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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 SECURITIES AND EXCHANGE
15 COMMISSION,

16 Plaintiff,

17 v.

18 CHARLES P. COPELAND,
19 COPELAND WEALTH
20 MANAGEMENT, A FINANCIAL
21 ADVISORY CORPORATION;
22 AND COPELAND WEALTH
23 MANAGEMENT, A REAL
24 ESTATE CORPORATION,

25 Defendants.

CASE NO. 11-CV-08607-R-DTB

**OPPOSITION OF PERMANENT
RECEIVER TO MOTION OF TRI
TOOL INC. FOR AN ORDER TO
MODIFY STAY; AND,
MEMORANDUM OF POINTS AND
AUTHORITIES**

DATE: August 19, 2013
TIME: 10:00 a.m.
DEPT. 8, 2nd Floor

Judge: Hon. Manuel L. Real

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1 Thomas C. Hebrank, the court-appointed Permanent Receiver
2 ("Receiver") for Copeland Wealth Management, a Financial Advisory
3 Corporation ("CWM Financial"), and Copeland Wealth Management, a
4 Real Estate Corporation ("CMWR"), and their subsidiaries and affiliates
5 (the "Receivership Entities") including, without limitation, Copeland
6 Properties Three, L.P. ("CP3"), Copeland Properties 14, L.P. ("CP14")
7 and Copeland Properties 18, L.P. ("CP18") submits this Memorandum of
8 Points and Authorities in Opposition to the Motion of Creditor Tri Tool
9 Inc. ("Tri Tool") for an Order to Modify Stay (the "Motion").

10
11 I.

12 **INTRODUCTION**

13 The Receiver agrees with much of Tri Tool's extensive factual
14 statement. Nevertheless, the Motion does not support modification of the
15 stay implemented by this Court. Tri Tool is among the multitude of
16 others with claims against the Receivership estate as a result of
17 Defendant Charles Copeland's questionable dealings. However, that
18 does not justify Tri Tool's attempt to lift the stay so it can pursue CP3,
19 CP14, CP18, CWMR and Copeland Realty, Inc. ("CRI") in an action
20 pending in Sacramento County Superior Court (the "State Court Action").
21 This Court has granted the Receiver's motion establishing a claims-bar
22 date and the procedures for submitting proofs of claims. Tri Tool has
23 already submitted a claim, which is its remedy, just as claims are the
24 remedy for the numerous other creditors.

25 Tri Tool initially filed its complaint in the State Court Action on July
26 27, 2009, against CP3 and the personal guarantors only, based on an
27 unpaid \$200,000 promissory note. Now, *four years later*, Tri Tool wants
28 to amend its complaint to add as new defendants CP14, CP18, CWMR,

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1 and CRI. The reason for that is obvious – the Receiver’s reports reflect
2 that CP18 and CWMR have substantial funds, unlike most of the
3 Receivership Entities.

4 This Court, however, has ruled that the Receivership Entities will
5 not be consolidated. Rather than pool assets and liabilities, the Court
6 determined that the Receivership Entities should be treated individually.
7 Tri Tool wants the Court reverse its approach in that regard too. Tri
8 Tool’s claim is properly against CP3 (although CP3 was terminated
9 before the Receiver was appointed), or perhaps against CWMR, as the
10 successor general partner of CP3. Whether those claims would be
11 approved is not before the Court, but given the Court’s existing orders,
12 Tri Tool can have no proper claims against CP14 or CP18.

13 The former limited partners of CP3 that have joined in the Motion
14 (the “CP3 Limited Partners” and, together with Tri Tool, sometimes
15 referred to as “Movants”) have even less reason for seeking to modify
16 the stay. Four of them, Janet Ihde, Sandra Hayes, Joseph Dotan and
17 Melvyn Ross, had their investments in CP3 rolled into CP18 and will
18 benefit from anticipated distributions of CP18’s funds. (Declaration of
19 Thomas Hebrank (“Hebrank Decl.”), ¶¶5 & 8.) One of the others, Lillian
20 Franklin, had the good fortune of liquidating her CP3 investment. The
21 other, Neal Bricker, had the misfortune of being rolled into Copeland
22 Fixed Income Two, L.P. (“CFI2”), which Charles Copeland drained.
23 (Hebrank Decl. ¶¶6 & 9.)

24 However, none of this gives the CP3 Limited Partners an ability to
25 pursue further relief in the State Court Action against Receivership
26 Entities. Indeed, for five of the six, it could only lead to a windfall at the
27 expense of all other CP18 limited partners who would have to wait for
28

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1 any distribution until the State Court Action is concluded. In reality, all of
2 CP3's limited partners have a possible pro-rata obligation for repayment
3 of Tri Tool's note, which Tri Tool has been pursuing against them in the
4 State Court Action because of their allegedly shared obligation.

5 Apart from Tri Tool's attempt to circumvent the orderly and efficient
6 administration of the Receivership's claims procedures, there are some
7 significant facts that are disputed. As stated above, much of the factual
8 history is accurate; however, certain facts and some the
9 characterizations are not. For example, CP3 did not *loan* money to
10 CP18, nor did CP3 *purchase* the North Carolina property owned by
11 CP18. Rather, it acquired an interest in CP14, which was transferred to
12 CP18, and then distributed to CP3's partners when CP3 was terminated.

13 In addition, Tri Tool filed its initial complaint against CP3 in the State
14 Court action in July 2009. Almost two years later in April 2011, Tri Tool
15 filed a Second Amended Complaint, to name the CP3 Limited Partners.
16 Now, *four years later*, it wants to again amend its complaint to add CP14,
17 CP18, CWMR and CRI. Tri Tool is not just designating "Doe" defendants
18 as it states, Tri Tool is naming new defendants based on new allegations.
19 The Motion not only is improper, but also any further amendment to Tri
20 Tool's complaint in the State Court Action would be time barred.

21 **II.**

22 **PROCEDURAL BACKGROUND**

23 The Securities and Exchange Commission ("SEC") filed its
24 Complaint for Violations of The Federal Securities Law against
25 defendants on October 18, 2011. [Dkt. 1.] On October 25, 2011, the
26 Court entered the Judgment of Permanent Injunction and Other Relief,
27 placing the assets of the Receivership Entities into the Receiver's
28

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1 possession and control, and implementing the stay. [Dkt. 3.]¹ The Court
2 determined by its March 12, 2012 Order Approving Receiver’s
3 Application and Report that CWMR, CP3, CP14 and CP18, are among
4 the Receivership Entities. [Dkt. 53.]

5 On October 3, 2012, the Court authorized the sale of CP18’s North
6 Carolina property by its Order Granting Receiver’s Motion for Approval of
7 Sale of Real Property. [Dkt. 126.] The sale netted the Receivership
8 \$2,411,637, so far, with another \$597,114 remaining in escrow pending
9 resolution of a disputed proof of claim submitted by CP18’s lender.

10 Next, the Court decided that the assets and liabilities of each
11 Receivership Entity should not be pooled, but instead would be
12 addressed individually in its November 5, 2012 Order Denying Motion to
13 Consolidate Receivership Entities and Pool Assets and Liabilities of
14 Receivership Entities (“11/5/12 Order”). [Dkt. 180.]

15 On January 2, 2013, the Court established the procedures for
16 making claims against Receivership Entities in its Order Granting
17 Receiver’s Motion (1) Establishing Bar Date for Claims; (2) Approving
18 Form and Manner of Notice; and, (3) Approving Proof of Claim Form and
19 Procedures for Submitting Proofs of Claim (“1/2/13 Order”). [Dkt. 214.]

20 Tri Tool has submitted its Proof of Claim to the Receiver based on
21 a \$200,000 promissory note that was not paid by CP3. Tri Tool did not
22 submit the claim against any particular Receivership Entity, but the
23 Receiver intends to consider it as a potential claim against CWMR, the
24 successor general partner of CP3.²

25 ¹ The Docket for this case shows that the judgment was filed on October 19, 2011, and that it was
26 entered on October 25, 2011.

27 ² Tri Tool’s Proof of Claim is for the total amount of \$529,000. This includes the \$200,000 principal
28 amount of the note, \$230,021 in attorney’s fees, and \$85,150 in interest. (Hebrank Decl. ¶¶12 & 13,
Exs. 2 & 3.)

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III.

FACTUAL HISTORY

A. Tri Tool's \$200,000 Receivable

The Receiver acknowledges that Tri Tool has an unpaid debt owed to it by CP3. The debt is based on a Straight Note for \$200,000 (the "Tri Tool Note") entered April 5, 2007, by Donald Copeland who purported to be signing as the "General Partner" of CP3. (Hebrank Decl. ¶14, and Ex. 4.) The real general partner of CP3 was CRI. (See, Limited Partnership Agreement dated 2/23/04; Hebrank Decl., Ex. 5.) Tri Tool knew, or certainly should have known, that Donald Copeland was not CP3's general partner because Tri Tool concurrently was purchasing CP3's Rancho Cordova property for \$9,900,000. (See, Declaration of Rollie Peterson in Support of Motion ("Peterson Decl."), Ex. N.)

In the Tri Tool Note, CP3 promises to pay \$200,000 at the end of 24 months after close of escrow on the Rancho Cordova property if an unrecorded easement was not removed. There was no requirement that the money be held in escrow or a reserve account. Charles Copeland and Donald Copeland personally guaranteed the note.

B. The Pacific Western Bank Loan

The Receiver also acknowledges that CP3 obtained a \$1,800,000 loan from Pacific Western Bank ("PWB") about two months before it sold the Rancho Cordova property to Tri Tool. The loan appears to have been used to buy an interest in CP14 that would become part of the purchase price for property in North Carolina being acquired by

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1 CP14/CP18.³ (Peterson Decl., Ex. M, Line Item 201.) Another \$850,000
2 was paid by CP18, primarily from investments made by the other limited
3 partners in CP18. The PWB loan did not purchase the North Carolina
4 property as Tri Tool suggests. The Balance Sheet prepared by the
5 Receiver as part of his Report No. 2 [Dkt. 31] identifies all of the CP18
6 limited partners most of whom were not investors in CP3. (Hebrank
7 Decl., ¶15, Ex. 1.)

8 It also appears that the seller of the North Carolina property
9 deferred a \$330,000 payment as part of the purchase price. (Peterson
10 Decl., Ex. M, Line Item 214.) There seems to be nothing wrong with that
11 either, if the seller elected to carry part of the purchase price.

12 **C. Sale of CP3's Property**

13 Escrow for the sale of CP3's Rancho Cordova property to Tri Tool
14 closed on April 6, 2007, according to the Seller's Settlement Statement.
15 (Peterson Decl., Ex. N.) The \$1,800,000 loan from PWB was repaid
16 through escrow together with interest and fees, which Tri Tool knew six
17 years ago. After payment of all "Seller Charges" the statement shows
18 that CP3 had \$680,924.59 remaining in cash. The closing of escrow
19 also triggered the two-year period for CP3 to remove the easement on
20 the property. Otherwise, payment of the \$200,000 Tri Tool Note was
21 required. However, at that time, CP3 had an opportunity to avoid any
22 obligation under the note whatsoever by removing the easement.

23 ///

24 ///

25 _____
26 ³ The Receiver does not dispute that CP14 might have been the original intended purchaser of the
27 North Carolina property but, because CP14 also was being used for 1031 tax deferred exchange
28 purposes, another single-purpose entity had to be the purchaser to satisfy the lender for the North
Carolina property acquisition. There appears to be nothing actionable about that.

1 Had the PWB loan not been paid through escrow, CP3 and its
 2 partners would have had to repay the loan through other means. (See,
 3 C. Copeland deposition transcript ("Copeland Trans.") 77:5-23; Peterson
 4 Decl., Ex. A-9.) One alternative, of course, would have been to liquidate
 5 their investments in CP14/CP18. However, had that been done, the CP3
 6 Limited Partners would have no interest in CP18 and no right to receive
 7 any distributions through the Receivership.

8 Similarly, the \$330,000 deferred payment on CP18's acquisition of
 9 the North Carolina property was paid off with the proceeds of CP3's sale
 10 of its Rancho Cordova property. (Copeland Trans. 140:14-17; Peterson
 11 Decl., Ex. A-16.) Again, had that not been done, the partners in
 12 CP14/CP18 would have had to make the payment through other means,
 13 such as a cash call.

14 **D. Distribution of CP3 Sales Proceeds**

15 After the sale of CP3's property, Charles Copeland created a
 16 specific cash plan for each of the CP3 investors. Everyone, including
 17 Janet Ihde, Sandra Hayes, Joseph Dotan and Melvyn Ross, rolled their
 18 investments into CP14/CP18, with the exception of Lillian Franklin who
 19 received cash, and Neal Bricker who moved into CFI2. (Copeland
 20 Trans. 78:25-79:24; Peterson Decl., Ex. A-10.)

21 CP18 was established to acquire and operate the North Carolina
 22 property. (Copeland Trans. 112:11-113:1; Peterson Decl., Ex. A-13.)
 23 This was done because the bank that was providing the purchase loan
 24 wanted a single-asset entity to own the property and CP14 also owned
 25 other property that was part of a tax-deferred exchange. The partners in
 26 CP14 then became partners in CP18. (Copeland Trans. 113:10:114:18;
 27 Peterson Decl., Ex. A-18.) When CP18 was formed, CP14 first had an
 28

1 ownership interest in it, but its ownership was distributed out to CP14's
 2 partners proportionately, and CP14 was closed. (Copeland Trans.
 3 141:7-13; Peterson Decl., Ex. A-16.)

4 Consequently, by the end of 2007, CP3 had sold its only property,
 5 paid its existing debts and made distributions to its partners. (Copeland
 6 Trans. 152:3-153:1; Peterson Decl., Ex. A-17.) At that point, the
 7 \$200,000 Tri Tool Note had not been paid, and it would not come due, if
 8 at all, until April 2009. That left nearly a year-and-a-half to remove the
 9 easement and avoid the obligation entirely. The wind-down of CP3 and
 10 distribution of its assets was not a fraudulent transfer. Even if it were, Tri
 11 Tool still is left with a claim against a Receivership entity and no basis for
 12 seeking modification of the stay.

13 **E. The State Court Action**

14 Tri Tool filed the State Court Action on July 27, 2009. That was
 15 after CP3 failed to remove the easement on the Rancho Cordova
 16 property and, thereafter, did not pay the \$200,000 Tri Tool Note that had
 17 then become due. The original Tri Tool complaint named only CP3 and
 18 the two guarantors, Charles Copeland and Donald Copeland.

19 Two years later, on April 4, 2011, Tri Tool filed its Second Amended
 20 Complaint ("SAC") to add new causes of action and to name the CP3
 21 limited partners, Sandra Hayes, Joseph Doton, Melvyn Ross, Lillian
 22 Franklin, WW Eure, Dorthy Zilch Janet Idhe and Neal Bricker.
 23 (Declaration of John H. Stephens ("Stephens Decl.") ¶8, Ex. 4.) That was
 24 six months before this Court implemented the stay on October 25, 2011.
 25 Tri Tool acknowledges that it conducted discovery during this two-and-a-
 26 half year period, and obtained K-1 tax statements for the CP3 partners
 27 that would identify all interest-holders, yet Tri Tool did not seek leave to
 28

1 name CWMR, CP14, CP18 or CRI in the State Court Action. None of the
2 CP3 limited partners filed cross-complaints against them either.

3 The SAC alleges that fraudulent transfers were made by Donald
4 Copeland to the CP3 limited partners in June 2007 – six years ago – but
5 nothing is alleged in the SAC against CRWR, Copeland Realty, CP14 or
6 CP18. (Stephens Decl. Ex.4.) When Tri Tool filed its original complaint
7 in July 2009, it knew or should have known shortly thereafter that CP3
8 had distributed profits from the sale of its property to the partners.

9 Tri Tool admits that by October 2010, it knew CP3 had distributed
10 its cash assets to its limited partners. Tri Tool filed a motion in the State
11 Court Action to compel responses to discovery it had served on October
12 28, 2010, because it had learned in responses to “prior discovery” that
13 the cash had been distributed. (Stephens Decl. ¶¶4-6, Exs. 1 & 2.)

14 *Indeed, Tri Tool knew as early as January 2010 that CP3’s general*
15 *partner had distributed its cash from the sale of its Rancho Cordova*
16 *property to its investors. Charles Copeland testified on January 18,*
17 *2010, in response to questions by Tri Tool’s counsel, that CP3 dissolved*
18 *shortly after the sale of its building and that over \$200,000 was*
19 *distributed to the CP3 investors. (Copeland Trans. (1/18/10)14:22-15:8;*
20 *Stephens Decl., Ex. 3.) And, the CP3 Limited Partners knew in 2007,*
21 *that CP3’s general partner had distributed all of its funds.*

22 Tri Tool also knew from the April 2007 Settlement Statement that it
23 received upon its purchase of CP3’s Rancho Cordova property that the
24 PAC loan had been paid off. CP3’s Limited Partners either knew or
25 certainly should have known then too.

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1 **1. Refusal to Modify the Stay Preserves the Status Quo, and Movants Will Not Suffer Substantial Injury**

2
3 This Court, with the Receiver’s assistance, has instituted
4 procedures that are appropriate under the unique facts of this case. First,
5 the Court fashioned in its 1/2/13 Order an efficient process for the
6 numerous creditors to submit proofs of claim against the Receivership
7 Entities and their assets. Second, the Court determined, pursuant to the
8 11/5/12 Order, that the assets of the various Receivership Entities will
9 not be pooled and distributed on a pro rata basis to all proper claimants,
10 but instead will be distributed based on claims against specific entities.

11 These decisions have thoughtfully and effectively maintained the
12 status quo. They afford fairness and protection to all claimants, including
13 Movants. However, Tri Tool seeks to circumvent these procedures and
14 to secure for itself special treatment that is not warranted by the facts. A
15 refusal to modify the stay will ensure that these procedures remain intact,
16 protecting the interests of all claimants who have timely submitted their
17 proofs of claim.

