

00973785 B: 2194 P: 1500

Page 1 of 7

Mary Ann Trussell, Summit County Utah Recorder

06/28/2013 01:26:55 PM Fee \$23.00

By High Country Title

Electronically Recorded

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

WELLS FARGO BANK, NATIONAL ASSOCIATION
MAC C7331-140
4643 S. Ulster St., Suite 1400
Denver, CO 80237

Attn: Jori J. Zikas
Loan No. WB11355

APN: NPRK-T-1-AM, NPRK-Q-AM

(Space Above For Recorder's Use)

MODIFICATION AGREEMENT AMENDING DEED OF TRUST

THIS MODIFICATION AGREEMENT AMENDING DEED OF TRUST ("**Agreement**") is executed June 11, 2013 but effective as of May 21, 2013, by and between Wells Fargo Bank, National Association (collectively with its successors or assigns, "**Lender**"), and Cottonwood Newpark One, L.C., a Utah limited liability company ("**Trustor**" or "**Borrower**"). Lender is the beneficiary hereunder for indexing purposes by the clerk of court. This is not a novation.

RECITALS

- A.** Pursuant to the terms of that certain Construction Loan Agreement by and between Borrower and Lender dated May 21, 2008, as amended and modified by that letter agreement dated November 5, 2010; as amended by that letter agreement dated May 17, 2011; as amended by that certain Modification Agreement dated September 27, 2011; as amended by that letter agreement dated May 1, 2012 (collectively, and as the same may be amended, modified, supplemented or replaced from time to time, "**Loan Agreement**"), Lender made a loan to Borrower in the original principal amount of Eleven Million Five Hundred Thousand and No/100 Dollars (\$11,500,000.00) ("**Loan**"). The Loan is evidenced by that certain Promissory Note dated May 21, 2008, executed by Borrower payable to the order of Lender, in the principal amount of the Loan (as the same may be amended, modified, supplemented or replaced from time to time, "**Note**") and is further evidenced by certain other documents described in the Loan Agreement as Loan Documents
- B.** The Note is secured by, among other things, a Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated May 21, 2008, executed by Trustor, in favor of High Country Title, as Trustee, for the benefit of Lender, as Beneficiary, and recorded May 21, 2008, as Instrument No. 00845058 in the Recorder's Office of Summit County, Utah, as further amended and modified by that certain Amendment to Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated September 27, 2011, recorded September 30, 2011 as Instrument No. 00931266 in the Recorder's Office of Summit County, Utah

(collectively, and as the same may be amended, modified, supplemented or replaced from time to time, "**Security Instrument**") encumbering real property described more particularly therein.

- C. Since the date of the Loan, Borrower has entered, or may enter, into a Swap Agreement, as defined in the Loan Agreement.
- D. Borrower's obligations to Lender under the Swap Agreement are to be secured by the Security Instrument. Lender's obligations to pay money to Borrower under the Swap Agreement, if any, are to be assigned to Lender as additional collateral for the Loan.
- E. All exhibits, schedules or other items attached hereto are incorporated herein by such attachment for all purposes.

NOW, THEREFORE, Trustor and Lender agree as follows:

1. **REPRESENTATIONS AND WARRANTIES.** Trustor represents and warrants, as of the effective date above, that:
 - 1.1 **Intentionally deleted.**
 - 1.2 **FULL FORCE AND EFFECT.** The Note and other Loan Documents, as amended, are in full force and effect without any defense, counterclaim, right or claim of set-off; all necessary action to authorize the execution and delivery of this Agreement has been taken; and this Agreement is a modification of an existing obligation and is not a novation.
 - 1.3 **NO DEFAULT.** No Default (as defined in the any of the Loan Documents or any of the Other Related Documents), breach or failure of condition has occurred, or would exist with notice or the lapse of time or both, under the Security Instrument or any of the Loan Documents (as modified by this Agreement) or any of the Other Related Documents and that all representations and warranties herein and in the other Loan Documents are true and correct, and shall survive execution of this Agreement.
 - 1.4 **TITLE TO THE PROPERTY.** Since the recordation date of the Security Instrument (stated above), Borrower has not further encumbered the Property, including, without limitation, by entering into any deed of trust, deed to secure debt or mortgage, ground lease, and/or any option to purchase or right of first refusal with respect to the Property.
 - 1.5 **INTERVENING LIENS.** The lien of the Security Instrument and the Other Security Instrument is a first lien on the property described therein and covered thereby and that this Agreement will not cause intervening liens to become prior to the lien of the Security Instrument or Other Security Instrument. If any intervening lien exists or hereafter arises, Borrower shall cause the same to be released or subordinated to the lien of the Security Instrument or the Other Security Instrument, without limiting any other right or remedy available to Lender. Borrower has no legal or equitable claim against any mortgagor, trustor or grantor named in the Security Instrument and the Other Security Instrument which would be prior to the lien of the Security Instrument and the Other Security Instrument, or which would entitle Borrower to a judgment entitling Borrower to an equitable lien on all or any portion of that property prior in lien to the Security Instrument and the Other Security Instrument.
2. **MODIFICATION OF LOAN DOCUMENTS.** The Security Instrument and the other Loan Documents have been supplemented and modified to incorporate the following, which shall supersede and prevail over any conflicting provisions of the Loan Documents:

