

When Recorded Return To:

Wells Fargo Bank, National Association  
Real Estate Banking Group (AU # 0110152)  
299 So. Main Street, 6<sup>th</sup> Floor  
Salt Lake City, UT 84111  
Loan No. WB11355

00931266 B: 2097 P: 1152

Page 1 of 7

Alan Spriggs, Summit County Utah Recorder  
09/30/2011 03:27:17 PM Fee \$23.00  
By LANDMARK TITLE COMPANY  
Electronically Recorded

Attn: Malerie Young

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## AMENDMENT TO CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

**THIS AMENDMENT TO CONSTRUCTION DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (the "Amendment") is made as of September 27, 2011, by and among **COTTONWOOD NEWPARK ONE, L.C.**, a Utah limited liability company ("Trustor"), **HIGH COUNTRY TITLE**, a Utah corporation ("Trustee"), and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association and successor-by-merger to Wachovia Financial Services, Inc., a North Carolina corporation ("Beneficiary").

### RECITALS:

A. Trustor, as Borrower, and Beneficiary, as Bank, are parties to that certain Construction Loan Agreement dated May 21, 2008 (as amended, modified, extended, and renewed from time to time, the "Loan Agreement"). All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Loan Agreement.

B. The obligations of Trustor under the Loan Agreement are secured by, *inter alia*, a Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated May 21, 2008 executed by Borrower, as trustor, for the benefit of Bank and recorded in the Official Records of Summit County, Utah as Entry No. 00845058, Book 1931, beginning on Page 0293 (the "Deed of Trust"). The Deed of Trust encumbers certain real property located in Summit County, Utah, as more particularly described in Exhibit A of the Deed of Trust and attached hereto (the "Property").

D. In accordance with that certain Modification Agreement between Trustor, as borrower, and Beneficiary, as Bank, dated of even date herewith (the "Modification Agreement"), Trustor and Beneficiary have agreed to modify and amend the Loan and Loan Documents to, among other things, increase the interest rate payable under the Note.

E. Concurrently with the modification of the Loan and Loan Documents pursuant to the Modification Agreement, Trustor and Beneficiary desire to amend the Deed of Trust, as more particularly set forth herein.

NOW THEREFOR, FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, Trustor and Beneficiary agree as follows:

1. Accuracy of Recitals. Trustor hereby acknowledges the accuracy of the Recitals above.

2. Modifications to Deed of Trust. The Deed of Trust is hereby modified and amended to reflect that the Loan and the Loan Documents, pursuant to the Modification Agreement, have been modified and amended to (i) increase the interest rate payable under the Note and (ii) make certain other amendments to the Loan Documents as contained in the Modification Agreement.

3. Not a Novation. The parties each agree and acknowledge that the modifications set forth herein are not intended to be a novation or to constitute or evidence a new loan but rather a continuation of the existing Loan and the lien and charge of the Deed of Trust against the Property and all assets and properties described in the Deed of Trust shall continue unabrogated and in full force and effect.

4. Ratification of Deed of Trust. As amended by this Amendment, the Deed of Trust is ratified and confirmed and continues in full force and effect and contains the entire understanding and agreement of the parties in respect of the Deed of Trust and supersedes all prior representations, warranties, agreements and understandings. The Deed of Trust as modified herein shall be binding upon and inure to the benefit of Trustor and Beneficiary, and their respective successors and assigns. No provision of this Amendment may be changed, discharged, supplemented, terminated or waived except in a writing signed by Beneficiary.

5. Release and Discharge. Trustor fully, finally, and forever releases and discharges Beneficiary, and its respective successors, assigns, directors, officers, employees, agents, and representatives from any and all actions, causes of action, claims, debts, demands, liabilities, obligations, and suits, of whatever kind or nature, in law or equity, that Trustor has or in the future may have, whether known or unknown, (i) in respect of the Loan, the Loan Documents, or the actions or omissions of Beneficiary in respect of the Loan or the Loan Documents, and (ii) arising from events occurring prior to the date of this Amendment.

6. Miscellaneous. Except for the amendments above stated, all of the conditions and covenants of the Deed of Trust shall remain in full force effect, unchanged, and the Deed of Trust is in all respects ratified, confirmed and approved. All of the terms and conditions of the Deed of Trust are incorporated herein by reference.

7. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Signature pages may be removed from separate counterparts to form a single document.

8. Choice of Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Utah, without giving effect to conflicts of law principles.

9. Binding Effect. The Deed of Trust as modified herein shall be binding upon and inure to the benefit of, Trustor and Beneficiary and their respective successors and assigns.

10. Ratification. As amended by this Amendment, the Deed of Trust is ratified and confirmed and continues in full force and effect.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Trustor and Beneficiary have executed this Amendment as of the day and year first above written.

**TRUSTOR:**

**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 F. West  
Title: Vice President

**BENEFICIARY:**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
a national banking association and  
successor-by-merger to  
Wachovia Financial Services, Inc., a North  
Carolina corporation

By: \_\_\_\_\_  
Name: Erik Bengtzen  
Title: Vice President

IN WITNESS WHEREOF, Trustor and Beneficiary have executed this Amendment as of the day and year first above written.

**TRUSTOR:**

**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 F. West  
Title: Vice President

**BENEFICIARY:**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
a national banking association and  
successor-by-merger to  
Wachovia Financial Services, Inc., a North  
Carolina corporation

By:   
Name: Erik Bengtzen *SHAWN NIELSEN*  
Title: Vice President *SENIOR VICE PRESIDENT*

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

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of Sept., 2011, by ~~Steven~~ John F  
*West* ~~W. Baer~~, a Vice 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.

[Signature]  
Notary Public

My commission expires: August 3, 2014

[SEAL]



STATE OF UTAH )  
 : ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by Erik  
Bengtzen, Vice President of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking  
association and successor-by-merger to Wachovia Financial Services, Inc., a North Carolina corporation, on  
behalf of such association.

\_\_\_\_\_  
Notary Public

My commission expires:

[SEAL]

STATE OF UTAH )  
 : ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by Steven W. Baer, a Vice 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

My commission expires:

[SEAL]

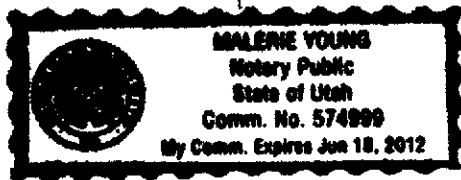
STATE OF UTAH )  
 : ss.  
COUNTY OF Salt Lake )

<sup>senior</sup> The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of September 2011, by Erik Bengtzen, Vice President of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association and successor-by-merger to Wachovia Financial Services, Inc., a North Carolina corporation, on behalf of such association. Shaun Nielson

Malerie Young  
\_\_\_\_\_  
Notary Public

My commission expires: 6/18/12

[SEAL]



**EXHIBIT A**

**LEGAL DESCRIPTION**

That certain real property located in Summit County, State of Utah and 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

**COURTESY RECORDING**

**This document is being recorded solely as a courtesy and an accommodation to the parties named therein. LANDMARK TITLE COMPANY hereby expressly disclaims any responsibility or liability for the accuracy or the content thereof.**