18 **(a) Refusal to Modify the Stay Ensures Fair and Consistent**
19 **Application of the 1/2/13 Order and the 11/5/12 Order**

20 In its 1/2/13 Order, the Court established a claims bar date,
21 approved the manner by which notice should be given to claimants, and
22 approved the specific form for proofs of claims and the procedures for
23 submitting them. This process has been essential to the execution of the
24 Receiver’s powers and the disposition of assets that have come under
25 his control. It will determine which claimants are entitled to receive
26 distributions and should not be undermined.

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1 Tri Tool was entitled to submit its proof of claim, and has done so.
2 The fact that Tri Tool and the CP3 Limited Partners now make
3 unsubstantiated allegations about fraudulent activity by Receivership
4 Entities six years ago, while under Charles Copeland's control, does not
5 distinguish their claims from others. On the contrary, it places them in a
6 large class of similarly situated individuals. Granting Tri Tool special
7 treatment to pursue CP3, CP14, CP18, CRI and CWMR outside the
8 established claims procedure would nullify the Receiver's function and
9 be prejudicial to other creditors.

10 Tri Tool wants to be paid in full from funds generated by the
11 Receiver belonging to an entity (CP18) that did not issue the Tri Tool
12 Note, and at the expense of legitimate CP18 investors. The CP3 Limited
13 Partners want the benefit of distributions from CP18's funds, while
14 foisting onto the Receivership estate responsibility for paying the Tri Tool
15 Note for which they have proportionate obligations.

16 Furthermore, pursuant to the 11/5/12 Order, the Court ruled that
17 the assets of the Receivership estate will not be pooled, but will be
18 distributed based on equity interests in and claims against specific
19 Receivership Entities. This decision was based on the Court's
20 determination to treat the assets of the individual Receivership Entities
21 as they currently exist, even though there is some evidence that might
22 suggest that some assets were commingled among the Receivership
23 Entities without the limited partners' knowledge.

24 The Court has decided to treat the Receivership Entities as
25 discreet units, rather than allow the pooling or tracing of assets. There
26 may have been some comingling and transfers among the entities;
27 however, that was not sufficient to persuade the Court to pool the assets
28

1 and distribute them pro rata to claimants, and it should not persuade the
2 Court to modify the stay.

3 Tri Tool's Motion goes into detail about CP3's assets and how they
4 can be traced in various ways to other Receivership Entities. However,
5 the Court has already decided that this is not the proper approach for
6 this case. Tri Tool does not have a claim against CP14 or CP18 and any
7 such claim would involve the tracing of assets, which would render
8 meaningless the Court's 11/5/12 Order.

9 **(b) Tri Tool and the CP3 Limited Partners Will Not Suffer**
10 **Substantial Injury if the Stay Remains in Place**

11 Movants cite various cases to support their argument that they will
12 suffer substantial injury if the stay remains in place. However, they ignore
13 that they already have submitted proof of claims pursuant to the
14 procedure established by the 1/2/13 Order. That order gives Movants a
15 remedy, and affords them due process. They will not suffer substantial
16 harm because they have claims to the funds in the Receivership estate.
17 They are not entitled to more.

18 Conversely, if the stay were modified, it would force other limited
19 partners and creditors with claims against CP3, CP14, CP18, CWMR and
20 CRI to wait until the State Court Action was concluded before the Receiver
21 could distribute all assets of those entities. Given that the State Court
22 Action was filed four years ago and Tri Tool is still seeking to amend its
23 pleadings, the State Court Action could continue for some time. Despite
24 the current October trial date in the State Court Action, if any Receivership
25 Entities were added as defendants, the Receiver would need to conduct his
26 own discovery. The discovery could take many more months and could
27 result in substantial expenses to the Receivership estate.

1 If substantial injury would befall anyone, it will not be the Movants
 2 whose claims against CP14 and CP18 are tenuous at best – it will be the
 3 individuals with legitimate claims against CP18, or other Receivership
 4 Entities, who will be forced to wait for their rightful distributions. In
 5 addition, the Receivership assets would be diminished by litigation costs.

6 In SEC v. Universal Financial, 760 F.2d 1034, 1038 (9th Cir. 1985),
 7 the court refused to lift the stay in a receivership matter where, among
 8 other things, the litigation costs would increase, while the size of the
 9 receivership estate would be diminished. Here, if the stay is modified to
 10 allow Tri Tool and the CP3 Limited Partners to name CP14, CP18,
 11 CWMR and CRI, litigation costs undoubtedly will increase diminishing
 12 the value of the Receivership estate.

13 **2. Tri Tool and the Limited Partners Are Unlikely to Prevail**
 14 **on Their Claims Against CP14, CP18, CWMR And CRI**

15 The Wencke Court pointed out that, when a movant's claim is
 16 unlikely to succeed, and the receiver, therefore, is likely to prevail, there
 17 is less reason to require the receiver to defend an action. Wencke, 622
 18 F. 2d at 1373. Here, Tri Tool and the CP3 Limited Partners are not likely
 19 to prevail on their claims against CP14, CP18, CWMR and CRI for
 20 several reasons.

21 First, Tri Tool's claims under the Uniform Fraudulent Transfer Act
 22 ("UFTA") are time barred. Pursuant to California Civil Code, § 3439.09,
 23 the statute of limitations on an action for relief from a transfer proscribed
 24 under section 3439.04(a) (transfer made with intent to defraud creditors)
 25 is four years after the transfer or, if later, one year after the transfer was or
 26 could reasonably have been discovered by the claimant up to a maximum
 27 of seven years. Civ. Code § 3439.09(a), (c). The statute of limitations for
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1 an action for relief from a transfer proscribed by section 3439.04(b)
2 (transfer without receiving reasonably equivalent value) is four years after
3 the transfer. Civ. Code § 3439.09(b). See *also* Monastra v. Konica
4 Business Machines (1996) 43 Cal.App.4th 1628, 1645.

5 In this case, the alleged transfer occurred in or around February of
6 2007 when CP3 transferred funds to CP14/CP18 and its limited partners.
7 (Peterson Decl. ¶17). Tri Tool's claim under section 3439.04(b) of the
8 UFTA (transfer without equivalent value) is therefore time barred
9 because Tri Tool would have had to file its proposed Third Amended
10 Complaint by February of 2011, four years later. Tri Tool's claim under
11 section 3439.04(a) of the UFTA (transfer with intent to defraud) is also
12 time barred because Tri Tool reasonably should have discovered the
13 transfer well within a year after filing its original complaint in July 2009.
14 Under this scenario, Tri Tool would have had to file its Third Amended
15 Complaint, *at the absolute latest*, by July 2011.⁴ All of these dates
16 predate October 25, 2011, when the stay in the Receivership was
17 entered and, therefore, any argument that the stay tolled the statute of
18 limitations is without merit.

19 Furthermore, Tri Tool actually knew about the transfer of CP3's
20 funds more than a year before the Court implemented the stay. In
21 December 2010, Tri Tool filed a motion to compel further discovery in the
22 State Court Action. In a declaration in support of that motion, Tri Tool
23 states that on October 28, 2010, it served discovery on Donald Copeland
24 and CP3, but they did not provide responses. (Stephens Decl., ¶¶4-6,
25

26 ⁴ The seven year backstop of section 3934.09(c) only comes into play if the transfer could only
27 reasonably have been discovered after four years from the transfer, in which case the statute provides
28 a maximum time period in which the claim must be brought. Monastra v. Konica Business Machines
(1996) 43 Cal.App.4th 1628, 1645.

1 Ex. 2.) In the supporting memorandum, Tri Tool states that “[d]uring
 2 discovery, Plaintiff learned that Defendants dissolved [CP3] and
 3 distributed cash to the limited partners in amounts that exceeded the
 4 debt owed to Tri Tool”. Therefore, Tri Tool wanted the additional
 5 discovery “to learn the names and addresses of the limited partners.”
 6 (Stephens Decl., ¶¶2-3, Ex. 1.)

7 In fact, Tri Tool knew from Charles Copeland’s deposition
 8 testimony in January 2010 that CP3’s general partner had distributed the
 9 cash remaining from the sale of CP3’s property to its investors. In
 10 questioning by Tri Tool’s counsel, Mr. Copeland testified that shortly after
 11 the 2007 sale, CP3 was terminated and its cash was distributed.
 12 (Copeland Trans. (1/18/10)14:22-15:8; Stephens Decl., Ex. 3.) While Tri
 13 Tool might contend that it did not then know the names of the limited
 14 partners, it knew the identity of the general partner. Moreover, the CP3
 15 Limited Partners had known about the distributions since 2007.⁵

16 Thus, by October 25, 2011, when the stay in this action was
 17 effected, Tri Tool had known for almost two years about the transfer of
 18 CP3’s funds. Any tolling of the statute of limitations because of the stay
 19 would not prevent Tri Tool’s fraudulent transfer claims from being time
 20 barred.

21 Finally, by the end of 2007, CP3 had sold its only property, paid its
 22 debts and made distributions to its partners. At that point, the \$200,000
 23 Tri Tool Note would not come due, if at all, until April 2009. CP3 and
 24 Charles Copeland then had a year-and-a-half to remove the easement

25 ⁵ Tri Tool also states incorrectly that the Receiver has denied the CP3 Limited Partners access to
 26 CP18’s books and records. (Tri Tool’s Memorandum of Points and Authorities, p.7, n.2.) Rather,
 27 CP18’s Quick Books were delivered electronically to counsel for Janet Ihde, Sanda Hayes, Joseph
 28 Dotan and Melvyn Ross more than two weeks before the Motion was filed, and his office confirmed
 receipt. (Stephens Decl., ¶10, Ex.5.)

1 and avoid the obligation entirely. Consequently, the legitimate wind-
 2 down of CP3 and distribution of its assets does not appear to have been
 3 a fraudulent transfer, because CP3 could have had no intent to hinder,
 4 delay or defraud a creditor that did not then exist. Without a fraudulent
 5 transfer, Movants do not have a colorable claim even if it were not time
 6 barred.

7 **3. Any Modification of the Stay is Premature**

8 The foregoing analysis of the first two Wencke factors is
 9 compelling enough for the Court to deny the Motion without considering
 10 the ripeness of the Motion to modify the stay. Nevertheless, certain facts
 11 suggest that a modification, especially as to CP18, would be premature.

12 On October 3, 2012, this Court approved the sale CP18's North
 13 Carolina property. The sale netted the partnership \$2,411,637.74 with
 14 an additional \$597,114.36 being held in escrow pending resolution of the
 15 dispute with CP18's lender.

16 The Receiver is negotiating with CP18's lender the possible terms
 17 for distributing the escrowed funds and he plans to file a motion for
 18 approval of the settlement, or, if a settlement is not reached, for
 19 directions from the Court to resolve the lender's claims. Therefore, it is
 20 not clear at this time what assets of CP18 will be available for
 21 distribution. The Receiver should not have to wait for the resolution of
 22 the State Court Action to make that determination.

23 **V.**

24 **CONCLUSION**

25 The Court should deny Tri Tool's and the CP3 Limited Partners'
 26 Motion. Modification of the stay would undermine the Court's 1/2/13
 27 Order and 11/5/12 Order, which preserve the status quo. Movants are
 28

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A LIMITED LIABILITY PARTNERSHIP
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1 not entitled to special treatment; rather, they are entitled to file proofs of
2 claim, which they have done. The allegations of fraud as to some of the
3 Receivership Entities do not distinguish their claims. Furthermore, the
4 claims under the UFTA are time barred. The only reason Movants seek
5 to add CP14, CP18, CWMR and CRI as defendants in the State Court
6 Action at this very late stage is that they know CP18 and CWMR have
7 assets. However, they have waited too long and their claims are now
8 extinguished. For these reasons and all others set forth above, the
9 Receiver respectfully requests that the Court deny the Motion.

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DATED: July 29, 2013

MULVANEY BARRY BEATTY LINN
& MAYERS LLP

By: /s/ John H. Stephens
John H. Stephens
Toby S. Kovalikver
Attorneys for Permanent Receiver
Thomas C. Hebrank

HEBCO.130.494232.1

1 Everett G. Barry, Jr. (SBN 053119)
2 John H. Stephens (SBN 82971)
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8 Facsimile: 619-238-1981

9 Attorneys for Permanent Receiver
10 Thomas C. Hebrank

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 v.

17 CHARLES P. COPELAND,
18 COPELAND WEALTH
19 MANAGEMENT, A FINANCIAL
20 ADVISORY CORPORATION,
21 AND COPELAND WEALTH
22 MANAGEMENT, A REAL
23 ESTATE CORPORATION,

24 Defendants.

CASE NO. 2:11-cv-08607-R-DTB

**DECLARATION OF JOHN H.
STEPHENS IN SUPPORT OF
OPPOSITION OF PERMANENT
RECEIVER TO MOTION OF
CREDITOR TRI TOOL INC. FOR
AN ORDER TO MODIFY STAY**

DATE: August 19, 2013
TIME: 10:00 a.m.
DEPT. 8, 2nd Floor

Judge: Hon. Manuel L. Real

25 I, John H. Stephens, declare as follows:

26 1. I am an attorney, licensed to practice before the above-entitled
27 Court, and an attorney with Mulvaney Barry Beatty Linn & Mayers LLP,
28 counsel for the Permanent Receiver, Thomas C. Hebrank. I submit this
declaration in opposition to the motion filed by Tri Tool, Inc. ("Tri Tool") for
modification of the stay implemented by this Court. I have personal
knowledge of the facts below, expect those stated on information or belief,

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1 and as to those I believe them to be true. If called as a witness, I would
2 competently in a manner consistent with these facts.

3 2. Attached hereto as Exhibit 1 is a copy of Tri Tool's
4 Memorandum of Points and Authorities in Support of its Motion to Compel
5 Defendants to Respond to Request for Production of Documents (Set
6 Two) filed on December 15, 2010 in the Superior Court of Sacramento
7 County in Case Number 34-2009-00054045 (the "State Court Action"). I
8 obtained the document from the electronic filing system used by the
9 Sacramento Superior Court.

10 3. Tri Tool's motion to compel states: "[d]uring discovery, Plaintiff
11 learned that Defendants dissolved Copeland Properties Three, LP, and
12 distributed cash to the limited partners, in amounts exceeding the debt
13 owed Tri Tool, while the limited partnership was indebted to Tri Tool." The
14 motion proceeds to state that the "additional discovery sought by Plaintiff
15 seeks to learn the names and identities of the limited partners." (Ex. 1,
16 2:2-6.)

17 4. Attached hereto as Exhibit 2 is a copy of the Declaration of
18 Rollie A. Peterson in support of Tri Tool's motion to compel, also filed on
19 December 15, 2010 in the State Court Action.

20 5. The declaration states "[o]n October 28, 2010, Plaintiff Tri Tool
21 served its Request for Production of Documents, Set Two on Defendants
22 Donald E. Copeland and Copeland Properties Three, LP." (Ex. 2, ¶3.)

23 6. Consequently, before October 28, 2010, Tri Tool knew that
24 Copeland Properties Three, L.P. ("CP3") had distributed its cash from the
25 sale of its property in 2007 to its limited partners. Tri Tool might not have
26 known all of the names of CP3's limited partners, but Tri Tool knew that
27 CP3's general partner had made the transfers.
28

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1 7. In fact, Tri Tool knew from the deposition testimony of Charles
2 Copeland on January 18, 2010, that CP3 had been dissolved and that
3 funds had been distributed to the investors shortly after the sale in an
4 amount that exceeded the \$200,000 note owed by CP3 to Tri Tool. A
5 copy of excerpts from the deposition transcript of Charles Copeland is
6 attached hereto as Exhibit 3, see, 14:22-15:8. Tri Tool knew then that
7 CP3’s general partner made the transfers but did nothing for three-and-a-
8 half more years, well past the one year statute of limitations, and nearly
9 two years before this Court instituted the stay in this action on October 25,
10 2011.

11 8. Attached hereto as Exhibit 4 is a copy of the Second Amended
12 Complaint (“SAC”) filed on April 4, 2011 in the State Court Action. I also
13 obtained the document from the electronic filing system used by the
14 Sacramento Superior Court

15 9. The SAC added new causes of action and named the limited
16 partners of Copeland Properties Three, LP (“CP3 Limited Partners”),
17 Sandra Hayes, Joseph Doton, Melvyn Ross, Lillian Franklin, WW Eure,
18 Dorthy Zilch Janet Idhe and Neal Bricker. The SAC further alleges that
19 fraudulent transfers were made by Donald Copeland to the CP3 Limited
20 Partners in June 2007; however, nothing is alleged against Copeland
21 Wealth Management, a real estate corporation, Copeland Realty, Inc.,
22 Copeland Properties 14, LP or Copeland Properties 18, LP (“CP18”).

