANCE AGREEMENT

THIS EASEMENT AND MAINTENANCE AGREEMENT ("Agreement") is made and entered into as of the 25th day of June 2006, by and among COTTONWOOD NEWPARK TWO, L.C. ("Cottonwood"), NEWPARK CORPORATION, a Utah corporation ("Newpark"), and NEWPARK OWNERS ASSOCIATION, INC., a Utah nonprofit corporation (the "Association"). Cottonwood, Newpark and Association are sometimes collectively referred to below as the "Parties."

RECITALS:

A. Newpark is the master developer of a mixed-use real estate development located in Summit County, Utah, known as the Newpark Development (the "Development").

B. Cottonwood has acquired from Newpark or its affiliate title to a portion of the land within the Development, commonly referred to as Lot V-1 of Parcel V of Newpark Subdivision ("Lot V-1"), Lot V-1 is more particularly described on the attached Exhibit "A."

C. The Development is subject to the terms and provisions of that certain Third Amended and Restated Declaration of Covenants, Conditions and Restrictions of Newpark Owners Association, Inc., dated December 17, 2004 and recorded on December 17, 2004 in Book 1667 at Page 667 of the official records of Summit County, Utah (the "CCRs"). The undefined capitalized terms used in this Agreement shall have the meanings ascribed to such terms in the CCRs.

D. Under the terms of the CCRs, the Association is obligated to maintain the Common Areas of the Development, which include the roadways, sidewalks, trailways, parking areas, landscaped areas and common utility service areas located on land either owned by the Association or on which the Association has an easement. Cottonwood wishes to grant the Association such an easement, to provide for the reservation of certain parking rights, and to engage the Association to perform other repair and maintenance work for Lot V-1 (but unrelated to the Common Areas), all as set forth below in this Agreement.

NOW, THEREFORE, in consideration of the above recitals, the promises contained below, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT:

1. Recitals. The recitals to this Agreement are an integral part of the agreement and understanding of the Parties, and are incorporated by reference in this Agreement.

2. Parking and Construction on Lot V-1. Cottonwood is planning to construct an office building and parking lot on Lot V-1 as shown on the attached Exhibit "B." No use of the building to be constructed on Lot V-1 (the "Lot V-1 Building") shall require parking ratio greater than four spaces for every 1,000 leasable square feet ("Lot V-1 Parking Ratio"). The Parties acknowledge and agree that the site planning and improvements, and layout of parking associated with Lot V-1, as shown on the attached Exhibit "B," has been done in the most efficient manner possible so as to maximize the number of parking stalls available for use by the occupants of the building to be constructed on Lot V-1 and by occupants and owners of property within the Development.

3. Grant of Easement to the Association. Subject to the terms of this Agreement, those areas of Lot V-1 designated on the attached Exhibit "B" as "Common Area" (but expressly excluding the designated "Patio Park" area and any portion of the Lot V-1 Building, it being understood that all Common Area is outside of the exterior walls of Lot V-1 Building) (collectively, the "Easement Property") are to be treated as Common Areas under the CCRs and are to be available for the uses provided in the CCRs (including, but not limited to those uses set forth in Section 1 of Article IV of the CCRs). Consistent with the above, Cottonwood hereby grants the Association a limited easement to enter onto such Common Areas, but only as reasonably necessary to perform those obligations set forth in the CCRs pertaining to the repair and maintenance (including replacement, as needed) of such Common Areas. The easement granted above is the easement referenced in Note 15 of the 2nd Amended Plat recorded on 7/12, 2006 in Book 1803 at Page 546 in the official records of Summit County, Utah. Notwithstanding the designation set forth in the first sentence of this Section 3, and notwithstanding any contrary language in the CCRs, the use of the parking areas to be constructed on Lot V-1 are subject to the following reservations and restrictions:

(a) Parking rights on Lot V-1 may be limited and reserved for the exclusive use of the occupant(s) of the Lot V-1 Building, between the hours of 7:30 a.m. to 5:30 p.m. on weekdays, exclusive of national holidays, and such occupant(s) (whether owner, successor-in-interest, assignee, or tenant) may post notice of and enforce such exclusive use as may be reasonably appropriate.

