

When recorded, mail to:

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

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

MADE BY

WACHOVIA SECURITIES, LLC
as Tenant

and

WACHOVIA FINANCIAL SERVICES, INC.
a national banking association
as Lender

Dated as of: April 2, 2008

SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT

(PID #612866)

THIS SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT ("**Agreement**") is made as of the 2 day of April 2008 by and among WACHOVIA FINANCIAL SERVICES, INC., ("**Lender**"), WACHOVIA SECURITIES, LLC ("**Tenant**") and COTTONWOOD NEW-PARK ONE, L.C ("**Landlord**").

Recitals

A. Tenant is the lessee under the Lease Agreement dated July 27, 2006, by and between Landlord and Tenant (as amended, the "**Lease**"), covering certain land and improvements thereon or to be constructed thereon located on 1441 W UTE Blvd, Park City UT 84098-7633 that certain real property as more particularly defined and described in the Lease (the "**Premises**").

B. Lender has made or will make a loan (the "**Loan**") to Landlord secured or to be secured by a mortgage or deed of trust, an assignment of rents and leases, and/or other security instruments (collectively, the "**Security Documents**") encumbering the Premises

C. Tenant desires assurance that if Lender forecloses the Security Documents, Lender shall recognize Tenant's leasehold estate and rights under the Lease and shall assume and be bound to Tenant to perform the obligations of Landlord under the Lease with the same force and effect as if Lender were the landlord under the Lease (subject to any express exceptions herein).

D. Lender is willing to agree that Tenant's possession of the Premises shall not be disturbed as a result of a foreclosure of any of the Security Documents or a transfer in lieu of foreclosure so long as Tenant is not in default (following notice and beyond any period of time given Tenant to cure such default) under the Lease and provided Tenant subordinates the Lease to the lien of the Security Documents and agrees to attorn to the purchaser at the foreclosure sale or transferee taking title in lieu of foreclosure and recognize said purchaser or transferee as landlord under the Lease.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties mutually covenant and agree as follows:

1. **Subordination**. Subject to the terms hereof, and provided Lender complies with all of its obligations under this Agreement, Tenant hereby subordinates the Lease, all extensions, modifications and renewals thereof, and all of Tenant's rights and interests thereunder, to the lien of the Security Documents, and to all modifications, renewals and extensions of the same, to the extent of all advances heretofore or hereafter made to Landlord secured by the Security Documents. This Agreement is not intended and shall not be construed to subordinate the Lease to any other security documents or any other liens or encumbrances other than the Security Documents as defined herein.

2. **Non-Disturbance**. Provided Tenant is not in default beyond any applicable notice and cure periods, as of the date Lender commences foreclosure proceedings or accepts a deed in lieu of foreclosure (except that if Tenant is in default at such date and the default is capable of cure by Tenant and Tenant is diligently and continuously pursuing such cure to completion then such default shall not affect Lender's obligations to Tenant hereunder), then no default under any of the Security Documents, as modified, extended, increased, spread or consolidated, and no proceeding to foreclose the same or the acceptance by Lender of a deed in lieu of foreclosure, or the exercise of any of Lender's rights under any of the Security Documents, will disturb Tenant's possession of the Premises under the Lease, nor will the Lease be affected or extinguished thereby and Lender hereby recognizes Tenant's rights to the Premises pursuant to the

terms of the Lease. In addition, Lender agrees not to name Tenant in any proceeding instituted to foreclose any of the Security Documents unless Lender is legally obligated to do so to properly foreclose the same and then such foreclosure shall in any event be made subject to the provisions of this Agreement.