23 10. Tri Tool incorrectly states in its Motion for an Order to Modify
24 Stay (the “Motion”) that the Receiver has denied CP3’s limited partners
25 access to CP18’s books and records. That is not true. On or about June
26 5, 2013, and several weeks before the Motion was filed, the Receiver
27 electronically sent CP18’s “QuickBooks” to the law firm Ziprick & Cramer,
28

EXHIBIT 1

~~FILED
ENDORSED~~

2010 DEC 15 AM 9:20

SACRAMENTO COURTS
DEPT #53 #54

1 **Rollie A. Peterson, Esq. (SBN #113042)**
2 **PETERSON & KELL, A LAW CORPORATION**
3 **2377 Gold Meadow Way, Suite 280**
4 **Gold River, California 95670**
5 **Telephone: (916) 635-9300**
6 **Facsimile: (916) 635-9303**

7 **Attorneys for Plaintiff Tri Tool Inc.**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SACRAMENTO**

10
11 **TRI TOOL INC., a Nevada**)
12 **corporation,**)
13 **Plaintiff,**)
14 **vs.**)
15 **COPELAND PROPERTIES THREE,**)
16 **LP, a California limited partnership;**)
17 **CHARLES P. COPELAND, an**)
18 **individual; DONALD E. COPELAND,**)
19 **an individual; and DOES 1 through 20,**)
20 **inclusive,**)
21 **Defendants.**)

CASE NO. 34-2009-00054045
PLAINTIFF TRI TOOL INC.'S
MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF ITS MOTION TO COMPEL
DEFENDANTS TO RESPOND TO
REQUEST FOR PRODUCTION OF
DOCUMENTS. SET TWO

Date: January 10, 2011
Time: 9:00 a.m.
Dept: 54

Trial Date: January 25, 2011

22 **I.**

23 **INTRODUCTION**

24 Plaintiff Tri Tool Inc., submits this memorandum of points and authorities in support of its
25 motion to compel Defendants Donald E. Copeland and Copeland Properties Three, LP to respond
26 to Plaintiff's Request for Production of Documents, Set Two, and for sanctions, for failing to
27 respond to the discovery Plaintiff served upon them:

- 28 (1) Request for Production of Documents, Set Two, propounded by Plaintiff to

1 **Defendants Donald E. Copeland and Copeland Properties Three, LP.**

2 During discovery, Plaintiff learned that Defendants dissolved Copeland Properties Three,
3 LP, and distributed cash to the limited partners, in amounts exceeding the debt owed Tri Tool,
4 while the limited partnership was indebted to Tri Tool. The discovery sought by Plaintiff seeks to
5 learn the names and addresses of the limited partners, and the amounts distributed to each of them,
6 so that Plaintiff may join them in this case and judgment to recover the wrongful distributions,
7 under California Corp. C. §15905.09, "Liability for Improper Distribution."

8 **II.**

9 **UNDERLYING FACTS**

10 On April 5, 2007, Defendant Copeland Properties Three, LP, a California limited
11 partnership (hereafter "CP") and Plaintiff Tri Tool Inc., a Nevada corporation (hereafter "Tri Tool")
12 closed escrow for CP's sale to Tri Tool of improved real property. The real property is found at
13 3041 Sunrise Boulevard, Rancho Cordova, California (hereafter "Real Property"). CP gave Tri
14 Tool a promissory note called "Straight Note" (hereafter "Note") in part consideration of the sale.
15 CP is the Note's maker. Tri Tool is the Note's holder. CP's general partner, Defendant Donald E.
16 Copeland (hereafter "D. Copeland") signed the Note for CP. He and Defendant Charles P.
17 Copeland (hereafter "C. Copeland") guaranteed the Note (hereafter collectively "Guarantors").

18 The Note provides that CP would pay Tri Tool \$200,000 if, within twenty-four (24) months
19 from escrow's close, CP did not remove an unrecorded, purported easement (hereafter "Purported
20 Easement"), clouding title to the Real Property. CP did not perform the condition to remove the
21 Easement within twenty-four (24) months of escrow's close and breached its covenant to pay to Tri
22 Tool \$200,000. Guarantors failed to pay on CP's breach, breaching their promise to pay Tri Tool.
23 The Note provides for interest at 10% per annum, accruing from the Note's due date. The Note
24 further provides that its holder is entitled to attorney fees and costs incurred in its collection.

25 Tri Tool sues the Defendants for non-payment. In Tri Tool's First Cause of Action, as
26 payee and holder of the Note, it sues CP for damages, as the maker of the Note. Tri Tool sues CP
27

1 for damages, pursuant to California Civil Code (hereafter "CC") §3302, "**Breach of Obligation**
2 **to Pay Money Only**", and California Commercial Code (hereafter "Calif. Comm.C.") §3304,
3 "**Overdue Instrument**". In Tri Tool's Second Cause of action, it sues Guarantors for breach of
4 their guarantee, as accommodation parties. These causes arise out of Calif. Comm.C. §3412,
5 "**Obligation of Issuer of Note or Cashier's Check**" and Calif. Comm.C. §3419, "**Instruments**
6 **Signed for Accommodation**". Therein, Tri Tool incorporated by reference the allegations of its
7 First Cause of Action.

8 **III.**

9 **PROCEDURAL BACKGROUND**

10 On July 27, 2009, Plaintiff filed the instant action. Defendants answered on September 15,
11 2009. Defendants, in their answer, illuminated by their responses to form interrogatories, claim
12 that Plaintiff interfered with Defendants' ability to remove the subject easement. They claim
13 Plaintiff's suit was not actionable for this reason, by the affirmative defenses of unclean hands,
14 waiver, release, estoppel and breach of the covenant of good faith and fair dealing.

15 On August 6, 2010, Plaintiff filed its motion for summary judgment/summary adjudication.

16 On October 28, 2010, Plaintiff served by mail, on Defendants' attorney, directed to
17 Defendants CP and Donald Copeland Request for Production of Documents, Set Two. These
18 Defendants' responses were due December 2, 2010. Defendants have not responded to said
19 inspection demands, nor did they ask for an extension of time to respond. They did not produce
20 any documents.

21 On November 24, 2010, the Court entered its order on the motion for summary judgment,
22 granting the same.

23 **IV.**

24 **LAW & ARGUMENT**

25 Parties may make demands for inspection of documents and other tangible things (CCP
26 §§2031.010 to 2031.510). In the instance, where a response is due, the parties may agree to extend
27

1 time for service of their response. [CCP §2031.270].

2 The party to whom inspection demands are made shall respond, in writing (CCP
3 §§2031.210, 2031.220, 2031.230, 2031.240 and 2031.250) and within 30 days after service (CCP
4 §2031.260). They must produce documents as provided by CCP § 2031.280.

5 Defendants' failure to timely respond to discovery requests results in a waiver of all
6 objections. [Inspection Demands, CCP §2031.300(a)].

7 Monetary sanctions are available for failure to respond to inspections demands [CCP
8 §2031.300(c)]. CCP §2023.010(i)“**Conduct Subject to Sanctions**”, requires a good faith attempt
9 to resolve the disputes informally, if the section governing a particular discovery motion so
10 requires. This motion is made to compel responses where no response was timely made, as opposed
11 to motions to compel further responses. CCP §2031.300(c) authorizing a motion for failure to
12 respond, does not require a declaration stating the parties must first meet and confer, as does CCP
13 §2031.310(b)(2) for a motion to compel further responses. Because all objections are waived,
14 nothing is left for informal resolution. Thus, the moving party is not required to show a
15 “reasonable and good faith attempt to resolve the matter, informally with opposing counsel, before
16 filing the motion”. [See *Leach v. Sup.Ct.* (1980) 111 CA3d 902, 905-906, 169 CR 42, 44].

17 V.

18 CONCLUSION

19 For the foregoing reasons, under CCP §2031.300(b), this Court should enter an order
20 compelling Defendants to provide responses to Plaintiff's Requests for Production of Documents,
21 Set Two. The court should order that such responses be made, without objection, complete and
22 responsive in every respect.

23 Further, the Court, pursuant to CCP §2031.300, should order Defendants to pay the
24 requested monetary sanctions to Plaintiff.

25 //

26 //

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28 P&A02WER01 L00 P&A's in Supp of Plaintiff's Mot to Compel - Documents

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Respectfully submitted,

**PETERSON & KELL,
A LAW CORPORATION**



Dated: December 15, 2010

By:

**ROLIE A. PETERSON, ESQ.,
Attorney for Plaintiff Tri Tool Inc.**

EXHIBIT 2

FILED
ENDORSED

2010 DEC 15 AM 9:21

SACRAMENTO COURTS
DEPT. #53 #54

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Rollie A. Peterson, Esq. (SBN #113042)
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2377 Gold Meadow Way, Suite 280
Gold River, California 95670
Telephone: (916) 635-9300
Facsimile: (916) 635-9303

Attorneys for Plaintiff Tri Tool Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

TRI TOOL INC., a Nevada corporation,
Plaintiff,
vs.
COPELAND PROPERTIES THREE, LP, a California limited partnership; CHARLES P. COPELAND, an individual; DONALD E. COPELAND, an individual; and DOES 1 through 20, inclusive,
Defendants.

CASE NO. 34-2009-00054045
DECLARATION OF ROLLIE A. PETERSON IN SUPPORT OF PLAINTIFF TRI TOOL INC.'S MOTION TO COMPEL DEFENDANTS TO RESPOND TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET TWO

DATE: January 10, 2011
TIME: 9:00 a.m.
DEPT: 54
Trial Date: January 25, 2011

I, ROLLIE A. PETERSON, declare:

- I am attorney licensed to practice before all the courts in the State of California and am the attorney for Plaintiffs Tri Tool Inc., a Nevada corporation (hereafter "Tri Tool").
- If called as a witness, I could and would testify competently to the following of my own personal knowledge.

DEC11WER01 L00 Declaration in Sup of Mot to Compel - Documents

EXHIBIT 2

1 3. On October 28, 2010, Plaintiff Tri Tool served its Request for Production of
2 Documents, Set Two on Defendants Donald E. Copeland and Copeland Properties Three, LP.
3 Defendants' responses were due December 2, 2010.

4 4. Attached hereto as **Exhibit "A"** are a true and correct copies of Plaintiff's Request
5 for Production of Documents, Set Two to Defendants.

6 5. Because of Defendants' failure or refusal to provide responses to Request for
7 Production of Documents, Set Two, my client has incurred and will incur further reasonable costs
8 and fees in connection with this motion and the hearing thereon. I have practiced law for more than
9 twenty-nine(29) years and I am rated by Martindale & Hubbel AV Preeminent 5.0 out of 5.0. My
10 billing rate is \$400 per hour

11 6. Because the codes and rules require that a party seeking court orders in discovery
12 matters bring separate motions for each discovery demand, we have prorated the time equally
13 between the two motions brought.

14 7. The amount of monetary sanctions requested is as shown in the following:

15 **For preparing and bringing the current motion in the amount of \$1,180, as follows:**

16 (1). 12/09/10: Commence drafting notice of motion to compel responses to discovery
17 requests; commence drafting points and authorities in support; declaration of Rollie A. Peterson
18 in support of motions, and proposed court orders. [1.2 hours x \$400 = \$480 - 2 = \$240].

19 (2) 12/13/10: Continue drafting points and authorities for motion to compel responses
20 to discovery requests. [2.2 hours x \$400 = \$880 - 2 = \$440].

21 (3) 12/14/10: Review and revise notice of motion, points and authorities in support of
22 motion to compel responses to discovery requests; draft declarations of Rollie A. Peterson, Esq.
23 and proposed order; review and revise Peterson declarations and court orders; proofread and correct
24 notices of motion, points and authorities, declarations and proposed orders. [2.5 hours x \$400 =
25 \$1,000 - 2 = \$500].

26 **Should Defendants oppose the current motion, then, the anticipated additional amounts**

27 DEC11WER01 L00 Declaration in Sup of Mot to Compel - Documents

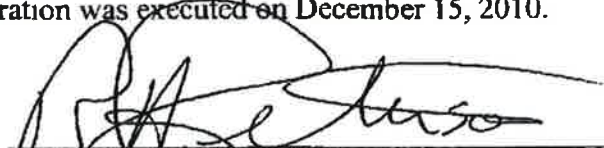
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of \$1,000, as follows:

(1) (RP) Review Defendants' opposition; draft reply brief; review tentative ruling; prepare oral arguments if requested. [2.0 hours x \$400 = \$800 - 2 = \$400].

(2) (RP) If oral arguments requested, travel to court, attend hearing and prepare proposed order after hearing. [Estimate 3.0 hours x \$400 = \$1,200 - 2 = \$600].

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on December 15, 2010.



ROLLIE A. PETERSON, ESQ.

EXHIBIT "A"

1 Rollie A. Peterson, Esq. (SBN #113042)
2 PETERSON & KELL, A LAW CORPORATION
3 2377 Gold Meadow Way, Suite 280
4 Gold River, California 95670
5 Telephone: (916) 635-9300
6 Facsimile: (916) 635-9303

7 Attorneys for Plaintiff Tri Tool Inc.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SACRAMENTO

10
11 TRI TOOL INC., a California
12 corporation,

13 Plaintiff,

14 vs.

15 COPELAND PROPERTIES THREE,
16 LP, a California limited partnership;
17 CHARLES P. COPELAND, an
18 individual; DONALD E. COPELAND,
19 an individual; and DOES 1 through 20,
20 inclusive,

21 Defendants.

CASE NO. 34-2009-00054054

PLAINTIFF'S REQUEST FOR
PRODUCTION OF DOCUMENTS
AND THINGS, SET TWO

22 PROPOUNDED PARTY:

Plaintiff Tri Tool Inc., a California
Corporation

23 RESPONDING PARTY:

Defendants Donald E. Copeland
and Copeland Properties Three, LP
a California limited partnership

24 SET NUMBER:

Two

25 A. CCP §2031, INSPECTION DEMAND AND RESPONSE THERETO

26 Plaintiff Tri Tool Inc., a California Corporation (hereafter "Tri Tool"), and its attorney of
27 record, hereby demand, pursuant to Code of Civil Procedure §§2031, et seq., that the Defendants
28 named above, do the following:

RFP02WER01 L00

Document Demand

1

EXHIBIT 2

1 (1) Respond, in writing, separately to each item or category of item in Exhibit "1", to
2 Plaintiff's Request for Production of Documents, Set Two, in accordance with the definitions
3 contained in Subpart "B" hereafter, by stating any of the following:

4 (i) A statement in compliance with CCP §2031.220 that you will comply with
5 the particular demand for inspection by the date set for inspection, and any related activities; or

6 (ii) A representation that you lack the ability to comply with the demand for
7 inspection of a particular item or category of item, as provided by CCP §2031.230, or

8 (iii) An objection to the particular demand. [See CCP §2031.240]

9 The written response to this demand shall be signed under oath and shall be served on
10 Plaintiff as provided by CCP §§2031.250 and 2031.260.

11 (2) Produce for inspection the original of each and every document listed in Exhibit "1",
12 which is therein specifically described or reasonably particularized in a category of documents, and
13 which are within your possession, custody and control. Plaintiff demands inspection for copying or
14 photographing the documents listed by categories delineated in said Exhibit "1".

15 4. With respect to each **DOCUMENT** otherwise called for, as to which you assert a
16 claim of privilege or where your attorneys assert the work product doctrine, identify each such
17 **DOCUMENT** with sufficient particularity to permit a motion to produce. With respect to each such
18 **DOCUMENT**, separately state the following information.

19 (a) The type of **DOCUMENT** (e.g. letter, memorandum, note, etc.);

20 (b) Its date,

21 (c) The name, business **ADDRESS** and job title of its author or authors,

22 (d) The job title of its author or authors at the time the **DOCUMENT** was prepared;

23 (e) The name, business **ADDRESS** and present job title of its **ADDRESSEE** and all of
24 the recipients of the **DOCUMENT**;

25 (f) The job title of its **ADDRESSEE** and all recipients at the time the **DOCUMENT** was
26 prepared and at the time it was received,

27 (g) A general description of the subject of the **DOCUMENT**;

28 (h) The basis of the claim of privilege or work product doctrine, and

1 (i) If YOU claim that the DOCUMENT is not discoverable because of the work product
2 doctrine, identify the proceeding in connection with which the DOCUMENT was prepared.

3 All of the items in Exhibit "1" to which this request is directed that are in your possession,
4 custody and control, and that are not privileged, are relevant to the subject matter of the above-
5 entitled action, or reasonably calculated to lead to the discovery of admissible evidence and good
6 cause exists for the production pursuant to this request

7 PLEASE TAKE FURTHER NOTICE that if a written response is not received within
8 thirty (30) days after this demand has been served upon you, all objections will be deemed waived,
9 and a formal motion to produce will be made pursuant to CCP §§2031.300-2031.320 At that time,
10 sanctions will be requested for the costs and attorney's fees associated with the preparation and
11 hearing of said motion, inasmuch as you are now given the opportunity to permit
12 copying/photographing/inspection/sampling without the necessity of a formal motion.

13 The documents demanded herein shall be produced for inspection and copying at 10:00 a.m.
14 on December 2, 2010 at Peterson & Kell, A Law Corporation, 2377 Gold Meadow Way, Suite
15 280, Gold Meadow, California 958670.

16 B: DEFINITIONS:

17 As used in this Demand for Production the following definitions apply:

18 1 ADDRESS means street ADDRESS, including the city, state, and zip code

19 2 AGREEMENT means the document entitled "Straight Note", dated April 5, 2007,
20 a copy of which is attached to the Complaint filed herein as Exhibit "A"

21 3. ANY shall be understood to include and encompass "all".

22 4. DOCUMENT means a writing, as defined in California Evidence Code ("Evidence
23 Code") §250, and includes the original and all copies, whether copied by handwritten, typewritten,
24 printed, photostated, or photographed means, or however else reproduced, transmitted by electronic
25 mail or facsimile. It also includes all computer data, including the end-user data and the meta data
26 Meta data includes file header information, document revision information, hidden comments,
27 document creation dates, its creator, its revisionists, links to attachments, links between conversation
28 threads, access records, web activities logs, meta data files associated with PDF, or otherwise

1 through native and processed images, and all other electronic code and every other means of
2 recording and form of communicating, upon ANY tangible thing, including tapes, disks, electronic
3 chips and in whatever form, including words, pictures, sounds, or symbols, or any combinations of
4 them.

5 5. **Copeland Properties** means Copeland Properties Three, LP, a California limited
6 partnership.

7 6. **INCIDENT** means the circumstances and events surrounding the subject matter of
8 this action.

9 7. **Tri Tool** means Tri Tool Inc., a California corporation, and includes any and all
10 divisions, subsidiaries or other businesses it owns and/or is doing business as, if any such entities
11 exist.

12 8. **PERTAINING TO** means commenting upon, concerning, relating or referring to,
13 in connection with, or evidencing, and should be construed in the broadest sense of the word

14 9 **STRAIGHT NOTE** means the document entitled "Straight Note", a copy of which
15 is attached to the Complaint as Exhibit "A".