(b) Notwithstanding Section 3(a) above, twenty-five percent (25%) of parking stalls to be located on Lot V-1 may be limited and reserved for the exclusive use of the occupant(s) of the Lot V-1 Building (whether owner, successor-in-interest, assignee, or tenant) at all times, and such occupant(s) may post notice of and enforce such exclusive use as may be reasonably appropriate.

4. Maintenance of Common Areas; Maintenance of Patio Park. Consistent with the terms of the CCRs, the Association shall undertake responsibility for operation and maintenance of all of the Common Areas located on Lot V-1, including, without limitation, the parking facilities herein described, the costs of which will be levied as an assessment under the terms of the CCRs.

The Association's use of the Easement Property to fulfill its obligations in this Section 4 shall not unreasonably or unnecessarily interfere with the business, operations, or use of the Lot V-1 by the occupant(s) thereof. Neither the Association nor any successor shall be allowed to increase the scope of the limited easement granted in Section 3 above or otherwise increase the burden on Lot V-1. That area designated as the "Patio Park" on the attached Exhibit "B" is neither Common Area nor Limited Common Area and, as such, Cottonwood alone retains ultimate responsibility for the maintenance and repair (including replacement, as needed) of the improvements to be constructed thereon (the "Patio Park Maintenance Work"). Given the Association's responsibility for maintenance of the Common Areas in the Development and its anticipated engagement of one or more contractors to perform such work on its behalf, Cottonwood has requested, and the Association has agreed to perform, through such contractor(s), the Patio Park Maintenance Work. The costs incurred by the Association in performing the Patio Park Maintenance Work shall be those costs actually, necessarily and reasonably incurred for like work in the Development, and shall be billed to Cottonwood separately from Cottonwood's Assessment (as the owner of Lot V-1) for the costs associated with the Association's maintenance of the Common Areas located on Lot V-1. Cottonwood or the Association may, at any time and upon at least thirty (30) days' prior written notice to the other, discontinue the Association's performance of the Patio Park Maintenance Work.

5. Covenants to Run with Land. The easements granted in this Agreement shall constitute covenants running with Lot V-1. By coming to have any interest in or occupying Lot V-1, the person so coming to have such interest or occupying the same agrees to be bound by this Agreement. If Lot V-1 has more than one owner, the liability of each Owner under this Agreement shall be joint and several. Notwithstanding any applicable theory relating to a mortgage, the term owner shall not mean a Mortgagee unless until such Mortgagee has acquired title to the realty concern pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure. "Mortgagee" means the mortgagee under a mortgage or the beneficiary under a deed of trust recorded in the official records.

6. Dispute Resolution. The Parties agree that all disputes respecting this Agreement shall be subject to non-binding mediation and, upon the mutual agreement of the parties, by undertaking arbitration to be conducted in Salt Lake City, Utah in accordance with § 78-31a-101, *et seq.*, Utah Code Ann. The arbitrator of any such matter, in addition to such other and usual authority, shall also determine the content of any missing, vague or illusory term of this Agreement including, but not limited to, dimensions and legal descriptions of properties not otherwise fully described herein or the terms of easements and attendant rights or other such matters upon which agreement may be contemplated in the future. The terms of this provision shall be construed broadly so as to grant such arbitrator authority to the fullest extent possible to enforce and define the terms of the agreements between the Parties.

7. Further Documents. The parties hereto agree to execute and deliver such other and further documents as may be necessary to convey the spirit and intent of this Agreement.