3. **Attornment.** In the event of any such foreclosure or other sale to, or acquisition of the Premises by any other manner in lieu of foreclosure by, Lender or a third party (the purchaser at foreclosure or the transferee in lieu of foreclosure, including Lender if it is such purchaser or transferee, and such purchaser's/transferee's successors and assigns being hereafter called the "**Purchaser**"), Tenant shall attorn to Purchaser provided Purchaser shall recognize the Lease as a direct lease from Purchaser to Tenant and Purchaser shall assume and be bound to Tenant to perform the obligations of Landlord under the Lease, except that Purchaser shall not (a) be liable for any previous act or omission of Landlord under the Lease which accrued prior to the date of acquisition of Landlord's interest except for (i) ongoing defaults under the Lease; or (ii) acts or omissions of which Purchaser had written notice prior to Purchaser's acquisition of Landlord's interest under the Lease; (b) be subject to any offset, claim or defense which shall theretofore have accrued against Landlord, unless the basis of such offset, claim or defense remains uncured and Purchaser had notice thereof prior to Purchaser's acquisition of Landlord's interest under the Lease; (c) have any obligation with respect to any security deposit under the Lease unless such security deposit has been delivered to Purchaser; or (d) be bound by any previous prepayment of rent for a period greater than one (1) month in advance of its due date under the Lease, unless such prepayment shall have been expressly approved in writing by Lender or contained in the Lease and only to the extent such prepayment has been received by Purchaser.

4. **Notices to Landlord.** From and after the date Tenant receives a fully executed copy of this Agreement, Tenant shall send a copy of any notice or statement of a material default by Landlord under the Lease to Lender at the same time such notice or statement is sent to Landlord pursuant to the provisions of Section 9 below. A Purchaser shall be deemed to have received any and all notices received by Lender. Lender shall have the right to remedy any Landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied, and for such purpose Tenant hereby grants Lender an additional period of fifteen (15) days to enable Lender to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. If Lender is unable to remedy the default within the time period, Tenant may proceed to effect such remedy and offset the cost thereof as provided in the Lease. In the event of the termination of the Lease by reason of any default there under by Landlord, upon Lender's written request, given within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to Lender or its designee or nominee a new lease of the Premises for the remainder of the term of the Lease upon all of the same terms, covenants and conditions of the Lease. Lender shall have the right, without Tenant's consent, to foreclose the Security Documents or to accept a deed in lieu of foreclosure of the Security Documents or to exercise any other remedies under the Security Documents.

5. **Release.** Tenant has notice that the rent and all other sums due under the Lease have been assigned to Lender as additional security under the Security Documents. If Lender notifies Tenant in writing of a default under the Security Documents and demands in writing that Tenant pay its rent and all other sums due under the Lease directly to Lender or as otherwise required pursuant to Lender's notice, 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 Lender's notice. Landlord hereby authorizes Tenant to make such payments to Lender or as Lender shall otherwise direct, and Landlord hereby releases and discharges Tenant of and from any liability to Landlord resulting from Tenant's compliance with Lender's demands.

6. **Insurance and Condemnation Proceeds.** Tenant agrees that, notwithstanding any provision hereof to the contrary, the terms of the Security Documents shall continue to govern with respect to the disposition of any insurance proceeds or eminent domain awards, and any obligations of Landlord to restore the

real estate of which the Premises are a part shall, insofar as they apply to Lender, be limited to insurance proceeds or eminent domain awards received by Lender after the deduction of all costs and expenses incurred in obtaining such proceeds or awards.

7. **Consent.** Lender shall promptly respond to any request by Landlord or Tenant concerning this Agreement, the Lease or the Premises. Lender shall not unreasonably withhold, condition, or delay any response or consent requested by Landlord or Tenant with regard to this Agreement, the Lease or the Premises.

8. **Lease Provisions.** It is agreed that this Agreement shall supersede, to the extent inconsistent therewith, the provisions of the Lease relating to subordination of the Lease.

9. **Notice.**

(a) **Written Notice; Delivery Methods.** Each party giving or making any notice, request, demand, consent, approval, or other communication (each, a "**Notice**" (but sometimes "**notice**")) pursuant to this Agreement shall: (i) give the Notice in writing; (ii) cause the Notice to be signed by an authorized representative of the sending party; and (iii) use one of the following methods of delivery, each of which for purposes of this Agreement is a writing: (a) personal delivery; (b) Registered or Certified Mail, in each case, return receipt requested and postage prepaid; (c) nationally recognized overnight courier, with all fees prepaid; or (d) facsimile.