16 10. **YOU, YOUR, or YOU AND ANYONE ACTING ON YOUR BEHALF** includes
17 YOU, YOUR agents, YOUR employees, YOUR insurance companies, THEIR agents, and THEIR
18 employees, YOUR attorneys, YOUR accountants, YOUR investigators, and ANYONE ELSE
19 ACTING ON YOUR BEHALF.

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23 Dated: October 28, 2010

PETERSON & KELL,
A LAW CORPORATION

24 By: 
25 ROLLIE A. PETERSON, ESQ.,
26 Attorney for Plaintiff Tri Tool Inc.

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EXHIBIT "1"

1. All documents that identify the names, address and telephone numbers of Copeland Properties' limited partners, from Copeland Properties' inception through its dissolution.

2. All documents that show the investment made by each limited partner in Copeland Properties from its inception to its dissolution

3. All documents that reflect the balance of Copeland Properties' partners, both general and limited, capital accounts, from its inception through its dissolution.

PROOF OF SERVICE BY MAIL

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I am a citizen of the United States and a resident of the County of Sacramento; I am over the age of eighteen (18) years; my business address is 2377 Gold Meadow Way, Suite 280, Gold River, California 95670; I am readily familiar with this firm's practice for collection and processing of documents for mailing with the United States Postal Service, a true copy of the within:

PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS, SET TWO

is being served on the following parties, at the addresses indicated below by depositing for collection in the sealed envelopes, with postage thereon fully prepaid, in the United States Postal Service at Gold River, California on October 28, 2010, following ordinary business practices.

Scott Showler, Esq
Attorney at Law
1839 Commercenter West
San Bernardino, CA 92408

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 28, 2010, at Gold River, California


SHELEEN K. HADDAD

EXHIBIT 3

ORIGINAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

TRI TOOL, INC., a Nevada)
 corporation,)
)
 Plaintiff,)
)
 vs.) Case No.
) 34-2009-00054045
 COPELAND PROPERTIES THREE, LP,)
 a California limited partnership;)
 CHARLES P. COPELAND, an individual;)
 DONALD E. COPELAND, an individual;)
 and DOES 1 through 20, inclusive,)
)
 Defendants.)
)
)

DEPOSITION OF CHARLES PERRY COPELAND

LOCATION: DILL AND SHOWLER
 411 Brookside Avenue
 Redlands, CA 92373

 DATE AND TIME: Monday, January 18, 2010
 9:00 a.m. to 11:30 a.m.

 REPORTED BY: GINA M. TOMPKINS, CSR
 CSR No. 9123

 JOB NO.: 011810AGT

MARTIN, TOMPKINS & ASSOCIATES
 6719 Redlands Court
 Riverside, California 92506
 (951) 924-5665 (951) 601-9810 Fax

EXHIBIT 3

1 A. 6 to 12.

2 Q. And the California limited -- sorry.
3 Copeland Realty Inc., is that a California corporation?

4 A. Yes.

5 Q. And who are the shareholders in Copeland
6 Realty, Inc.?

7 A. Charles Copeland, myself; and Donald
8 Copeland, my son.

9 Q. It's 50/50?

10 A. Yes. Strike that. No. 33 1/3 and 66 2/3.

11 Q. The two-thirds portion of it --

12 A. Is mine.

13 Q. Yours? Okay. Is Copeland Realty, Inc.,
14 still in existence?

15 A. Yes.

16 Q. Is it doing other projects?

17 A. Define "doing."

18 Q. Well, investing in other projects of any
19 kind.

20 A. It has not had any new investment properties
21 in the last year and a half.

22 Q. Okay. And is it my understanding that
23 Copeland Properties Three, LP, has been dissolved?

24 A. Yes.

25 Q. And when was it dissolved?

1 A. Shortly after the sale of the building.

2 Q. Okay. Were funds then distributed to the
3 investors from the sale of the building?

4 A. Yes.

5 Q. Do you remember how much was distributed?

6 A. No.

7 Q. Was it more than 200,000?

8 A. Yes.

9 Q. How long did you hold that property? And I
10 said "you." How long did Copeland Properties Three
11 hold the Sunrise property?

12 A. I would be guessing. Less than five years.

13 Q. Can you tell me what the purchase price was?

14 A. No.

15 Q. Was it less than \$9 million?

16 A. I don't know. 9 million would be my over/
17 under.

18 Q. Meaning?

19 A. The price is over or under 9 million, in my
20 mind, close.

21 Q. Okay. Do you think it would have been less
22 than 9.250, 9,250,000?

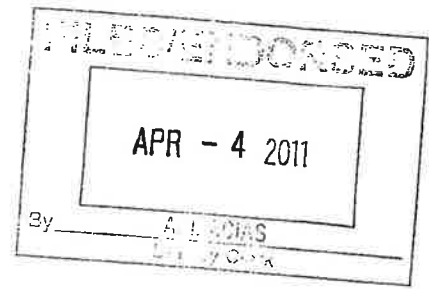
23 A. I don't know.

24 Q. But you believe that it was somewhere in the
25 neighborhood of about 9 million?

EXHIBIT¹⁵

EXHIBIT 4

1 **Rollie A. Peterson, Esq. (SBN #13042)**
2 **PETERSON & KELL, A LAW CORPORATION**
3 **2377 Gold Meadow Way, Suite 280**
4 **Gold River, California 95670**
5 **Telephone: (916) 635-9300**
6 **Fax: (916) 635-9303**



7 **Attorneys for Plaintiff Tri Tool Inc.**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SACRAMENTO**

10 **TRI TOOL INC., a Nevada**
11 **corporation,**

CASE NO. 34-2009-00054045

12 **Plaintiff,**

SECOND AMENDED

COMPLAINT FOR MONEY

13 **vs.**

[CC §§3302, 3439 et seq; Com C. §3122;
Corp. C §§15666; 15905.08, 15905.09]

14 **COPELAND PROPERTIES THREE,**
15 **LP, a California limited partnership;**
16 **CHARLES P. COPELAND, an**
17 **Individual; DONALD E. COPELAND,**
18 **an individual; and SANDRA**
19 **HAYES, an individual; JOSEPH**
20 **DOTON, an individual; MELVYN**
21 **ROSS, an individual; LILLIAN**
22 **FRANKLIN, an individual; WW EURA,**
23 **an individual, DORTHY ZILLCH, an**
24 **individual, CHARLES SCHWAB, FBO**
25 **JANET I, NEAL BRICKER, an**
26 **individual; and Does 1**
27 **through 12, inclusive,**

28 **Defendants.**

Plaintiff Tri Tool Inc., a Nevada corporation (hereafter "Tri Tool") alleges:

I.

FIRST CAUSE OF ACTION AGAINST MAKER
[CC §3302, Com C §3122]

1. Defendant Copeland Properties Three, LP, a California limited partnership (hereafter "Copeland Properties") is, and at all times herein mentioned was, doing business in Sacramento

1 County, California, and, in said county, entered into the Promissory Note (hereafter "Note"). A copy
2 of this Note is attached hereto as Exhibit "A" and made a part hereof by this reference.

3 2. Defendant Charles P. Copeland (hereafter "C. Copeland") is a resident of San
4 Bernardino County, California and guaranteed the Note. He was to perform his guarantee in
5 Sacramento County, California.

6 3. Defendant Donald E. Copeland (hereafter "D. Copeland") is a resident of San
7 Bernardino County, California and guaranteed the Note. He was to perform his guarantee in
8 Sacramento County, California.

9 4. Defendant, Sandra Hayes (hereafter "Hayes"), is a resident of the City of Redlands,
10 County of San Bernardino, State of California, and at all times herein mentioned, was a limited
11 partner in Copeland Properties.

12 5. Defendant, Joseph Doton (hereafter "Doton"), is a resident of the City of Redlands,
13 County of San Bernardino, State of California, and at all times herein mentioned, was a limited
14 partner in Copeland Properties.

15 6. Defendant, Melvyn Ross (hereafter "Ross"), is a resident of the City of Newport
16 Beach, County of Orange, State of California, and at all times herein mentioned, was a limited
17 partner in Copeland Properties.

18 7. Defendant, Lillian Franklin (hereafter "Franklin"), is a resident of the City of San
19 Bernardino, County of San Bernardino, State of California, and at all times herein mentioned, was
20 a limited partner in Copeland Properties.

21 8. Defendant, WW Eura (hereafter "Eura"), is a resident of the City of Riverside, County
22 of Riverside, State of California, and at all times herein mentioned, was a limited partner in
23 Copeland Properties.

24 9. Defendant, Dorthy Zillch (hereafter "Zillch"), is a resident of the City of Redlands,
25 County of San Bernardino, State of California, and at all times herein mentioned, was a limited
26 partner in Copeland Properties.

27 10. Defendant, Charles Schwab, FBO Janet I (hereafter "Janet"), is a resident of the City
28 of Indian Wells, County of Riverside, State of California, and at all times herein mentioned, was a

1 limited partner in Copeland Properties.

2 11. Defendant, Neal Bricker (hereafter "Bricker"), is a resident of the City of Claremont,
3 County of Los Angeles, State of California, and at all times herein mentioned, was a limited partner
4 in Copeland Properties.

5 12. Plaintiff is ignorant of the true names and capacities of the remaining defendants it
6 sues herein as Does 1 through 12, inclusive, and therefore sues these defendants by such fictitious
7 names. When Plaintiff ascertains the names of these defendants, it will amend this Complaint to
8 allege their true names and capacities. Upon information, Plaintiff believes and thereon alleges that
9 each defendant it fictitiously names is responsible in some manner for the occurrences Plaintiff
10 alleges herein, and that these doe defendants' acts proximately caused the damages Plaintiff
11 sustained, as it herein alleges.

12 13. On or about April 5, 2007, at Sacramento, Sacramento County, California, Copeland
13 Properties, for valuable consideration made, executed, and delivered to Tri Tool the Note, in the
14 amount of \$200,000, with interest, at the rate of 10% per annum. Copeland Properties made the
15 Note payable within 24 months of execution. However, a condition to Copeland Properties'
16 obligation to payment of the Note by Copeland Properties and Guarantors C. Copeland and/or D.
17 Copeland (hereafter, collectively "Defendants"), was its failure to remove a certain unrecorded
18 easement encumbering the real property Copeland Properties sold to Tri Tool (hereafter "Real
19 Property") within 24 months (hereafter "Condition"). If removed, no amount thereon, would then
20 be due and owing on the Note.

21 14. Copeland Properties failed to timely meet the Condition and the Note matured and
22 became due and payable on April 5, 2009. On April 13, 2009, Tri Tool demanded payment of
23 Defendants. Copeland Properties failed and refused and continues to fail and refuse to pay the Note,
24 or any part of it, and there is now due, owing, and unpaid from Defendants and each of them, to
25 Plaintiff, the whole thereof, together with interest thereon.

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II.

SECOND CAUSE OF ACTION AGAINST GUARANTORS
[Com C §3416]

15. Plaintiff incorporates Paragraphs 1 through 14 herein above, as though fully set forth hereat.

16. On or about April 5, 2007, prior to delivery of the Note to Plaintiff, Defendants C. Copeland and D. Copeland, as a part of the same transaction stated above, guaranteed payment of the Note, in writing, on the face thereon, the indebtedness evidenced by the Note.

17. There is now due, owing, and unpaid to Plaintiff, from C. Copeland and D. Copeland, on account of the Note, jointly and severally, the sum of \$200,000, principal, and 10% interest thereon, from April 5, 2007 to time of judgment herein.

III.

THIRD CAUSE OF ACTION AGAINST
THE LIMITED PARTNERS ONLY FOR RETURN OF DISTRIBUTIONS
[Corp. C. §15666, now §15905.08; §15905.09]

18. Plaintiff incorporates Paragraphs 1 through 14 herein above, as though fully set forth hereat.

19. Plaintiff is informed and believes, and thereon alleges that, on or about February 2004, D. Copeland, as Copeland Properties' general partner, and the Defendants Hayes, Doton, Ross, Franklin, Eure, Zillch, Janet I and Bricker, as limited partners (hereafter Hayes, Doton, Ross, Franklin, Eure, Zillch, Janet I and Bricker are collectively referred to as "the Limited Partners"), executed a written limited partnership agreement organizing Copeland Three (hereafter "Partnership Agreement").

20. Plaintiff is informed and believes and based thereon alleges that the Partnership Agreement provided for Copeland Properties' partners to invest in the Real Property, to hold the Real Property as rental property, and to eventually sell the Real Property for a profit. The Real Property was Copeland Properties' sole asset.

21. On or about February 23, 2004, D. Copeland caused to be filed a certificate of limited partnership, with the California Secretary of State, pursuant to California Corporations Code,

1 Revised Limited Partnership Act, Section 15621.

2 22. Defendant Hayes, contributed to Copeland Properties, \$200,000, as capital, for her
3 limited partnership interest.

4 23. Defendant Dotan, contributed to Copeland Properties \$215,000, as capital, for his
5 limited partnership interest.

6 24. Defendant Ross, contributed to Copeland Properties \$215,000, as capital, for his
7 limited partnership interest.

8 25. Defendant Franklin, contributed to Copeland Properties \$230,000, as capital, for her
9 limited partnership interest.

10 26. Defendant Eure, contributed to Copeland Properties \$430,000, as capital, for his or
11 her limited partnership interest.

12 27. Defendant Zillch contributed to Copeland Properties \$430,000, as capital, for her
13 limited partnership interest.

14 28. Defendant Janet I contributed to Copeland Properties \$215,000, as capital, for her
15 limited partnership interest.

16 29. Defendant Bricker contributed to Copeland Properties \$215,000, as capital, for his
17 limited partnership interest.

18 30. On or about June 2007, D. Copeland caused the California Secretary of State to cancel
19 the Certificate, dissolved the partnership, and distributed to the following Limited Partners, their
20 capital contributions in the following amounts:

<u>Limited Partners</u>	<u>Distributions</u>
(a) Hayes	\$ 200,000
(b) Dotan	\$ 215,000
(c) Ross	\$ 215,000
(d) Franklin	\$ 230,000
(e) Eure	\$ 430,000
(f) Zillch	\$ 430,000
(g) Janet I	\$ 215,000
(h) Bricker	\$ 215,000
TOTAL ASSETS WITHDRAWN:	<u>\$2,150,000</u>

28 31. D. Copeland paid the foregoing \$2,150,000 to the Limited Partners, as a return of

1 their capital contributions, even though there was not sufficient partnership property to pay the debts
2 and liabilities of Copeland Properties at the time he dissolved Copeland Properties.

3 32. Copeland Properties has no assets, other than the \$2,150,000 cash (hereafter "Cash
4 Assets") withdrawn by the Limited Partners and is insolvent.

5 33. The Limited Partners had a duty not to withdraw any part of the contributions to
6 Copeland Properties until all liabilities of Copeland Properties, except liabilities to D. Copeland, had
7 been paid.

8 34. The Limited Partners have no right to retain the \$2,150,000 when there is insufficient
9 partnership property to pay Copeland Properties' debts.

10 35. By the Limited Partners' actions, Plaintiff has been damaged by the Limited Partners
11 to the extent of \$200,000, plus interest thereon, from the time due, at the rate of 10%, plus attorney
12 fees, as to be determined by the court.

13 IV.

14 **FOURTH CAUSE OF ACTION**
15 **AGAINST THE LIMITED PARTNERS ONLY FOR**
16 **TRANSFERS OF ASSETS IN VIOLATION**
17 **OF THE UNIFORM FRAUDULENT TRANSFER ACT**
18 **[CC §§3439 et seq.]**

19 36. Plaintiff incorporates Paragraphs 1 through 14, and 19 through 35 herein above, as
20 though fully set forth hereat.

21 37. The obligations sued upon are not subject to the provisions of California Civil Code
22 (hereafter "CC") §1812.10 ("Retail Installment Sales") and §2984.4 ("Automobile Sales Finance
23 Act").

24 38. Plaintiff's claims against Copeland Properties arose before Copeland Properties
25 transferred the Cash Assets to the Limited Partners.

26 39. Plaintiff is informed and believes, and based thereon alleges that the transfers made
27 by D. Copeland to the Limited Partners on or about June 2007, described herein, were made with
28 actual intent to hinder, delay or defraud Plaintiff's collection of monies Copeland Properties owed
Plaintiff. Plaintiff is informed and believes that, amongst other things, the Limited Partners and the
Defendants Does 1 through 12, and each of them, caused the Cash Assets to be beyond the reach of

EXHIBIT 4

1 Copeland Properties' judgment creditors, which was otherwise available to satisfy the debt Copeland
2 Properties owed Plaintiff by:

3 (a) transferring the Cash Assets to insiders;

4 (b) the transfers were all of Copeland Properties' assets available to it with which to
5 satisfy its debts;

6 (c) the transfer was made in violation of law, to wit Corporations Code §15660, now
7 §15905.08 and §15905.09.

8 (d) Copeland Properties was insolvent immediately after the transfer was made.

9 Therefore, the transfer of the Cash Assets to the Limited Partners on or about June 2007 was
10 a fraudulent transfer pursuant to the Uniform Fraudulent Transfer Act (hereafter "UFTA") CC
11 §3439, et seq.

12 40. At the time of the transfers of the Cash Assets the Limited Partners knew or should
13 have known that the transfer would result in rendering Copeland Properties insolvent and that
14 Copeland Properties had incurred debts beyond its ability to pay them as they became due, of which
15 was known or should have been known to the Limited Partners.

16 41. The assets of Copeland Properties are non-existent to satisfy Plaintiff's claims and
17 therefore, the transactions should be set aside or voided to satisfy Plaintiff's claim and Plaintiff
18 should be awarded damages against the Limited Partners, and the Defendants Does 1 through 12,
19 and each of them, jointly and severally, in the sum of the wrongful transfers received by them.