8. Notices. Any notice required or permitted to be given pursuant to this Agreement shall be effective and valid only if in writing, and delivered personally by nationally-recognized express courier or delivery service (next morning business day delivery), or sent by facsimile

machine with receipt acknowledged (with a copy by first class mail) or postage prepaid by certified or registered mail, return receipt requested, as follows or to such other address or person as either party or person entitled to notice may specify by notice given as herein provided:

If to Newpark: Newpark Corporation
1483 Newpark Blvd.
Park City, Utah 84098
Attention: Marc Wangsgard
Telephone: (435) 649-9000
Fax: (435) 649-0218

With a copy to: James M. Doilney
1483 Newpark Blvd.
Park City, Utah 84098
Telephone: (435) 649-9000
Fax: (435) 649-0218

If to Cottonwood: Cottonwood Newpark Two, L.C.
2855 E. Cottonwood Parkway, Suite 560
Salt Lake City, Utah 84121
Attention: John L. West
Telephone: (801) 365-6200
Fax: (801) 365-6201

With a copy to: Cottonwood Newpark Two, L.C.
2855 E. Cottonwood Parkway, Suite 560
Salt Lake City, Utah 84121
Attention: Steven W. Baer
Telephone: (801) 365-6200
Fax: (801) 365-6201

If to Association: Newpark Owners Association, Inc.
1483 Newpark Blvd.
Park City, Utah 84098
Attention: Marc Wangsgard
Telephone: (435) 649-9000
Fax: (435) 649-0218

If to Summit County: Planning Director
Community Development
Summit County
P.O. Box 128
Coalville, Utah 84017
Telephone: (435) 336-3124

Unless otherwise specified, notices shall be deemed given when received, but if delivery is not accepted, on the earlier of the date delivery is refused or the third (3rd) day after the same is deposited with the United States Postal Service.

9. Miscellaneous.

(a) The Parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto.

(b) No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or provision herein contained. No extension of time for performance of any obligations or acts shall be deemed an extension of time for performance of any other obligations or acts.

(c) This Agreement shall bind, and inure to the benefit of, the successors and assigns of the Parties hereto.

(d) This Agreement may be executed in two or more counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on all the parties hereto, notwithstanding that all parties shall not have executed the same counterpart. Any Party may deliver this Agreement by facsimile transmission of such signed counterpart to the other Party.

(e) Nothing in this Agreement shall be deemed to be a gift or dedication of all or any portion of Lot V-1 for the general public or for any public purpose whatsoever, it being the intention of the Parties that this Agreement be strictly limited to the purposes expressed herein. The easements created by this Agreement may not be transferred, assigned or encumbered without the prior written consent of Cottonwood or its successor or assignee.

(f) The captions used in connection with the Articles of this Agreement are for convenience of reference only and shall not be deemed to construe or limit the meaning or language of this Agreement.

(g) If any provision of this Agreement is held to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

(h) This Agreement shall be governed and construed in accordance with the laws of the State of Utah with respect to contracts to be wholly performed therein.

(i) If any Party to this Agreement is required to initiate or defend an arbitration proceeding or litigation in any way connected with this Agreement, the prevailing Party in such matter, in addition to any other relief which may be granted, shall be entitled to

reasonable attorneys' fees, court costs, and other litigation or arbitration expenses. Attorneys' fees shall include attorneys' fees paid on any appeal or confirmation of arbitration award or modification thereto.

(j) A copy of any modification to this Agreement shall be provided to Summit County at the address provided above within ten (10) business day following the effective date of such modification.

DATED the day and year first written above.

NEWPARK:

NEWPARK CORPORATION,
a Utah corporation

By: Marc Wangsgard
Printed Name: Marc Wangsgard
Its: Co-President

ASSOCIATION:

^{MW} ~~COTTONWOOD~~ NEWPARK OWNERS
ASSOCIATION, INC.,
a Utah nonprofit corporation

By: Marc Wangsgard
Printed Name: Marc Wangsgard
Its: Director

COTTONWOOD:

COTTONWOOD NEWPARK TWO, L.C.,
a Utah limited liability company

By: CPM NEWPARK, L.C.,
a Utah limited liability company,
by its manager

By: COTTONWOOD PARTNERS
MANAGEMENT, LTD., a Utah
limited partnership, its manager

By: COTNET MANAGEMENT, INC.,
a Utah corporation, its general partner

By: John L. West
John L. West, President

STATE OF UTAH

COUNTY OF SALT LAKE)
: ss.