- 2.1 **Obligations Secured.** The recitals of the Security Instrument are hereby amended to include, as part of the definition of "Obligations," and thus secured by the Security Instrument, the following as a new subsection (i):
- (i) Payment and performance of all obligations of Borrower under or in connection with any Swap Agreement at any time entered into between Borrower and Lender, together with all modifications, extensions, renewals and replacements thereof.
- 2.2 **Cross-Default.** An "Event of Default" under any Swap Agreement (as defined therein) between Borrower and Lender shall be a Default (as defined in the Security Instrument) under the Security Instrument and any Default under the Security Instrument (or under any of the other Loan Documents) shall be an Event of Default under any Swap Agreement between Borrower and Lender. Any breach of any representation or condition contained in this Agreement shall be a Default under the Security Instrument and an Event of Default under any Swap Agreement between Borrower and Lender.
- 2.3 **Future Advance.** In addition to the obligations secured by the Security Instrument, the Security Instrument shall also secure payment and performance of all future advances and other obligations that the then record owner of all or part of the Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Lender, when such future advance or obligation is evidenced by an instrument in writing, which recites that it is secured by the Security Instrument including any and all advances or disbursements of Lender with respect to the Property for the payment of taxes, assessments, insurance premiums or costs incurred for the protection of the Property.
- 2.4 **Substitution of Trustee.** The Lender is the present holder of the beneficial interest under the Security Instrument, and, upon the recording herewith of that certain Substitution of Trustee executed by Lender (the "**Substitution of Trustee**"), does appoint **WELLS FARGO BANK NORTHWEST, NA**, a national banking association, with address of P.O. Box 45490, Salt Lake City, Utah 84145-0490, as Trustee, in place and instead of High Country Title, a Utah corporation, under said Security Instrument. Upon recordation of the Substitution of Trustee, the Lender does discharge the present record Trustee and appoint **WELLS FARGO BANK NORTHWEST, NA**, a national banking association as the new Trustee who shall succeed to all the powers, duties, authority and the title of the former Trustee. Except as provided herein, all references to the Trustee in the Loan Documents are hereby amended to mean the new Trustee.

Except as modified herein, all of the terms and provisions of the Security Instrument shall remain in full force and effect and are hereby ratified and confirmed.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Trustor and Lender have caused this document to be duly executed June 11, 2013 but effective as of May 21, 2013.

"LENDER"

WELLS FARGO BANK, NATIONAL ASSOCIATION
a national banking association

By: 
Name: J. Brian Duerden
Title: Vice President

"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

IN WITNESS WHEREOF, Trustor and Lender have caused this document to be duly executed June 11, 2013 but effective as of May 21, 2013.

"LENDER"

WELLS FARGO BANK, NATIONAL ASSOCIATION
a national banking association

By: _____
Name: J. Brian Duerden
Title: Vice President


"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

STATE OF UTAH

ss.

COUNTY OF SALT LAKE

The foregoing instrument was acknowledged before me this 27 day of JUNE 2013, by John F. West, a Vice President of Cotnet Management, Inc., a Utah corporation, the General Partner of Cottonwood Partners Management, Ltd., a Utah limited partnership, the Manager of CPM Newport, L.C., a Utah limited liability company, the Manager of COTTONWOOD NEWPARK ONE, L.C., a Utah limited liability company, on behalf of said association.

[Handwritten Signature]

NOTARY PUBLIC
Residing at: _____

My commission expires AUGUST 19, 2016



STATE OF UTAH

ss.

COUNTY OF SALT LAKE

The foregoing instrument was acknowledged before me this 27 day of JUNE 2013, by J. Brian Duerden, a Vice President of WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, on behalf of said association

[Handwritten Signature]

NOTARY PUBLIC
Residing at: SALT LAKE

My commission expires MAY 24, 2017

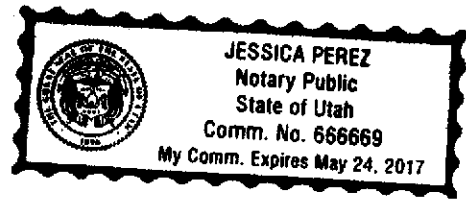


EXHIBIT A - DESCRIPTION OF PROPERTY

Exhibit A to Modification Agreement Amending Deed of Trust between Cottonwood Newport, L.C., a Utah limited liability company, as Trustor, and Wells Fargo Bank, National Association (collectively with its successors or assigns; "**Lender**") dated June 11, 2013 but effective as of May 21, 2013.

All that certain real property located in Summit County, Utah, described as follows:

Parcel 1

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

Parcel 2

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