20 42. Copeland Properties has been dissolved and has no assets to satisfy Plaintiff's claims.
21 Pursuant to the UFTA CC §3439.07(a)(1) and UFTA CC §343907(a)(1), Plaintiff is entitled to avoid
22 the transfer of the Cash Assets to the Limited Partners to the extent necessary to satisfy its claims
23 under subpart 2, is entitled to an attachment of the Cash Assets in accordance with CCP §481.010,
24 and under subpart 3, to injunctive relief.

25 43. Pursuant to UFTA CC §3439.08(b), Plaintiff is entitled to recovery damages against
26 the Limited Partners, and the Defendants, Does 1 through 12, and each of them, jointly and severally,
27 to the extent they are subsequent transferees of interest of assets in which Copeland Properties had
28 a substantial interest, the amount equal to the value of Copeland Properties' interest in the Cash

1 Assets.

2 44. The Limited Partners, and each of them, intentionally, wilfully, fraudulently and
3 maliciously did the things herein to defraud and oppress Plaintiff. Because Defendants, and each
4 of them, have participated in a fraud and because defendants, and each of them, set about in a
5 preconceived plan to place the assets of Copeland Properties beyond the reach of Plaintiff, Plaintiff
6 is entitled to exemplary and punitive damages.

7 **WHEREFORE**, Tri Tool prays judgment against Defendants, and each of them, jointly and
8 severally, as follows:

- 9 1. For the principal sum of \$200,000.
- 10 2. For interest on the principal sum at 10% per annum from April 5, 2007, to judgment.
- 11 3. For reasonable attorney's fees, according to proof.
- 12 4. For costs of suit herein incurred.
- 13 5. For such other and further relief as the Court may deem proper.

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Dated: May 30, 2011

**PETERSON & KELL,
A LAW CORPORATION**

By: 
**ROLLIE A. PETERSON, ESQ.,
Attorney for Plaintiff Tri Tool Inc.**

EXHIBIT “A”

EXHIBIT 4

STRAIGHT NOTE

April 5th, 2007


Copeland Properties Three L.P. promises to pay Tri Tool, Inc. the sum of \$200,000.00 at the end of 24 months from the date escrow number 276981, held with First American Title Company in Sacramento California, closes, if the unrecorded easement is not removed within this 24 month timeframe. The easement is defined as follows:

AN UNRECORDED ESMT. 26' WIDE FROM KENNETH L. BOGAN TO RICHARD W. DE SILVA AND HIS SUCCESSORS FOR THE PURPOSE OF INGRESS & EGRESS TO SUNRISE BOULEVARD. EASEMENT LOCATION TO BE WITHIN THE WESTERLY 50' OF PARCELS 2, 3 & 4 OF 33PM1

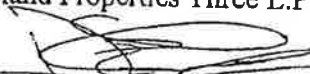
Furthermore, the \$200,000 is guaranteed by Charles P. Copeland and Donald E. Copeland individually and collectively.

"The undersigned agree to reimburse the Holder or Owner of this Straight Note for any and all costs and expenses (including without limit, court costs, legal expenses and reasonable attorney fees, whether or not suit is instituted and, if suit is instituted, whether at the trial court level, appellate level, in a bankruptcy, probate or administrative proceeding or otherwise) incurred in collecting or attempting to collect this Straight Note or incurred in any other manner or proceeding related to this Straight Note."

"If this Note is not paid when due, interest will accrue from the due date of this Note at the rate of ten percent (10%) per annum or the maximum amount allowed by law, whichever is lower."


Charles P. Copeland
Guarantor

Copeland Properties Three L.P.

BY: 
Donald E. Copeland
General Partner

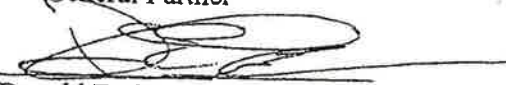

Donald E. Copeland
Guarantor

EXHIBIT 5

John H. Stephens

Subject: FW: Quickbooks

From: Lorelei Kay [mailto:lkay@ziprickcramer.com]
Sent: Wednesday, June 05, 2013 10:53 AM
To: Toby Kovalivker
Subject: Quickbooks

Toby,

Thanks for sending the QB companies. We have been able to open them.

Thanks for your assistance!

Lorelei Kay
Ziprick & Cramer, LLP
707 Brookside Ave.
Redlands, CA 92373
Office: (909) 798-5005 x 31
Fax: (909) 793-8944

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1 Everett G. Barry, Jr. (SBN 053119)
2 John H. Stephens (SBN 82971)
3 Toby S. Kovalivker (SBN 234386)
4 MULVANEY BARRY BEATTY LINN & MAYERS LLP
5 401 West A Street, 17th Floor
6 San Diego, CA 92101-7994
7 Telephone: 619-238-1010
8 Facsimile: 619-238-1981

9 Attorneys for Permanent Receiver
10 Thomas C. Hebrank

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 v.

17 CHARLES P. COPELAND,
18 COPELAND WEALTH
19 MANAGEMENT, A FINANCIAL
20 ADVISORY CORPORATION,
21 AND COPELAND WEALTH
22 MANAGEMENT, A REAL
23 ESTATE CORPORATION,

24 Defendants.

CASE NO. 11-CV-08607-R-DTB

**DECLARATION OF THOMAS C.
HEBRANK IN OPPOSITION TO
MOTION OF CREDITOR TRI
TOOL INC. FOR AN ORDER TO
MODIFY STAY**

DATE: August 19, 2013
TIME: 10:00 a.m.
DEPT. 8, 2nd Floor

Judge: Hon. Manuel L. Real

25 I, Thomas C. Hebrank, declare as follows:

26 1. I am the court-appointed Permanent Receiver in this action and
27 provide this declaration in opposition to the Motion of Tri Tool, Inc. for an
28 Order to Modify Stay (the "Motion"). I have personal knowledge of the facts
below, except those stated on information or believe, and as to those, I
believe them to be true.

MULVANEY BARRY BEATTY LINN & MAYERS
A LIMITED LIABILITY PARTNERSHIP
SEVENTEENTH FLOOR
401 WEST A STREET
SAN DIEGO, CALIFORNIA 92101-7944
TELEPHONE 619 238-1010
FACSIMILE 619 238-1981

1 2. On October 3, 2012, this Court entered its Order Granting
2 Receiver’s Motion for Approval of Sale of Real Property allowing the sale of
3 North Carolina property owned by Copeland Properties 18, L.P. (“CP18”).
4 The sale of CP18’s property subsequently closed and netted the
5 partnership \$2,411,637.74.

6 3. As part of the sale, an additional \$597,114.36 has been held in
7 an escrow account because of a dispute with the lender concerning default
8 interest and attorney’s fees that the lender is claiming.

9 4. I currently am negotiating with CP18’s lender, the possible
10 terms for distributing the escrowed funds and plan to file a motion for
11 approval of the settlement, or, if a settlement is not reached, for directions
12 from the Court to resolve the lender’s claims.

13 5. Attached hereto as Exhibit 1 is the Balance Sheet for C18 that
14 was attached to my Receiver’s Report No. 2. The document shows the
15 equity interests held by the various limited partners. Among them are
16 David Ziilch, Joseph Dotan, Janet Ihde, Melvyn Ross, Sandra Hayes and
17 WW Eure, all of whom I believe were former partners in CP3. I further
18 believe that they moved their interests from CP3 to CP18 when CP3 sold
19 its property and was terminated.

20 6. I am informed that Lillian Franklin also was a limited partner in
21 CP3, but liquidated her interest when CP3’s property was sold, and that
22 Neal Bricker was a limited partner, but reinvested in Copeland Fixed
23 Income Two, L.P. (“CFI2”), which now has limited funds.

24 7. On January 2, 2013, the Court established the procedure for
25 submitting claims against the Receivership Estate by its Order Granting
26 Receiver’s Motion (1) Establishing Bar Date or Claims; (2) Approving Form
27 and Manner of Notice; and, (3) Approving Claim Form and Procedures for
28 Submitting Proofs of Claims.

MULVANEY BARRY BEATTY LINN & MAYERS
A LIMITED LIABILITY PARTNERSHIP
SEVENTEENTH FLOOR
401 WEST A STREET
SAN DIEGO, CALIFORNIA 92101-7944
TELEPHONE 619 238-1010
FACSIMILE 619 238-1951

1 8. As part of the claims process, I received proofs of claim from
2 Joseph Dotan, Janet Ihde, Melvyn Ross and Sandra Hayes although they
3 were not required to submit them as limited partners. I anticipate that they
4 will receive distributions from CP18.

5 9. Mr. Bricker also has submitted a proof of claim against CP14
6 and CP18, but those claims have been rejected. His claim against CFI2
7 will be accepted, although the amount will have to be verified. However, it
8 appears CFI2 will have little to distribute.

9 10. The Balance Sheet for CP18 identifies the other limited
10 partners who have equity, but were not partners in CP3. I anticipate that
11 they too will receive distributions from CP18.

12 11. I received a Proof of Claim from Tri Tool, Inc., a copy of which
13 is attached hereto as Exhibit 2. The claim is not against any Receivership
14 Entity in particular, but will be considered as against Copeland Wealth
15 Management, a Real Estate Corporation ("CWMR") although the amount is
16 not supported by the claim.

17 12. I believe that Tri Tool's total claim of \$529,000 consists of
18 \$200,000 owed on a promissory note, and that the rest is attorney's fees
19 and interest. I have since received a July 16, 2013 letter from Tri Tool's
20 counsel indicating that the attorney's fees and costs total \$230,021.77 and
21 that interest is \$85,150.26. A copy of the 7/16/13 letter is attached hereto
22 as Exhibit 3.

23 13. Tri Tool's claim does not have the promissory note attached,
24 but I believe the \$200,000 "Straight Note" is the basis of the Proof of Claim.
25 A copy of the note is attached hereto as Exhibit 4.

26 14. The Straight Note was issued to Tri Tool by CP3, but was
27 signed by Donald Copeland, who identifies himself as the "General
28 Partner."

EXHIBIT 1

9:52 AM
10/27/11
Cash Basis

Copeland Properties Eighteen, LP
Balance Sheet
As of October 27, 2011

	Oct 27, 11
ASSETS	
Current Assets	
Checking/Savings	
1001 · Pacific Western Bank	45.35
Total Checking/Savings	45.35
Other Current Assets	
1431 · Deposit - CW Capital	91,094.36
1432 · Tax & Insurance Reserve	14,885.56
1434 · Partners 2010 NC Taxes	381.00
Total Other Current Assets	106,360.92
Total Current Assets	106,406.27
Fixed Assets	
1800 · Land Summary	
1801 · Land- Original Cost	1,701,379.61
1802 · Land- Deferred Gain	101,574.00
1803 · Land CP-5 Restored Basis	24,000.00
1804 · Land- CP-5 Sec 754	5,494.29
Total 1800 · Land Summary	1,832,447.90
1850 · Building Summary	
1852 · Building- Deferred Gain	406,296.00
1853 · Building- CP-5 Restored Basis	96,000.00
1854 · Building- CP-5 Sec 754	21,977.15
1850 · Building Summary - Other	6,805,518.45
Total 1850 · Building Summary	7,329,791.60
1890 · Accum Depr Summary	
1891 · A/D Building	-796,430.51
Total 1890 · Accum Depr Summary	-796,430.51
Total Fixed Assets	8,365,808.99
Other Assets	
1900 · Loan Fees	131,083.09
1901 · A/A Loan Fees	-91,083.00
Total Other Assets	40,000.09
TOTAL ASSETS	8,512,215.35
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
2005 · Note Payable - CP5	45,500.00
2015 · CP15 Loan Payable	25,000.00
2017 · Note Payable - CP17	20,700.00
2030 · Note Payable - CRI	
2030.3 · Note Payable-CWMRE/Eure	93,000.00
2030 · Note Payable - CRI - Other	200,524.68
Total 2030 · Note Payable - CRI	293,524.68
2035 · N/P - Accrued Management Fees	165,466.80
Total Other Current Liabilities	550,191.48
Total Current Liabilities	550,191.48
Long Term Liabilities	
2000 · Loan- CW Capital	5,392,120.22
Total Long Term Liabilities	5,392,120.22
Total Liabilities	5,942,311.70

9:52 AM
10/27/11
Cash Basis

Copeland Properties Eighteen, LP
Balance Sheet
As of October 27, 2011

	Oct 27, 11
Equity	
3800 · Capital - Copeland Realty Inc.	
3800.2 · Draw	-55,293.33
3800 · Capital - Copeland Realty Inc. - Other	356,232.09
Total 3800 · Capital - Copeland Realty Inc.	300,938.76
3802 · Capital - Bruce & Maureen Taber	
3802.2 · Draw	-7,599.99
3802 · Capital - Bruce & Maureen Taber - Other	316,151.54
Total 3802 · Capital - Bruce & Maureen Taber	308,551.55
3803 · Capital - Joseph Dotan	
3803.2 · Draws	-4,539.99
3803 · Capital - Joseph Dotan - Other	175,059.92
Total 3803 · Capital - Joseph Dotan	170,519.93
3804 · Capital - Steven Tozier	
3804.2 · Draw	-2,400.00
3804 · Capital - Steven Tozier - Other	91,784.70
Total 3804 · Capital - Steven Tozier	89,384.70
3805 · Capital - Ehud Dotan	
3805.2 · Draws	-1,280.01
3805 · Capital - Ehud Dotan - Other	48,951.16
Total 3805 · Capital - Ehud Dotan	47,671.15
3806 · Capital - Sandy & Perry Hayes	
3806.2 · Draws	-3,999.99
3806 · Capital - Sandy & Perry Hayes - Other	154,308.30
Total 3806 · Capital - Sandy & Perry Hayes	150,308.31
3807 · Capital - Ross Revocable Trust	
3807.2 · Draws	-4,299.99
3807 · Capital - Ross Revocable Trust - Other	165,880.53
Total 3807 · Capital - Ross Revocable Trust	161,580.54
3809 · Capital-Adele Hansen	
3809.2 · Draws	-3,500.01
3809 · Capital-Adele Hansen - Other	135,424.13
Total 3809 · Capital-Adele Hansen	131,924.12
3810 · Capital - Janet Ihde (Schwab)	
3810.2 · Draws	-4,299.99
3810 · Capital - Janet Ihde (Schwab) - Other	165,880.53
Total 3810 · Capital - Janet Ihde (Schwab)	161,580.54
3811.0 · Capital - W.W. Eure	
3811.2 · Draws	-6,740.01
3811.0 · Capital - W.W. Eure - Other	257,613.22
Total 3811.0 · Capital - W.W. Eure	250,873.21
3812.0 · Capital-Albert Reid (Schwab)	
3812.2 · Draws	-2,499.99
3812.0 · Capital-Albert Reid (Schwab) - Other	98,596.34
Total 3812.0 · Capital-Albert Reid (Schwab)	96,096.35
3813.0 · Capital - Steve Weiss	
3813.2 · Draws	-1,860.00
3813.0 · Capital - Steve Weiss - Other	74,147.32
Total 3813.0 · Capital - Steve Weiss	72,287.32
3816 · Capital-Barbara Stahr	
3816.2 · Draws	-2,866.68
3816 · Capital-Barbara Stahr - Other	110,586.70
Total 3816 · Capital-Barbara Stahr	107,720.02

9:52 AM
 10/27/11
 Cash Basis

Copeland Properties Eighteen, LP
Balance Sheet
 As of October 27, 2011

	Oct 27, 11
3817 · Capital-David Ziilch	
3817.2 · Draws	-2,866.68
3817 · Capital-David Ziilch - Other	110,586.93
Total 3817 · Capital-David Ziilch	107,720.25
3818 · Capital-Diana Weed	
3818.2 · Draws	-1,433.34
3818 · Capital-Diana Weed - Other	55,292.42
Total 3818 · Capital-Diana Weed	53,859.08
3819 · Capital-Timothy Weed	
3819.2 · Draws	-1,433.34
3819 · Capital-Timothy Weed - Other	55,292.42
Total 3819 · Capital-Timothy Weed	53,859.08
3824 · Capital- Carol Lowe	
3824.2 · Draws	-2,499.99
3824 · Capital- Carol Lowe - Other	95,608.92
Total 3824 · Capital- Carol Lowe	93,108.93
3825 · Captal - Copeland Prop Five	
3825.1 · Contributions (1/10 & 2/10)	51,000.00
3825.2 · Draws	-3,706.68
3825 · Captal - Copeland Prop Five - Other	-3,679.44
Total 3825 · Captal - Copeland Prop Five	43,613.88
Net Income	168,305.93
Total Equity	2,569,903.65
TOTAL LIABILITIES & EQUITY	8,512,215.35