The foregoing instrument was acknowledged before me this 25 day of June, 2006, by, John L. West, as President of CotNet Management, Inc., a Utah corporation, the general partner of Cottonwood Partners Management, Ltd., a Utah limited partnership, the manager of CPM Newpark L.C., a Utah limited liability company, the manager of Cottonwood Newpark Two, L.C., a Utah limited liability company.

Janet G. Vise

NOTARY PUBLIC

Residing at: Salt Lake County

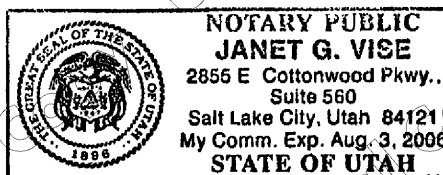
My Commission Expires:

8/3/06

STATE OF UTAH)

: ss.

COUNTY OF SUMMIT)



The foregoing instrument was acknowledged before me this 26th day of June, 2006 by Marc Wangsgard, the Director of Newpark Corporation, a Utah corporation.

Teressa K. Wharton
Co-president

NOTARY PUBLIC

Residing at: Wasatch County

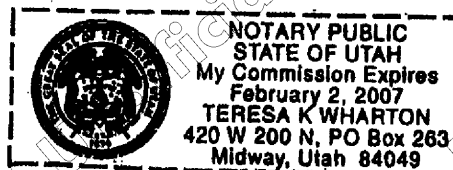
My Commission Expires:

2/2/2007

STATE OF UTAH)

: ss.

COUNTY OF SUMMIT)

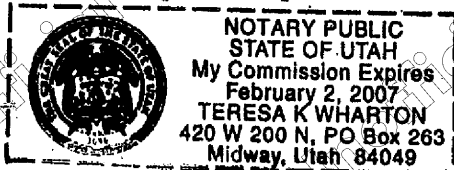


The foregoing instrument was acknowledged before me this 26th day of June, 2006 by Marc Wangsgard the Director of Newpark Owners Association, Inc., a Utah nonprofit corporation.

Teressa Wharton

NOTARY PUBLIC

Residing at: Wasatch County



My Commission Expires:

2/2/2007

DMWEST #6389618 v3

**Exhibit A
to
Easement and Maintenance Agreement**

Legal Description of Lot V-1

All of Lot V-1, Newpark Parcel V Subdivision 2nd Amended Plat,
according to the official plat thereof, recorded July 12, 2006, as Entry
Number 783595 of the official records in the office of the Summit County
Recorder.

PART OF NPRK-V-1-AM AND ALL OF NPRK-V-3-AM

**Exhibit B
to
Easement and Maintenance Agreement**

Site Plan for Lot V-1

(Attached)

DMWEST #6389618 v2

BK1803 PG1177

00783752



675 West 200 South Suite 100
 Salt Lake City
 Utah 84119
 (801) 552-8800
 Fax: (801) 552-7070
 coss@aes.com



JACK JOHNSON COMPANY
 Building Your Dream
 1500 East 2100 South
 Salt Lake City, Utah 84119
 (801) 486-3300
 Fax: (801) 486-3301
 www.jackjohnson.com

NO.	DATE	BY	CHKD.
1	10/1/11	JJM	MM
2	10/1/11	JJM	MM
3	10/1/11	JJM	MM
4	10/1/11	JJM	MM

**COTTONWOOD PARTNERS
 THE MOUNTAIN CENTER
 CORE & SHELL**

**SITE
 PLAN**

