

Recording Requested By,  
And After Recording, Return To:  
U.S. Bank National Association  
170 South Main Street, 6<sup>th</sup> Floor  
Salt Lake City, UT 84101  
Attn: Nate Quist

01001243 B: 2253 P: 1196

Page 1 of 8

Mary Ann Trussell, Summit County Utah Recorder

08/20/2014 02:43:33 PM Fee \$25.00

By Backman RPTP

Electronically Recorded

5-085032

OT-35

SUBORDINATION, NON-DISTURBANCE,  
ATTORNMENT AND ESTOPPEL AGREEMENT

THIS AGREEMENT is entered into as of August 13, 2014, by and between INNERCHANGE OAKLEY, LLC, a Utah limited liability company ("Lessee"), and U.S. BANK NATIONAL ASSOCIATION ("Bank").

RECITALS

A. Bank has extended credit or may hereafter extend credit to SNOW MOUNTAIN L.C., a Utah limited liability company ("Borrower"), secured, in whole or in part, by a deed of trust and an assignment of leases (collectively the "Deed of Trust") covering that certain real property situated in Summit County, Utah, and described on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. Lessee leases a portion of the Property pursuant to a Lease Agreement between Borrower and Oakley School, LLC, dated as of November 19, 2004, as amended and assigned to Lessee pursuant to an Assignment, Assumption, and Amendment of Lease Agreement dated August 1, 2013 (the "Lease"), which Lease has not been recorded. It is a condition of Bank's agreement to extend or continue credit to Borrower secured by the Property that the security of the Deed of Trust be and at all times remain a lien or charge on the Property prior and superior to the rights of Lessee under the Lease.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. SUBORDINATION.

(a) Subordination of Lease. The Deed of Trust and any and all extensions, renewals, modifications or replacements thereof shall be and at all times remain a lien or charge on the Property prior and superior to the Lease and any other rights of Lessee in the Property. Lessee intentionally and unconditionally waives, relinquishes and subordinates the priority and superiority of the Lease and Lessee's right and interest to the Property thereunder to the lien or charge of the Deed of Trust, and any and all extensions, renewals, modifications or replacements thereof.

(b) Reliance. Lessee acknowledges that Bank, in extending or continuing to extend credit to Borrower secured by the Property, is doing so in material reliance on this Agreement.

(c) Acknowledgments of Lessee. Lessee acknowledges that it has such information with respect any credit extended by Bank to Borrower, and all loan documents executed in connection therewith, as Lessee deems necessary in order to grant this subordination. Lessee further agrees that Bank is under no obligation or duty to, nor has Bank represented that it has or will, see to the application of the proceeds of any such credit by any person or

entity, and any application or use of any such proceeds for purposes other than those for which they were intended shall not defeat this subordination.

(d) **Entire Subordination Agreement.** This Agreement constitutes the whole and only agreement between the parties hereto with regard to the subordination of the Lease to the lien or charge of the Deed of Trust; there are no agreements (written or oral) outside or separate from this Agreement with respect to the subject matter hereof; and all prior negotiations with respect thereto, if any, are merged into this Agreement. This Agreement 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 without limitation those provisions, if any, contained in the Lease which provide for the subordination thereof to the lien of a deed of trust or mortgage affecting all or any portion of the Property.

2. **LEASE.** Lessee hereby covenants and agrees that, so long as the Deed of Trust remains in force and effect:

(a) **No Modification, Termination or Cancellation.** Lessee shall not consent to any material modification (including without limitation any change in rent or term provisions), termination or cancellation of the Lease without Bank's prior written consent.

(b) **Notice of Default.** Lessee shall notify Bank in writing concurrently with any written notice given to Borrower that seeks or asserts a termination of the Lease as a result of any breach of or default by Borrower under the Lease.

(c) **No Advance Rents.** Lessee shall not make any payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease.

(d) **Assignment of Rents.** Lessee acknowledges that the Lease has been assigned to Bank. Upon receipt by Lessee of written notice from Bank directing Lessee to make payment thereof to Bank, Lessee shall comply with such direction to pay and shall not be required to determine whether Borrower is in default under any obligations to Bank.

3. **ATTORNMEN.** If Bank or any other transferee acquires Borrower's right, title and interest in and to the Property pursuant to a judicial or non-judicial foreclosure of the Deed of Trust or a deed in lieu thereof or in any other manner whereby Bank or such transferee succeeds to the interest of Borrower under the Lease, Lessee agrees as follows for the benefit of Bank or such transferee:

(a) **Payment of Rent.** Lessee shall pay to Bank or such transferee all rental payments required to be made by Lessee pursuant to the terms of the Lease for the remaining term thereof.