EXHIBIT 2

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION	[For Receiver's use only] PROOF OF CLAIM NO. _____
SEC v. Charles P. Copeland, et al Case No. 2:11-cv-08607-R-DTB	Submit your Proof of Claim and supporting documentation to the Receiver: (1) in person or by courier service, hand delivery, or mail addressed to Thomas C. Hebrank, E3 Advisors, 501 West Broadway, Suite 800, San Diego, CA 92101; or (2) by electronic mail, as an attachment in portable document form (pdf) to lryan@elhtrccadvisors.com
1. CLAIMANT INFORMATION: Name: <u>TRi TOOL INC.</u> Address: <u>c/o Peterson + Kell, ALC</u> City, State, Zip: <u>2377 Gold Meadow Way</u> Telephone: <u>#280, Gold River, CA 95670</u> Account Number (if any): _____ telephone: <u>916-635-9300</u>	2. ENTITY WITH WHOM CLAIM WAS INCURRED (SUBMIT SEPARATE CLAIMS AGAINST EACH ENTITY): List here all other entities against which Claimant has filed a separate Proof of Claim: _____ _____ _____
3. BASIS FOR CLAIM (CHECK ALL APPLICABLE): Investment in _____ Other investment _____ Services performed _____ Money loaned <u>- See Attachment</u> Taxes _____ Your SSN: <u>88-0277328</u> from <u>04/06/07 to Present</u> (dates) Other: <u>Attorney Fees & Interest</u> (Describe or provide additional information on attached sheet)	4. SECURED CLAIM: Secured Party. Check this box if you contend your claim is subject to a security interest. Attach copies of all documents that evidence the claim of secured status, including promissory notes, mortgages, security agreements, and evidence of perfection of lien. BRIEF DESCRIPTION OF COLLATERAL: Real Estate _____ Motor Vehicle _____ Other _____ (please describe) ASSERTED VALUE OF COLLATERAL: \$ _____
5. TOTAL AMOUNT OF CLAIM: \$ <u>529,000</u>	
6. DATE(S) DEBT WAS INCURRED: <u>04/06/07</u>	7. IF COURT JUDGMENT, DATE OBTAINED: <u>ORDER FOR Summary Judgment: 11-24-2010</u>
8. IF LEGAL ACTION PENDING, DATE COMMENCED, COURT NAME, AND CASE NO.: <u>SACRAMENTO SUPERIOR COURT Case # 34-2009-00054045</u>	
9. SUPPORTING DOCUMENTATION: Please attach to your Proof of Claim Form copies of all documents available to you that support your claim, including but not limited to, copies of personal checks, cashiers checks, wire transfer advices, and other documents evidencing the claim, copies of contracts, a chronological accounting of all money received from any receivership entity or the receiver, copies of all agreements, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, evidence of perfection of lien, and other documents evidencing the amount and basis of the Proof of Claim. DO NOT SEND ORIGINAL DOCUMENTS. If such documentation is not available, please attach an explanation of why the documents are unavailable.	
10. VERIFICATION OF CLAIMS: All Proofs of Claim submitted are subject to verification by the Receiver and approval by the Court. It is important to provide complete and accurate information to facilitate this effort, Claimants may be asked to supply additional information to complete this process.	
11. CONSENT TO JURISDICTION: By submitting your Proof of Claim, you consent to the jurisdiction of the United States District Court Central District of California, Western District for all purposes and agree to be bound by its decisions, including, without limitation, a determination as to the validity and amount of any claims asserted against the Receivership Entities. In submitting your Proof of Claim, you agree to be bound by the actions of the United States District Court Central District of California, Western District even if that means your claim is limited or denied.	
12. DATED: <u>02/28/13</u>	13. SIGNATURE: Sign and print the name and title, if any, of all claimants or other persons authorized to submit this claim (attach a copy of power of attorney, death certificate, or other document as needed). Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that any supporting documentation provided is also true and correct. Signature: <u>[Handwritten Signature]</u> Printed Name: <u>Rollie A. Peterson, Esq.</u> Title: <u>Attorney for TRi TOOL INC.</u>

1 SEC. v. Copeland, et al.
U.S. District Court, Center District of California - Case No. 11-8607

2 **PROOF OF SERVICE**

3
4 I am a citizen of the United States and a resident of the County of Sacramento; I am over
5 the age of eighteen (18) years, and not a party to or interested in this action. I am an employee
6 of Peterson & Kell, A Law Corporation, and my business address is 2377 Gold Meadow Way,
Suite 280, Gold River, California 95670. On February 28, 2013, I caused to be served the
following document(s):

7 **TRI TOOL INC.'S PROOF OF CLAIM**

8 on all the parties to this action addressed as stated on the attached service list:

9 **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and
10 mailing today following ordinary business practices. I am readily familiar with this
11 agency's practice for collection and processing of correspondence for mailing; such
correspondence would be deposited with the U.S. Postal Service at Gold River, California,
on the same day in the ordinary course of business.

12 **BY PERSONAL DELIVERY:** I caused such envelope to be delivered by hand.

13 **BY OVERNIGHT COURIER:** I caused such envelope to be placed for collection and
14 delivered in accordance with standard overnight delivery procedures for delivery the next
business day.

15 **BY FACSIMILE:** I caused such document(s) to be transmitted by facsimile transmission
16 from (916) 635-9303, to the person(s) and facsimile transmission without number(s) shown
17 about. The facsimile transmission was reported as complete without error and a
transmission report was properly issued by the transmitting facsimile machine.

18 **BY FEDERAL ELECTRONIC FILING:** By causing the document to be electronically
19 filed via the Court's CM/EDF System, which effects electronic service on counsel who
are registered with the CM/EDF System.

20 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed on February 28, 2013, at Gold River, California.

21
22 
23 **SHELEEN K. HADDAD**

1 *SEC. v. Copeland, et al.*
2 U.S. District Court, Center District of California - Case No. 11-8607

3 **SERVICE LIST**

4
5 Everett G. Barry, Jr., Esq.
6 John H. Stephens, Esq.
7 Patrick L. Prindle, Esq.
8 MULVANEY BARRY BEATTY LINN
9 & MAYERS, LLP
10 401 West A Street, 17th Floor
11 San Diego, CA 92101-7994
12 Phone: (619) 238-1010
13 Fax: (619) 238-1981
14 E-Mail: ebarry@mulvaneybarry.com
15 jstephens@mulvaneybarry.com
16 Pprindle@mulvaneybarry.com
17 *Attorneys for Permanent Receiver, Thomas C. Hebrank*

18
19 Thomas C. Hebrank
20 501 W. Broadway, Suite 800
21 San Diego, CA 92101
22 *Permanent Receiver*

23
24 Scott Bartel, Esq.
25 Locke Lord Bissell & Liddell
26 500 Capital Mall, Suite 1800
27 Sacramento, CA 95814
28 *Attorney for Defendants Charles Copeland and
Copeland Wealth Management, A Financial Advisory Corp.*

Charles P. Copeland
Copeland Wealth Management,
a Real Estate Corporation
25809 Business Center Dr., Ste. B
Redlands, CA 92374

EXHIBIT 3

PETERSON & KELL

A Law Corporation

2377 Gold Meadow Way
Suite 280
Gold River, CA 95670
Tel: (916) 635-9300
Fax: (916) 635-9303

July 16, 2013

Of Counsel:
Philip W. Kell

VIA FACSIMILE & U.S. MAIL

John H. Stephens, Esq.
MULVANEY, BARRY, BEATTY
LYNN & MAYERS, LLP
401 West A Street, 17th Floor
San Diego, California 92101

Re: CP3 Promissory Note

Dear Mr. Stephens:

I am writing in response to your request to learn the total due Tri Tool Inc. on the CP3 promissory note.

Principle	\$200,000.00
Interest	85,150.26
Attorney Fees & Costs	<u>230,021.77</u>
TOTAL:	<u>\$515,172.03</u>

(Interest Per Diem is \$54.79 accruing after July 16, 2013)

If you should have any questions, please feel free to contact me.

Sincerely,

PETERSON & KELL,
A LAW CORPORATION

By: 
ROLLIE A. PETERSON, ESQ.

RAP/skh

cc: Mr. Frank Wernette

EXHIBIT 3

PETERSON & KELL, A LAW CORPORATION
2377 Gold Meadow Way, Suite 280
Gold River, California 95670
(916) 635-9300
FAX: (916) 635-9303

FACSIMILE TRANSMITTAL COVER SHEET

TO: John Stephens, Esq.

FROM: Rollie A. Peterson, Esq.

FAX NO.: 619-238-1981

DATE: July 16, 2013

TOTAL PAGES (Including Cover):

2

RE: Tri Tool v. Copeland, et al.

[xx] - ORIGINAL WILL FOLLOW.

[] - ORIGINAL WILL NOT FOLLOW.

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE
NOTIFY OUR OFFICE IMMEDIATELY AT (916) 635-9300

The pages comprising this facsimile transmission contain CONFIDENTIAL INFORMATION from Peterson & Kell, A Law Corporation. This information is intended solely for use by the individual or entity named as the recipient hereof. If you are not the intended recipient, any disclosure, copying, distribution or use of the contents of this transmission is prohibited. If you have received this transmission in error, please notify this office by telephone immediately, so we may arrange to retrieve the transmission at no cost to you.

EXHIBIT 3

EXHIBIT 4

STRAIGHT NOTE

April 5th, 2007


Copeland Properties Three L.P. promises to pay Tri Tool, Inc. the sum of \$200,000.00 at the end of 24 months from the date escrow number 276981, held with First American Title Company in Sacramento California, closes, if the unrecorded easement is not removed within this 24 month timeframe. The easement is defined as follows:

AN UNRECORDED ESMT. 26' WIDE FROM KENNETH L. BOGAN TO RICHARD W. DE SILVA AND HIS SUCCESSORS FOR THE PURPOSE OF INGRESS & EGRESS TO SUNRISE BOULEVARD. EASEMENT LOCATION TO BE WITHIN THE WESTERLY 50' OF PARCELS 2, 3 & 4 OF 33PM1

Furthermore, the \$200,000 is guaranteed by Charles P. Copeland and Donald E. Copeland individually and collectively.

"The undersigned agree to reimburse the Holder or Owner of this Straight Note for any and all costs and expenses (including without limit, court costs, legal expenses and reasonable attorney fees, whether or not suit is instituted and, if suit is instituted, whether at the trial court level, appellate level, in a bankruptcy, probate or administrative proceeding or otherwise) incurred in collecting or attempting to collect this Straight Note or incurred in any other manner or proceeding related to this Straight Note."

"If this Note is not paid when due, interest will accrue from the due date of this Note at the rate of ten percent (10%) per annum or the maximum amount allowed by law, whichever is lower."


Charles P. Copeland
Guarantor

Copeland Properties Three L.P.

BY:


Donald E. Copeland
General Partner

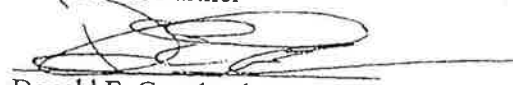

Donald E. Copeland
Guarantor

EXHIBIT 4

EXHIBIT 5

LIMITED PARTNERSHIP AGREEMENT

Preamble

AGREEMENT of Limited Partnership made this 23rd day of February, 2004, by and between Copeland Realty, Inc., General Partner and the Limited Partners.

IT IS HEREBY AGREED:

ARTICLE 1. THE PARTNERSHIP

Formation of Limited Partnership

1.01. The General Partner and the Limited Partners agree to form a limited partnership pursuant to the provisions of the California Revised Limited Partnership Act.

Name of Partnership

1.02. The name of the Partnership is Copeland Properties Three, a Limited Partnership. The business of the Partnership shall be conducted under that name.

Purpose of Partnership

1.03. The Partnership will engage in the business of real property ownership and any activities that are related or incidental to that business.

Principal Place of Business or Executive Office

1.04. The principal place of business or executive office of the Partnership is at 25809 Business Center Drive, Suite F Redlands, CA 92374, San Bernardino County, State of California, or at any other place within San Bernardino County, California, as may be determined from time to time by the General Partner. If the General Partner changes the principal place of business or executive office of the Partnership, it must give written notice of the change of address to each Limited Partner at least ten (10) days before that change.

Term of Partnership

1.05. The term of the Partnership commences on the date on which the Partnership's Certificate of Limited Partnership is filed by the Secretary of State of California in the manner required by the California Revised Limited Partnership Act or a date not more than 90 days after date certificate is received by Secretary of State and continues 10 years after the purchase of its first real property parcel.

Certificate of Limited Partnership

1.06. The General Partner will immediately execute a Certificate of Limited Partnership and cause that Certificate to be filed in the office of the Secretary of State of California. Thereafter, the General Partner will execute and cause to be filed certificates of amendment of the Certificate of Limited Partnership or Restated

Certificates of Limited Partnership whenever required by the California Revised Limited Partnership Act or this Agreement. The General Partner will execute and cause to be filed original or amended certificates evidencing the formation and operation of the Partnership whenever required under the laws of any other states in which the Partnership determines to do business. The General Partner will also record a certified copy of the Certificate and any amendment in the office of the county recorder in every county in which the Partnership owns real property.

Definitions

1.07. Except as otherwise stated in this Agreement or as the context of this Agreement requires, the terms defined in this Section, for the purposes of this Agreement, have the meanings specified in this Section.

(1) "Agreement" means this Limited Partnership Agreement, as amended from time to time.

(2) "Assignee" means a person who has acquired a beneficial interest in the limited partnership interest of a Limited Partner but who is not a "substituted Limited Partner."

(3) "Assigning Limited Partner" means a Limited Partner who has assigned a beneficial interest in that Partner's limited partnership interest but the Assignee of which has not become a "substituted limited partner."

(4) "Cash available for distribution" means total cash income from operations during any given accounting period plus the cash proceeds, if any, from the sale or other disposition, refinancing, or liquidation of Partnership property, less cash expenses as well as any allowances or reserves for contingencies or for repair to and maintenance of properties, and anticipated obligations the General Partner shall in its discretion deem necessary during the same accounting period.

(5) "Distribution" means any cash distributed to the Partners from cash available for distribution.

(6) "General Partner" refers to Copeland Realty, Inc., or any successor.

(7) "Limited Partner" refers to any person who is admitted to the Partnership, either as an original Limited Partner or as a substituted Limited Partner, and who executes this Agreement. A "new Limited Partner" is a Limited Partner other than an original or substituted Limited Partner who has purchased a limited partnership interest from the Partnership by making the required contribution to the Partnership.

(8) "Majority in interest of the Limited Partners" means 67% of the interests of the Limited Partners.

(9) "Net income" and "net loss" means the net income or net loss of the Partnership as determined for the purposes of computing federal income taxes pursuant to the Internal Revenue Code in accordance with generally accepted accounting principles.

(10) "Partners" or "the Partners" refers collectively to the General Partner and the Limited Partners. Reference to "Partner" is a reference to any one of the Partners.

(11) "Partnership" refers to the Limited Partnership created under this Agreement and the Certificate of Limited Partnership to be filed with the Office of the Secretary of State pursuant to the California Revised Limited Partnership Act.

(12) "Vote" includes written consent.

(13) "Cumulative non compounded annualized profit" (CNCAP) is the total profit/loss from all sources, including ordinary income, investment return on cash reserves and capital gain, from the inception of the partnership through the present date. It will include both realized and non-realized gains, based on the fair market value of all partnership assets net of disposition costs.

(14) The percent of CNCAP above is computed using "original cash/property net equity" (OCPNE) of all partners as the denominator, CNCAP as the numerator and then the remainder divided by time elapsed from close of first purchase escrow.

$$\text{I.e. } \frac{\text{CNCAP}}{\text{OCPNE}} = \text{Gross CNCAP percent}$$

Then

$$\frac{\text{GCNCP}\%}{\text{Years of time elapsed}} = \text{Percent of CNCAP}$$

ARTICLE 2. MEMBERS OF PARTNERSHIP

Original General Partner

2.01. The name of the original General Partner is as follows: Copeland Realty, Inc.

Original Limited Partners

2.02. The name of each original Limited Partners are as follows:

Admission of Additional General Partner

2.03. Subject to any other provision of this Agreement, a person may be admitted as a General Partner after the Certificate of Limited Partnership is filed only with the written consent of General Partner and the vote or written consent of 67% of the Limited Partners.

Replacement of Sole Remaining General Partner

2.04. If a General Partner ceases to be a General Partner and there is no remaining General Partner, one or more new General Partner may be admitted to the Partnership on the written consent of 67% of the Limited Partners; provided that the Limited Partners agree in writing to continue the business of the Partnership pursuant to Paragraph 12.03 of this Agreement.

Admission of Additional Limited Partners

2.05. Subject to the provisions of Article 9 of this Agreement, governing transfers of partnership interests, a person may acquire an interest in the Partnership directly from the Partnership and be admitted as an additional Limited Partner on 67 percent of the vote of all the members of the Partnership.

Admission of Substituted Limited Partner

2.06. The assignee of a limited partnership interest may be admitted as a substituted Limited Partner with the vote or written consent of the General Partner and all the Limited Partners.

Amendment of Partnership Records

2.07. On admission of a General Partner or Limited Partner, the General Partner will add the name, address, contribution, and that Partner's share in Partnership profits or losses to the list of Partners kept in the principal executive office of the Partnership.

Additional Partners. Bound by Agreement

2.08. Before any person is admitted to the Partnership as a General or Limited Partner, that person shall agree in writing to be bound by all of the provisions of this Agreement.

ARTICLE 3. FINANCING

Capitalization

3.01. The Partnership shall have an initial capitalization of \$2,100,000.00 which shall be contributed by the Limited Partners, as further described in Paragraph 3.03 of this Agreement.

General Partner Capital Contribution

3.02. (a) The General Partner named in this Agreement shall contribute to the capital of the Partnership in cash the sum of \$21,000.00 for a 1% interest.

(b) Each new or replacement General Partner admitted after the execution of this Agreement shall contribute, before admission to the Partnership, a sum that shall be determined by the General Partner. In the alternative, or in addition to the contribution provided for in this Agreement, the remaining General Partner may require a General Partner who is being admitted to replace a former General Partner to purchase the interest of the former General Partner pursuant to Paragraphs 9.04, 9.05, and 9.06 of this Agreement. These provisions are subject, however, to any requirements for approval by the Limited Partners specified elsewhere in this Agreement. If there are no remaining General Partners, the contribution and interest of a new or replacement General Partner shall be determined by the Limited Partners in accordance with Paragraph 2.04 of this Agreement.

Limited Partner Capital Contribution

3.03. Each of the Limited Partners shall contribute to the capital of the Partnership cash or real estate with net equity value in the amount of \$210,000.00 for each 10% interest.

Initial Capital Contributions From New Limited Partners

3.04. Each new Limited Partner admitted to the Partnership shall contribute to the capital of the Partnership.

Additional Capital Contributions

3.05. No additional contributions of capital shall be required of the Limited Partners.

Interest on Contributions

3.06. No interest shall be paid on the initial contributions to the Partnership capital.

Withdrawal and Return of Capital

3.07. (a) No Partner may withdraw any portion of the capital of the Partnership and no Partner, General or Limited, is entitled to the return of that Partner's contribution to the capital of the Partnership except on the dissolution of the Partnership or the withdrawal of that Partner from the Partnership and that Partner's compliance with Paragraphs 9.02 and 9.03 of this Agreement.