(b) **Addresses.** Each party giving a Notice shall address the Notice to the appropriate person at the receiving party (the "**Addressee**") at the addresses listed below or to another Addressee or at another address as designated by a party in a Notice pursuant to this Section.

<u>Tenant</u>	If delivered: Wachovia Corporate Real Estate Attn: Lease Admin. (PID #612866) 201 N. Tryon St., 21 st Floor, NC-0114 Charlotte, NC 28288-0114
	If mailed: Wachovia Corporate Real Estate Attn: Lease Admin. (PID #612866) PO Box 36729 Charlotte, NC 28236-6729
with copy to:	Wachovia Corporate Legal Division Attn: Rebecca Olliff (PID #612866) 301 S. College St., 30 th Floor, NC-0630 Charlotte, NC 28288-0630
<u>Lender</u>	Wachovia Financial Services, Inc., Attn: Real Estate Services 16435 N. Scottsdale Road, Suite 200, Scottsdale, Arizona - 85254

Landlord COTTONWOOD NEWPARK ONE, L.C
Attn: John L. West
C/o John L. West
2855 E. Cottonwood Pkwy, Suite 560
Salt Lake City, UT 84121

with a copy to: COTTONWOOD PARTNERS
Attn: M. SCOTT COLLINS
2855 E. COTTONWOOD PARKWAY, SUITE 560
SALT LAKE CITY, UT 84121

(c) **Effectiveness of a Notice.** Except as provided elsewhere in this Agreement, a Notice is effective only if the party giving the Notice has complied with Sections 9(a) and 9(b) and if the Addressee has received the Notice. A Notice is deemed to have been received as follows: (i) if a Notice is delivered in person, or sent by Registered or Certified Mail, or nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt; (ii) if a Notice is sent by facsimile, upon receipt by the party giving the Notice of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the Addressee's facsimile number; and (iii) if the Addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver the Notice. In addition, if a Notice is sent by facsimile, the party sending the Notice shall also send a confirmation copy of the Notice by one of the methods set forth in subsection (i) above.

(d) **Delivery Time of Notice.** Notwithstanding the foregoing, if any Notice is received after 5:00 p.m. on a Business Day where the Addressee is located, or on a day that is not a Business Day where the Addressee is located, then the Notice is deemed received at 9:00 a.m. on the next Business Day where the Addressee is located. Each party's attorney is authorized to give any Notice pursuant to this Agreement on behalf of such attorney's client.

10. **Miscellaneous.**

(a) **Authority.** Tenant, Landlord and Lender represent and warrant to each other that they and the individuals signing below have the right, power and authority to execute this Agreement.

(b) **Counterparts.** This Agreement may be executed in several counterparts each of which when executed is an original, but all of which together shall constitute one instrument.

(c) **Invalidity.** If any provisions of this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not apply to or affect any other provision hereof, but this Agreement shall be construed as if such invalidity, illegality, or unenforced ability did not exist.

(d) **Governing Law.** The laws of the State where the Premises are located shall govern this Agreement and its validity, enforcement and interpretation.

(e) **Modifications.** No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against whom the same is sought to be asserted.

(f) **Recordation.** Landlord or Tenant shall record this Agreement in the local registry in which the Premises is located.

(g) **Successors and Assigns.** This Agreement shall inure to the benefit and shall be binding upon the parties hereto and their respective successors and assigns and any Purchaser, and its heirs, personal representatives, successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of Lender, all obligations and liabilities of Lender under this Agreement arising from or after the date of such assignment or transfer by Lender shall terminate as to the entity that is assigning or transferring such interest and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Lender's interest is assigned or transferred.

11. **Assignments, Modifications, Amendments and Terminations.** The Lease shall not be assigned or terminated (except a termination that is permitted in the Lease without Landlord's consent) or materially modified or amended without Lender's prior written consent in each instance.