(b) **Continuation of Performance.** Lessee shall be bound to Bank or other transferee in accordance with all of the terms of the Lease for the remaining term thereof, and Lessee hereby attorns to Bank or such transferee as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Bank or such transferee succeeding to Borrower's interest in the Lease and giving written notice thereof to Lessee.

(c) **No Offset.** Neither Bank nor such transferee shall be liable for the return of any sums which Lessee may have paid to Borrower as the prior lessor under the Lease as security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Borrower to Bank or such transferee.

(d) **Subsequent Transfer.** If Bank or such transferee, by succeeding to Borrower's interest under the Lease, becomes obligated to perform the covenants of a lessor thereunder, then, upon any further transfer by Bank or

such transferee of its interest as a lessor under the Lease, all of such obligations shall terminate as to Bank or other transferee.

4. **NON-DISTURBANCE.** In the event of a foreclosure of the Deed of Trust, or a transfer of the Property in lieu thereof or in any other manner whereby Bank or such transferee succeeds to the interest of Borrower under the Lease, so long as there shall then exist no breach, default or event of default by Lessee under the Lease, (a) the leasehold interest of Lessee shall not be extinguished or terminated by reason of such foreclosure, (b) the Lease shall continue in full force and effect, and (c) Bank and its successors-in-interest shall recognize and accept Lessee as the tenant under the Lease, subject to the terms and conditions of the Lease as modified by this Agreement.

5. **ESTOPPEL.** Lessee acknowledges and represents that:

(a) **Lease Effective.** The Lease has been duly executed and delivered by Lessee and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Lessee thereunder are valid and binding, and there have been no amendments, modifications or additions to the Lease (written or oral), other than those included in the Lease definition set forth above. The Lease constitutes the entire agreement between Borrower and Lessee with respect to the Property, and Lessee claims no rights to the Property other than as set forth in the Lease.

(b) **No Default.** As of the date hereof and to the best of Lessee's knowledge, (i) there exists no breach of or default under the Lease, nor any condition, act or event which with the giving of notice or the passage of time, or both, would constitute such a breach or default, and (ii) there are no existing claims, defenses or offsets against rental due or to become due under the terms of the Lease.

(c) **No Prepaid Rent.** No deposits or prepayments of rent have been made in connection with the Lease, except for a standard security deposit.

6. **MISCELLANEOUS.**

(a) **Remedies Cumulative.** All remedies provided herein are cumulative, not exclusive, and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Bank and Borrower or any other person or entity.

(b) **Costs, Expenses and Attorneys' Fees.** If any party hereto institutes any judicial or administrative action or proceeding to enforce any rights or obligations under this Agreement, or seeking damages or any other judicial or administrative remedy, the prevailing party shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of the prevailing party's in-house counsel), whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Bank or any other person) relating to Borrower, Lessee or any other person or entity.

(c) **Notices.** All notices, requests and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing delivered to each party at the address set forth below its signature, or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class and postage prepaid; and (iii) if sent by telecopy, upon receipt.

(d) **Further Assurances.** At the request of any party hereto, each other party shall execute, acknowledge and deliver such other documents and/or instruments as may be reasonably required by the requesting party in order

to carry out the purpose of this Agreement, provided that no such document or instrument shall modify the rights and obligations of the parties set forth herein.

(e) Successors, Assigns, Governing Law. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, legal representatives, successors, assigns and other transferees of the parties hereto, and shall be governed by and construed in accordance with the laws of the State of Utah.

(f) Conflicts. In the event of any inconsistency between the terms of this Agreement and the Lease, the terms of this Agreement shall control.

(g) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be construed as one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

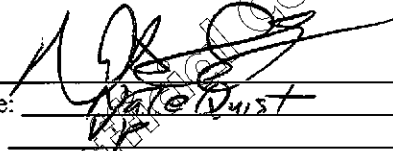
LESSEE:

INNERCHANGE OAKLEY LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_, Utah \_\_\_\_\_  
Attn: \_\_\_\_\_

BANK:

U.S. BANK NATIONAL ASSOCIATION

By:   
Name: Nate Quist  
Title: \_\_\_\_\_  
Address: 170 South Main Street, 6<sup>th</sup> Floor  
Salt Lake City, Utah 84101  
Attn: Nate Quist

ACKNOWLEDGMENTS

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of August, 2014, by \_\_\_\_\_, as \_\_\_\_\_ of Innerchange Oakley, LLC, a Utah limited liability company

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

My commission expires: \_\_\_\_\_

Residing at: \_\_\_\_\_

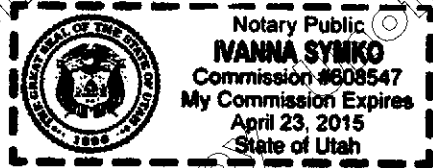
STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 18 day of August, 2014, by Nate Quist as VP of U.S. Bank National Association.