(b) No Partner is entitled to demand the distribution of Partnership property other than cash as part of the return of that Partner's capital contribution to the Partnership.

(c) No Limited Partner has a priority over any other Limited Partner as to the return of a contribution on the dissolution of the Partnership.

ARTICLE 4. ALLOCATION AND DISTRIBUTION OF PROFITS AND LOSSES

Allocation of Profits and Losses

4.01. The net profits of the Partnership are allocated to, and any net losses suffered by the Partnership will be borne by, the Partners in the following proportions:

GENERAL PARTNER 0% of the first 10% of cumulative non compounded profit; then 10% of next 2%; then 20% of next 4%; then 40% of the next 5%; then 50% of the remainder.

LIMITED PARTNERS First 10% of cumulative non compounded profit; then 90% of the next 2% of cumulative non compounded profit; then 80% of the next 4%; then 60% of the next 5%; then 50% of the

remainder.

EXAMPLE A

Example of profit distribution at various profit levels:

<u>Total</u>	<u>General</u>	<u>Limited</u>
10%	0%	10.0%
12%	.2%	11.8%
16%	1.0%	15.0%
21%	3.0%	18.0%
25%	5.0%	20.0%
35%	10.0%	25.0%

Distribution of Cash Available for Distribution

4.02. Annually cash available for distribution, as determined by the General Partner, will be distributed to the Partners as follows:

- (1) First the Limited Partners shall receive annual cash distribution not to exceed 6% of the initial capital contribution made by the Limited Partner. (See Exhibit A attached hereto).
- (2) Next the General Partner shall receive payment for services not to exceed .5% of property purchase price.
- (3) All remaining cash available for distribution shall be distributed to the Limited Partners.

4.03. No General Partner or Limited Partner has the right to receive property other than money on the distribution of profits. No Partner may be compelled to accept the distribution of any asset in kind from the Partnership in lieu of any distribution of money due that Partner.

Priorities Among Limited Partners

4.04. No Limited Partner shall be entitled to any priority or preference over any other Limited Partner as to the distribution of cash available for distribution.

ARTICLE 5. MANAGEMENT OF PARTNERSHIP
AFFAIRS

Control and Management

5.01. The General Partner has the sole and exclusive control of the Limited Partnership. Subject to any limitations expressly set forth in this Agreement, the General Partner has the power and authority to take any action from time to time as it may deem to be necessary, appropriate, or convenient in connection with the management and conduct of the business and affairs of the Partnership, including without limitation, the power to do the following:

(1) Acquire property, including real or personal property, for the use of the Partnership on the terms and conditions as the General Partner may, from time to time, determine to be advantageous to the Partnership;

(2) Dispose of Partnership property, either in the ordinary course of the business of the Partnership or, from time to time, when the General Partner deems the disposition to be in the best interests of the Partnership;

(3) Finance the Partnership's activities by borrowing money from third parties on the terms and under the conditions as the General Partner deems appropriate. When money is borrowed for Partnership purposes, the General Partner is authorized to pledge, mortgage, encumber, or grant a security interest in Partnership properties as security for the repayment of those loans;

(4) Employ, retain, or otherwise secure the services of any personnel or firms deemed necessary by the General Partner for or to facilitate the conduct of Partnership business affairs, all on the terms and for the consideration as the General Partner deems advisable; and

(5) Take any and all other action permitted by law that is customary in or reasonably related to the conduct of the Partnership business or affairs.

Restrictions on Limited Partners

5.02. The Limited Partners do not have either the obligation or the right to take part, directly or indirectly, in the active management or control of the business of the Partnership, except as otherwise permitted in this Agreement and except for the following:

(1) Acting as a contractor for or an agent or employee of the Partnership or a General Partner, or an officer, director, or shareholder of a corporate General Partner.

(2) Consulting with and advising a General Partner with regard to the business of the Partnership.

(3) Acting as surety for the Partnership or guaranteeing one or more specific debts of the Partnership.

(4) Approving or disapproving an amendment to this Agreement.

Standard of Care of General Partner

5.03. The General Partner must exercise ordinary business judgment in managing the affairs of the Partnership. Unless fraud, deceit, or a wrongful taking is involved, the General Partner is not liable or obligated to the Limited Partners for any mistake of fact or judgment made by the General Partner in operating the business of the Partnership that results in any loss to the Partnership or its Partners. The General Partner does not, in any way, guarantee the return of the Limited Partners' capital or a profit from the operations of the Partnership. The General Partner is not responsible to any Limited Partner because of a loss of that Partner's investment or a loss in operations, unless the loss has been occasioned by fraud, deceit, or a wrongful taking by the General Partner.

Authority for Use of Nominees

5.04. All Partners recognize that practical difficulties exist in doing business as a Limited Partnership, occasioned by third parties seeking to determine the capacity of the General Partner to act for and on behalf of the Partnership, or for other reasons. Therefore, the Limited Partners specifically authorize the General Partner to acquire all real and personal property, arrange all financing, enter contracts, and complete all other arrangements needed to effectuate the purpose of this Partnership, either in its own names or in the name of a nominee, without having to disclose the existence of this Partnership. If the General Partner decides to transact the Partnership business in his own name or in the name of a nominee, he shall place a written declaration of trust in the Partnership books and records that acknowledges the capacity in which the nominee acts and the name of the Partnership as the true or equitable owner.

Removal of General Partner

5.05. A General Partner may be removed by the affirmative vote of 67% in interest, not in number, of the Limited Partners who are not also General Partners. Written notice of a General Partner's removal must be served on that Partner by certified mail. The notice must set forth the day on which the removal is to be effective, and that date shall not be less than 30 days after the service of notice on the General Partner. If there is no other remaining General Partner, and the Limited Partners fail to elect a new General Partner pursuant to Paragraph 2.04 of this Agreement within 30 days after the removal becomes effective, the Partnership will be dissolved and its business wound up and terminated. If the removal of a General Partner does not cause the dissolution of the Partnership, the General Partner's interest may be purchased pursuant to Paragraphs 9.04 or 9.05 of this Agreement. Otherwise, that removal will cause that Partner's interest in the Partnership to be converted to that of a Limited Partner. A former General Partner whose interest has been converted to that of a Limited Partner has the same rights and obligations under this Agreement as any other Limited Partner.

ARTICLE 6. BOOKS, RECORDS, AND ACCOUNTS

Partnership Accounting Practices

6.01. (a) The Partnership books shall be kept on a cash basis. The Partnership books shall be closed and balanced at the end of each fiscal year of the Partnership. The General Partner at his expense, will employ accounting and tax professionals.

(b) The fiscal year of the Partnership will be determined by the General Partner.

Maintenance of Records and Accounts

6.02. At all times, the General Partner must maintain or cause to be maintained true and proper books, records, reports, and accounts in which shall be entered fully and accurately all transactions of the Partnership.

Required Records

6.03. The General Partner must maintain at the principal executive office of the Partnership within California all of the following records:

(1) A current list of the full name and last known business or residence address of each Partner, set forth in alphabetical order, together with the contribution and the share in profits and losses of each Partner.

(2) A copy of the certificate of limited partnership and all certificates of amendment (or the restated certificate of limited partnership), together with executed copies of any powers of attorney pursuant to which any certificate has been executed.

(3) Copies of the Partnership's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years.

(4) Copies of this Agreement and all amendments to this Agreement.

(5) Financial statements of the Partnership for the six most recent fiscal years.

(6) The Partnership's books and records for at least the current and past three fiscal years.

Delivery of Records to Limited Partners

6.04. On the request of any Limited Partner, or his or her agent or attorney, the General Partner will promptly deliver to that Partner, or to his or her agent or attorney, at the expense of the Partnership, a copy of any of the following:

(1) The current list of each Partner's name, address, contribution, and share in profits and losses.

(2) The certificate of limited partnership, as amended, and any powers of attorney pursuant to which any certificate was executed.

(3) This Agreement, as amended.

Access to Records by Limited Partners

6.05. Each Limited Partner and/or each Limited Partner's duly authorized representative, attorney, or attorney-in-fact has the right, on reasonable request, to:

(1) Inspect and copy, during normal business hours, any Partnership records the Partnership is required to maintain, pursuant to Paragraph 6.02 of this Agreement.

(2) Obtain from the General Partner, promptly after becoming available, a copy of the Partnership's federal, state, and local income tax or information returns for each year.

Financial Statements

6.06. The General Partner will furnish financial statements and reports as follows:

(1) The General Partner will issue an annual report containing a balance sheet as of the end of each fiscal year and an income statement and statement of changes in financial position for each fiscal year. The General Partner will send a copy of that annual report to each Partner not later than 120 days after the close of each fiscal year.

(2) The General Partner will deliver or mail the following to the Limited Partners, within 30 days after receipt of the written request of Limited Partners representing at least 5 percent of the interests of all Limited Partners:

(a) An income statement of the Partnership for the initial three-month, six-month, or nine-month period of the current fiscal year that ends more than 30 days before the date of the request.

(b) A balance sheet of the Partnership as of the end of the initial three-month, six-month, or nine month period of the current fiscal year that ends more than 30 days before the date of the request.

(3) The General Partner will accompany any of these financial statements with either the report of an accountant engaged by the Partnership, or, if there is no report of an accountant, the certificate of a General Partner that the financial statements were prepared without audit from the books and records of the Partnership.

Amendments to Agreement

6.07. The General Partner will promptly furnish any Limited Partner who executed a power of attorney authorizing a General Partner to execute an amendment to this Agreement with a copy of any amendment to this Agreement executed by a General Partner pursuant to that power of attorney. As used in this Paragraph, the term "promptly" means within 10 business days after the execution of the amendment.

Income Tax Data

6.08. The General Partner will send to each Partner, within 60 days after the end of each taxable year, such information as is necessary for them to complete their federal and state income tax or information returns.

Partnership Tax or Information Returns

6.09. The General Partner will send to each Partner a copy of the Partnership's federal, state, and local income tax or information returns for each taxable year within 60 days after the end of each taxable year.

Capital Accounts

6.10. An individual capital account must be maintained for each General Partner and Limited Partner. A capital account consists of a Partner's contribution to the initial capital of the Partnership, any additional contributions to the Partnership capital made by the Partner pursuant to this Agreement, and any amounts transferred to the capital account from that Partner's income account pursuant to this Agreement.

Income Accounts

6.11. An individual income account will be maintained for each Partner. At the close of each

accounting period, each Partner's share of the net profits or net losses of the Partnership will be credited or debited to, and that Partner's distributions received during each fiscal year will be deducted from, that Partner's income account and any resulting balance or deficit shall be transferred to or charged against that Partner's capital account.

Banking

6.12. The General Partner will open and maintain a separate bank account in the name of the Partnership in which there shall be deposited all of the funds of the Partnership. No other funds may be deposited in the account. The funds in that account must be used solely for the business of the Partnership, and all withdrawals from that account are to be made only on checks signed by the General Partner.

ARTICLE 7. RIGHTS, POWERS, DUTIES, AND RESTRICTIONS OF PARTNERS

General Partner Exclusive Right to Manage

7.01. The General Partner has full and exclusive charge and control of the management, conduct, and operation of the Partnership in all matters and respects.

Devotion of Time by General Partner

7.02. The General Partner must devote his entire care, attention, and business capacity to the affairs of the Partnership or such care, attention, and business capacity to the affairs of the Partnership as may be reasonably necessary. In this connection, the Partners acknowledge that any General Partner may be the Manager or General Partner of other partnerships and may continue to manage other partnerships, and may continue to engage in other related businesses whether or not competitive with the business of the Partnership.

Voting Rights of General Partner

7.03. The General Partner has rights in the management and conduct of the Partnership business.

Restrictions on General Partner

7.04. Except as otherwise expressly provided in this Agreement, each General Partner is subject to all the restrictions imposed on general partner by the California Revised Limited Partnership Act and the California Uniform Partnership Act and has all the rights and powers granted to general partner under those statutes.

Salaries of General Partner

7.05. The General Partner shall be paid a flat fee annually as outlined in paragraph 4.02.2.

Voting Rights of Limited Partners

7.06. (a) In addition to any other voting rights granted the Limited Partners under this Agreement, the

Limited Partners have the right to vote on the following matters:

- (1) The dissolution and winding up of the Partnership, pursuant to Paragraph 12.02;
 - (2) The merger of the Partnership or the sale, exchange, lease, mortgage, pledge, or other transfer of, or granting a security interest in, all or a substantial part of the assets of the Partnership other than in the ordinary course of its business;
 - (3) The incurrence of indebtedness by the Partnership other than in the ordinary course of its business;
 - (4) A change in the nature of the Partnership's business;
 - (5) Transactions in which the General Partner has an actual or potential conflict of interest either with the Limited Partners or the Partnership;
 - (6) The removal of a General Partner;
 - (7) An election to continue the business of the Partnership when a General Partner ceases to be a General Partner.
- (b) All of the actions specified in Subparagraph (a) of this Agreement may be taken following the vote of 67% of the Limited Partners.
- (c) The Limited Partners have the right to vote on the admission of an additional General Partner. Except as specifically provided in Paragraphs (d) and (e) of this Paragraph 7.06 or any other provision of this Agreement, the admission of an additional General Partner may be accomplished on the affirmative vote of 67% in interest of the Limited Partners or provide for vote by greater than majority in interest of limited partners.
- (d) The Limited Partners have the right to vote on an election to continue the business of the Partnership and the admission of one or more General Partner after a General Partner ceases to be a General Partner under Corporations Code 15642(b), (c), or (d) and there is no remaining General Partner. These actions may only be taken on 67% interests of the Limited Partners.
- (e) The Limited Partners have the right to vote on any other matters related to the business of the Partnership that are made subject to the approval or disapproval of the Limited Partners by this Agreement.

Loans to the Partnership

7.07. Nothing in this Agreement prevents a Partner from lending money to the Partnership on a promissory note or similar evidence of indebtedness for a reasonable rate of interest. Any Partner lending money to the Partnership has the same rights and risks regarding the loan as would any person or entity making the loan who was not a member of the Partnership.

Transaction of Business With Partnership

7.08. Except as otherwise provided in this Agreement, a Partner may not transact other business with the Partnership.

Partners Engaging in Other Business

7.09. Except as otherwise provided in Paragraph 7.02 of this Agreement, any of the Partners may engage in or possess an interest in other business ventures of every nature and description independently or with others. Neither the Partnership nor the Partners have any right by virtue of this Agreement in and to any such independent ventures or to the income or profits derived from them.

ARTICLE 8. PARTNERSHIP MEETINGS

Call and Place of Meetings

8.01. (a) Meetings of the Partners will be held at the Principal Executive Office of the Partnership or at any place selected by the person or persons calling the meeting or specify place of meeting within or without California at the call and pursuant to the written request of the General Partner, or of Limited Partners representing more than 67 percent of the interests of Limited Partners, for consideration of any of the matters as to which Limited Partners are entitled to vote pursuant to Paragraph 7.06 of this Agreement.

(b) In addition, the Partners may participate in a meeting through the use of conference telephones or similar communications equipment providing that all Partners participating in the meeting can hear one another. Participation in this type of telephone meeting constitutes presence in person at the meeting.

Notice of Meeting

8.02. Immediately on receipt of a written request stating that the Partner or Partners request a meeting on a specific date which date shall not be less than 10 nor more than 60 days after the receipt of the request by the General Partner, the General Partner must give notice to all Partners entitled to vote, as determined in accordance with Paragraph 13.01 of this Agreement. Valid notice may not be given less than 10 nor more than 60 days before the date of the meeting; the notice must state the place, date, and hour of the meeting and the general nature of the business to be transacted. No business other than the business stated in the notice of the meeting may be transacted at the meeting. Notice must be given by mail addressed to each Partner entitled to vote at the meeting at the address for the Partner appearing on the books of the Partnership.

Quorum

8.03. At any duly held or called meeting of Partners, a majority in interest or other percentage of the Limited Partners represented in person or by proxy or in person constitutes a quorum. The Partners present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment,

notwithstanding the withdrawal of enough Partners to leave less than a quorum, if any action taken, other than adjournment, is approved by the requisite percentage of interests of Limited Partners.

Adjournment of Meetings

8.04. A Partnership meeting at which a quorum is present may be adjourned to another time or place and any business that might have been transacted at the original meeting may be transacted at the adjourned meeting. If a quorum is not present at an original meeting, that meeting may be adjourned by the vote of a majority of the interests represented either in person or by proxy. Notice of the adjourned meeting need not be given to Partners entitled to notice if the time and place of the adjourned meeting are announced at the meeting at which the adjournment is taken, unless (1) the adjournment is for more than 45 days or (2) after the adjournment, a new record date is fixed for the adjourned meeting, in which case notice of the adjourned meeting shall be given to each Partner of record entitled to vote at the adjourned meeting.

Meetings Not Duly Called, Noticed, or Held

8.05. The transactions of any meeting of Partners, however called and noticed, and wherever held, shall be as valid as though consummated at a meeting duly held after regular call and notice, if a quorum is present at that meeting, either in person or by proxy, and if, either before or after the meeting, each of the persons entitled to vote, not present in person or by proxy, signs either a written waiver of notice, a consent to the holding of the meeting, or an approval of the minutes of the meeting.

Waiver of Notice

8.06. Attendance of a Partner at a meeting constitutes waiver of notice, except when that Partner objects, at the beginning of the meeting, to the transaction of any business on the ground that the meeting was not lawfully called or convened. Attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be described in the notice of the meeting and not so included, if the objection is expressly made at the meeting. Any partner approval at a meeting (other than unanimous approval by Limited Partners of an election to continue the business of the Partnership after the retirement, death, or adjudication of incompetence of a General Partner) is valid only if the general nature of the proposal is stated in any written waiver of notice.