12. **Effectiveness.** This executed copy is only valid for thirty (30) days and is contingent upon receipt of a fully executed, recorded copy to Tenant within such 30-day period after which time this Agreement shall become null and void.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

[SIGNATURE PAGES FOLLOW]

State of New York)

Tenant

County of _____)

WACHOVIA SECURITIES, LLC

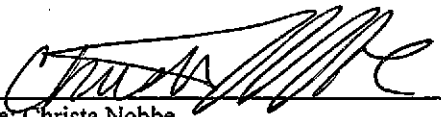
On the 7th day of APRIL 2008 before me, the undersigned, personally appeared Jeffrey Eiskowitz personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity and that by hi/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument and that such individual made such appearance before the undersigned in _____.

By: Jeffrey Eiskowitz
Print Name: Jeffrey Eiskowitz
Title: AS ITS VICE PRESIDENT

[Signature]
Notary Public
My commission expires: 4/7/08
JOANNE KELLY
NOTARY PUBLIC, STATE OF NY
NO. 01KE6159027
QUALIFIED KINGS COUNTY
COMM. EXP. 01-16-2011
[NOTARY SEAL]

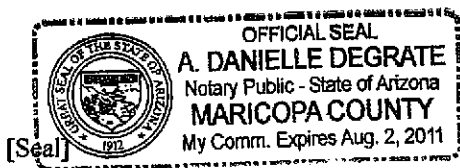
BANK:


WACHOVIA FINANCIAL SERVICES, INC.
a North Carolina corporation

By: 
Name: Christa Nobbe
Title: Vice President

STATE OF ARIZONA)
 :SS
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 20th day of May, 2008, by Christa Nobbe, a Vice President of **WACHOVIA FINANCIAL SERVICES, INC.**, a North Carolina corporation, on behalf of such corporation.




NOTARY PUBLIC
Residing at _____


LESSOR:

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

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

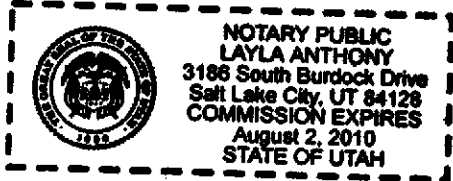
By: COTTONWOOD PARTNERS
MANAGEMENT, LTD.
a Utah limited partnership, its Manager

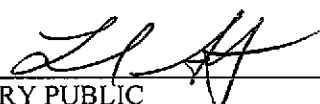
By: COTNET MANAGEMENT, INC.
a Utah corporation, its General Partner

By: 
Name: John L. West
Title: President

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 21st day of May, 2008, by John L. West, President of COTNET MANAGEMENT, INC., a Utah corporation and the general partner of COTTONWOOD PARTNERS MANAGEMENT, LTD., a Utah limited partnership and the manager of CPM NEWPARK, L.C., a Utah limited liability company and the manager of **COTTONWOOD NEWPARK ONE, L.C.**, a Utah limited liability company, on behalf of such company.




NOTARY PUBLIC
Residing at _____

[Seal]

EXHIBIT A

PROPERTY DESCRIPTION

That certain real property located in Summit County, Utah, more particularly described as follows:

Parcel 1

All of Lot T-1, **Amended Plat Newpark Parcel T Subdivision**, according to the official plat thereof, recorded December 23, 2004, as Entry No. 720980 of the official records of the office of the Summit County Recorder.

Summit County Tax Serial Number : NPRK-T-1-AM

Address

1456 Ute Boulevard, Park City, Utah 84098

Parcel 2

All of Newpark Parcel Q, **Amended Plat Newpark Q Subdivision**, according to the official plat thereof, recorded December 23, 2004, as Entry No. 720979 of the official records of the office of the Summit County Recorder.

Summit County Tax Serial Number: NPRK-Q-AM

Address

1441 Ute Boulevard, Park City, Utah 84098