*Nanna Symko*  
Notary Public

My commission expires: April 23 2015

Residing at: Salt Lake City



to carry out the purpose of this Agreement, provided that no such document or instrument shall modify the rights and obligations of the parties set forth herein.

(e) Successors, Assigns; Governing Law. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, legal representatives, successors, assigns and other transferees of the parties hereto, and shall be governed by and construed in accordance with the laws of the State of Utah.

(f) Conflicts. In the event of any inconsistency between the terms of this Agreement and the Lease, the terms of this Agreement shall control.

(g) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be construed as one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

LESSEE:

INNERCHANGE OAKLEY LLC

By: CANNON HOLBROOK  
Name: [Signature]  
Title: NIC President  
Address: 661 EAST TECHNOLOGY AVE, SUITE B  
ORLANDO, Utah 84097  
Attn: CANNON HOLBROOK

BANK:

U.S. BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: 170 South Main Street, 6<sup>th</sup> Floor  
Salt Lake City, Utah 84101  
Attn: Nate Quist

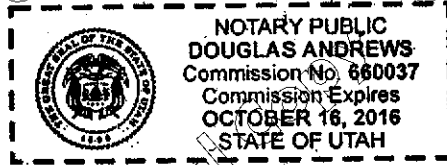
ACKNOWLEDGMENTS

STATE OF UTAH )  
 ) ss.  
COUNTY OF Utah )

The foregoing instrument was acknowledged before me this 19 day of August, 2014, by Cammie Holbrook,  
as Vice President of Innerchange Oakley, LLC, a Utah limited liability company

[Signature]  
Notary Public

My commission expires: 10/16/16  
Residing at: Orem UT



STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of August, 2014, by \_\_\_\_\_  
as \_\_\_\_\_ of U.S. Bank National Association.

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

My commission expires: \_\_\_\_\_  
Residing at: \_\_\_\_\_

Order No.: 5-085632

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**PARCEL 1:**

Beginning at a point which is South 1800.67 feet and West 950.24 feet from the Northeast corner of Section 20, Township 1 South, Range 6 East, Salt Lake Base and Meridian (said point being on the Southerly line of Weber Canyon Road and an existing fence corner) all courses are along an old existing fence line and running thence South 01 deg. 39'12" West 1582.46 feet; thence South 00 deg. 12'27" West 67.85 feet; thence South 01 deg. 36'10" West 485.60 feet; thence South 88 deg. 22'42" West 359.66 feet; thence North 00 deg. 21'21" East 347.07 feet; thence North 01 deg. 14'10" East 1579.79 feet; thence North 06 deg. 52'28" East 90.57 feet to the Southerly line of Weber Canyon Road; thence North 70 deg. 12'37" East 103.33 feet along said line; thence North 71 deg. 08'10" East 290.28 feet along said line to the point of beginning.

Being the proposed plat of Cottonwood Meadows Subdivision.

**PARCEL 2:**

Beginning at a point which is South 1800.67 feet and West 950.24 feet from the Northeast corner of Section 20, Township 1 South, Range 6 East, Salt Lake Base and Meridian to the Southerly line of Weber Canyon Road and thence South 71 deg. 08'10" West 290.28 feet; and South 70 deg. 12'37" West 103.33 feet along said Southerly line from the Northeast corner of Section 20, Township 1 South, Range 6 East, Salt Lake Base and Meridian (said point being on the Southerly line of Weber Canyon Road and an existing fence corner); thence South 06 deg. 52'28" West 90.57 feet, and South 01 deg. 14'10" West 1552.25 feet along an existing fence; thence South 65 deg. 01'55" West 219.34 feet; thence North 01 deg. 14'10" East 1643.13 feet to the Southerly line of Weber Canyon Road and on existing fence; thence North 66 deg. 11'40" East 227.04 feet along said Southerly line of Weber Canyon Road and on existing fence to the point of beginning.

Parcel No. **OT-35**