Consent to Action Without Meeting

8.07. Any action that may be taken at any meeting of the Partners may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by Partners having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all Partners entitled to vote on the matter were present and voted. If the Limited Partners are requested to consent to a matter without a meeting, each Partner shall be given notice of the matter to be voted on in the manner described in Paragraph 8.02. If any General Partner, or Limited Partners representing more than 10 percent of the interests of the Limited Partners, requests a meeting for the purpose of discussing or voting on the matter so noticed, notice of a meeting will be given pursuant to Paragraph 8.02 and no action may be taken until the meeting is held. Unless delayed by a request for and the conduct of a meeting, any action taken without a meeting is effective 15 days after the required minimum number of voters have signed consents to action without a meeting; however, the action is effective immediately if all General Partners and Limited Partners

representing at least 90 percent of the interests of the Limited Partners sign consents to the action without a meeting.

Proxies

8.08. (a) Every Partner entitled to vote may authorize another person or persons to act by proxy with regard to that Partner's interest in the Partnership.

(b) Any proxy purporting to have been executed in accordance with this Paragraph is presumptively valid.

(c) No Proxy is valid after the expiration of 11 months from the date of the proxy unless otherwise provided in the proxy. Subject to Subparagraphs (f) and (g) of this Paragraph, every proxy continues in full force and effect until revoked by the person executing it. The dates contained on the proxy forms presumptively determine the order of execution, regardless of the postmark dates on the envelopes in which they are mailed.

(d) A proxy is not revoked by the death or incapacity of the person executing it, unless (except as provided in Subparagraph (f) of this Paragraph), before the vote is counted, written notice of the death or incapacity of the maker is received by the Partnership.

(e) Revocation of a proxy is effected by a writing delivered to the Partnership stating that the proxy is revoked or by a subsequent proxy executed by the Partner who executed the original proxy or, as to any meeting, by the attendance and exercise of the right to vote at that meeting by the Partner who executed the proxy.

(f) A proxy that states that it is irrevocable is irrevocable for the period specified in the proxy when it is held by any creditor or creditors of the Partnership or the Partner who extended or continued credit to the Partnership or the Partner in consideration of the proxy if the proxy states that it was given in consideration of that credit and also states the name of the person extending or continuing credit. In addition, a proxy may be made irrevocable (notwithstanding Subparagraph (d) of this Paragraph) if it is given to secure the performance of a duty or to protect a title, either legal or equitable, until the happening of events that, by its terms, discharge the obligations secured by it.

(g) Notwithstanding the period of irrevocability specified in the proxy as provided in Subparagraph (f) of this Paragraph, the proxy becomes revocable when the debt of the Partnership or Partner is paid.

(h) A proxy may be revoked, notwithstanding a provision making it irrevocable, by the assignment of the interest in the Partnership of the Partner who executed the proxy to an assignee without knowledge of the existence of the proxy and the admission of that assignee to the Partnership as a Partner.

(i) The General Partner may, in advance of any Partnership meeting, prescribe additional regulations concerning the manner of execution and filing of proxies and their validation.

ARTICLE 9. TRANSFER OF PARTNERSHIP INTERESTS

Conditions for Transfer

9.01. A Limited Partner may sell, assign, transfer, encumber, or otherwise dispose of an interest in the Partnership subject to the provisions of this Article 9.

Permitted Transfers

9.02. (a) If a Limited Partner receives a bona fide offer for the purchase of all or a part of that Limited Partner's interest in the Partnership, that Limited Partner must either refuse that offer or give the General Partner, who will immediately notify all other limited partners by written notice setting out full details of that offer. The notice must specify, among other things, the name of the offer or, the percentage of interest in the Partnership covered by the offer, the terms of payment, whether for cash or credit and, if on credit, the time and interest rate, as well as all other consideration being received or paid in connection with the proposed transaction, and all other terms, conditions, and details of the offer.

(b) On receipt of the notice with regard to that offer, the General Partner shall have the exclusive right and option, exercisable at any time during a period of 30 days from the date of the notice, to purchase the interest in the Partnership covered by the offer in question at the same price and on the same terms and conditions of the offer as set out in the notice. If the General Partner decides to exercise the option, they must give written notice to that effect to the Limited Partner desiring to sell, and the sale and purchase must be consummated within 30 days. If the General Partner does not elect to exercise its option or waive their rights in writing, the selling Limited Partner must be so notified in writing and, subject to any prohibitions or restrictions on transfer imposed by the General Partner for purposes of compliance with applicable securities law, is free to sell the interest in the Partnership covered by the offer, if the sale is consummated within 90 days, or the interest once again becomes subject to the restrictions of this Article. The sale, if permitted, must be made strictly on the terms and conditions and to the person described in the required notice.

(c) If the General Partner fails to purchase all of the portion of the selling Limited Partner's interest in the Partnership specified in the notice to them provided in this Paragraph, the remaining Limited Partners shall have an additional 30 days to serve on the General Partner notice in writing of that Partner's intention to purchase on the terms and conditions set forth in the selling Partner's notice that portion of the selling Partner's interest as the offering Partner's interest in the profits or capital of the Partnership bears to the total interest of all profits or capital of the Partnership. Provided, however, if any Limited Partner fails to purchase a proportionate share of the interest offered by the selling Partner, notice of that fact shall be given to each Limited Partner by the General Partner, and the interest may be purchased by any one or more of the other Limited Partners.

(d) Any assignment made to anyone, not already a Partner, is effective only to give the assignee the right to receive distributions, and allocations of income, gain, loss, deduction, credit, or similar items to which the assignor would otherwise be entitled, does not relieve the assignor from liability under any agreement to make additional contributions to capital; does not relieve the assignor from liability under the provisions of this Agreement; and does not give the assignee the right to become a substituted Limited Partner. Neither the General Partner nor the Partnership are required to determine the tax consequences to a Limited Partner or his or her assignee, arising from the assignment of a Limited Partnership interest. The Partnership will continue with the same basis and capital account for the assignee as was attributable to the former owner who assigned the Limited Partnership interest. The Partnership interest of the General Partner cannot be

voluntarily assigned or transferred except pursuant to Paragraph 9.04 or when the transfer occurs by operation of law.

Death, Bankruptcy, or Incompetence of Limited Partner

9.03. If any Limited Partner dies or is adjudged incompetent or bankrupt by any court of competent jurisdiction, the remaining General and Limited Partners have an option to purchase the Partnership interest of that Limited Partner by paying to the person legally entitled to that interest, within 90 days after the date of death or the adjudication of incompetency or bankruptcy, the fair market value of that Partnership interest. This 60-day period may be extended to 30 days after a MAI appraisal is received provided the appraiser is contracted for within 30 days. Each remaining General and Limited Partner has the right to purchase that proportionate part of the deceased, incompetent, or bankrupt Limited Partner's interest in the Partnership as the remaining Partner's interest in the profits of the Partnership bears to the total interest of all profits the Partnership. Provided, however, if any remaining General or Limited Partner fails to purchase a proportionate share of the interest offered by the selling Partner, notice of that fact must be given to each General and Limited Partner, and it may be purchased by any one or more of the remaining General or Limited Partners.

Sale to New General Partner

9.04. When any General Partner ceases to be a General Partner, pursuant to Corporations Code Section 15642, the interest of the withdrawing General Partner may be purchased by a new General Partner during the option period set forth in Paragraph 9.04, on admission of the new Partner to the Partnership and on payment of the value of that interest determined as provided in Paragraph 9.06.

Duties of Remaining Purchasing General Partner

9.05. On the purchase and sale of a Withdrawing General Partner's interest, the new General Partner will assume all obligations of the Partnership and shall hold the withdrawing General Partner, the personal representative and estate of the withdrawing General Partner, and the property of the withdrawing General Partner free and harmless from all liability for those obligations. Further, the remaining General Partners, at their own expense, must immediately amend the Certificate of Limited Partnership as required by the California Revised Limited Partnership Act, and cause to be prepared, executed, acknowledged, filed, served, and published all other notices required by law to protect the withdrawing General Partner or the personal representative and estate of the withdrawing General Partner from all liability for the future obligations of the Partnership business.

Sale of Partnership by General Partner

9.06. At any time during the term of the Partnership, the General Partner may sell the real estate holdings of the partnership without further approval of the limited partners if such sale will result in a 20 percent non-compounded annual return to the Limited Partners. Any sale not meeting this amount must be approved by at least 50% of the Limited Partners.

Distribution Upon Sale

9.07. Net proceeds from the sale shall be distributed (a) first to the Limited Partners as specified in Exhibit A attached hereto (b) the balance of the distributions will be distributed 50% to the Limited Partners and 50% to the General Partner as more fully specified in Exhibit A.

ARTICLE 10. LIABILITIES OF PARTNERS

Liability of General Partner

10.01. Except as otherwise provided in this Agreement, the liability of the General Partner arising from the conduct of the business affairs or operations of the Partnership or for the debts of the Partnership is unrestricted.

Liability of Limited Partners

10.02. The liability of the Limited Partners is restricted and limited to the amount of the actual capital contributions that each Limited Partner makes or agrees to make to the Partnership.

ARTICLE 11. PROHIBITED TRANSACTIONS

Specified Acts

11.01. During the time of the organization or continuance of this Partnership, neither the General nor Limited Partners may take, and the Partners specifically promise not to do, any of the following actions:

(1) Use the name of the Partnership (or any substantially similar name) or any trademark or trade name adopted by the Partnership, except in the ordinary course of the Partnership business.

(2) Disclose to any non-partner any of the Partnership business practices, trade secrets, or any other information not generally known to the business community.

(3) Do any other act or deed with the intention of harming the business operations of the Partnership.

(4) Do any act contrary to this Agreement, except with the prior express written approval of all Partners.

(5) Do any act that would make it impossible to carry on the intended or ordinary business of the Partnership.

(6) Confess a judgment against the Partnership.

(7) Abandon or transfer or dispose of Partnership property, real or personal.

(8) Admit another person or entity as a General or Limited Partner.

Use all Partnership Assets

11.02. The General Partner may not use, and specifically promises not to use, directly or indirectly, the assets of this Partnership for any purpose other than conducting the business of the Partnership, for the full and exclusive benefit of all its Partners.

ARTICLE 12. DISSOLUTION OF THE PARTNERSHIP

Dissolution and Winding Up

12.01. The Partnership will be dissolved, and its affairs will be wound up on the expiration of the term provided for the existence of the Partnership in Paragraph 1.05 or on the occurrence of any of the events specified in Paragraphs 12.02 through 12.05, whichever is the first to occur.

Dissolution Upon Consent

12.02. The Partnership will be dissolved on any date specified in a consent to dissolution signed by 67 percent of the General Partners and by a majority in interest or specify number or percentage in interest of the Limited Partners.

Dissolution Upon Loss of a General Partner

12.03. The Partnership will dissolve and its affairs will be wound up if a General Partner ceases to be a General Partner.

Dissolution Upon Sale or Disposition of Assets

12.04. The Partnership will be dissolved and its affairs wound up when its assets are sold or otherwise disposed of and the only property of the Partnership consists of cash available for distribution to the Partners.

Dissolution Upon Judicial Decree

12.05. The Partnership will be dissolved and its affairs wound up when required by a decree of judicial dissolution entered under Section 15682 of the California Corporations Code.

Responsibility for Winding Up

12.06. (a) On dissolution of the Partnership, the affairs of the Partnership will be wound up by General Partner.

(b) If no General Partner is available to wind up the affairs of the Partnership, or one or more Limited Partners may wind up the affairs of the Partnership.

(c) If a Limited Partner is authorized to wind up the affairs of the Partnership, the Certificate of Limited Partnership must be amended to add the name and the business, residence, or mailing address of each Limited Partner winding up the Partnership's affairs. Any Limited Partner winding up the Partnership's

affairs may not be subject to liability as a General Partner based on this amendment. Any remaining General Partners not winding up the Partnership's affairs need not execute the Certificate of Amendment.

(d) If one or more Limited Partners wind up the affairs of the Partnership, those Limited Partners are entitled to reasonable compensation.

Liquidation and Distribution

12.07. The person or persons responsible for winding up the affairs of the Partnership pursuant to Paragraph 12.06 will take full account of the Partnership assets and liabilities, liquidating the assets of the Partnership as promptly as is consistent with obtaining the fair value of those assets, and applying and distributing the proceeds in the following order:

(1) To creditors of the Partnership, including Partners who are creditors to the extent permitted by law, in satisfaction of liabilities of the Partnership other than liabilities for any of the following:

(a) Distributions owing to Partners before their withdrawal from the Partnership and before the dissolution and winding up of the Partnership.

(b) Distributions owing to Partners on their withdrawal from the Partnership.

(2) Except as otherwise provided in this Agreement, to Partners and former Partners in satisfaction of liabilities for distributions owing to them before their withdrawal from the Partnership and before dissolution and winding up of the Partnership and on their withdrawal from the Partnership.

(3) To the Partners in accordance with the provisions set forth in this Agreement for the distribution of the assets of the Partnership.

Filing Certificate of Dissolution

12.08. On dissolution of the Partnership, 67 percent of the interests of Limited Partners representing a majority in interest of the Partners, must execute and file in the office of the Secretary of State a certificate of dissolution.

Cancellation of Certificate of Limited Partnership

12.09. On completion of the winding up of the Partnership's affairs, 67 percent of the General Partners must execute and file in the office of the Secretary of State a certificate of cancellation of the Certificate of Limited Partnership. If the Limited Partners are winding up the Partnership's affairs pursuant to Paragraph 12.06, the person authorized by a majority in interest of the Limited Partners must execute and file the certificate of cancellation of the Certificate of Limited Partnership.

ARTICLE 13. RECORD DATES

Setting Record Date for Meetings

13.01. The record date for determining the Partners entitled to notice of meetings, the right to vote at any meeting, or the right to take any other lawful action with regard to a meeting or the conduct of a vote by the Partners will be the date set by the General Partners or Limited Partners representing more than 67 percent of the Limited Partners' interests or both; however that date may not be more than 60 nor less than 10 days before the date of the meeting nor more than 60 days before any other action.

Setting Record Date for Distributions

13.02. The record date for determining the Partners entitled to any distribution or the right to take any other lawful action will be 10 days before that date; however that date may not be more than 60 days before any such action.

Automatic Record Date

13.03. In the absence of any action setting a record date the record date will be determined as follows:

(1) The record date for determining the Partners entitled to notice of, or to vote at, meetings will be at the close of business on the business day preceding the day on which notice is given, or, if notice is waived, at the close of business on business day preceding the day on which meeting is held.

(2) The record date for determining Partners entitled to give consent to Partnership action in writing without a meeting is the day on which the first written consent is given.

(3) The record date for determining Partners for any other purpose is at the close of business on the day on which the General Partners adopt the record date or the 60th day before the date of action relating to that other purpose, whichever is later.

(4) The record date for adjourned meetings is the record date set in determining the Partners entitled to notice of, or to vote at, the original meeting; however, the Partners who called that meeting may fix a new record date for the adjourned meeting and must fix a new record date if the meeting is adjourned for more than 45 days from the date set for the original meeting.

ARTICLE 14. MISCELLANEOUS PROVISIONS

Entire Agreement

14.01. This Agreement contains the entire understanding among the Partners and supersedes any prior written or oral agreements between them regarding the subject matter contained in this Agreement. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the Partners relating to the subject matter of this Agreement that are not fully expressed in this Agreement.

Amendments

14.02. (a) Subject to Subparagraph (b) of this Paragraph 14.02, the provisions of this Agreement may be amended by 67 percent of the vote of a majority in interest of the Limited Partners. Any amendment of this Agreement must be in writing, dated, and executed by all Partners. If any conflict arises between the provisions of any amendment and the original Agreement as previously amended, the most recent provisions control.

(b) The provisions of this Agreement governing the right of the Limited Partners to vote on the admission of a General Partner when there is a remaining or surviving General Partner, and the right of the Limited Partners to vote on the admission of a General Partner or an election to continue the business of the Partnership after a General Partner ceases to be a General Partner other than by removal and there is no remaining or surviving General Partner, may not be amended.

Attorneys' Fees

14.03. If any action at law or in equity, including an action for declaratory or injunctive relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party is entitled to reasonable attorneys' fees.

Governing Law

14.04. All questions with regard to the construction of this Agreement and the rights and liabilities of the parties will be governed by the laws of the State of California.

Notices

14.05. All notices must be in writing and sent by first class United States mail. All notices to the Partners must be sent to them at the addresses shown for them in the records of the Partnership. All notices to the Partnership must be sent to it at its principal executive office in California. Notices will be deemed to have been delivered when deposited in the United States mails.

Successors

14.06. Subject to the restrictions against assignment of limited partnership interests contained in this Agreement, this Agreement inures to the benefit of and is binding on the assigns, successors in interest, personal representatives, estates, heirs, and legatees of each of the parties.

Severability

14.07. If any provisions of this Agreement are declared by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions continue in full force and effect.

Execution by Spouses

14.08. This Agreement is executed by the Partners and by the spouses of Partners when those spouses are not themselves Partners. The signature of a spouse who is not a Partner may not be construed as making that spouse a Partner or as imposing on that spouse any responsibility for any Partnership obligation but merely as recording that spouse's consent to the execution by his or her spouse of this Agreement and to all of its terms and conditions to the extent that community property interests, if any, may be involved.

Election of Adjusted Basis

14.09. In the event of a transfer of all or part of the interest of a Limited Partner, the General Partners may elect, on behalf of the Partnership, to adjust the basis of the Partnership property pursuant to Section 754 of the Internal Revenue Code. All other elections required or permitted to be made by the Partnership under the Internal Revenue Code must be made by the General Partners in such manner as will, in their opinion, be most advantageous to a majority in interest of the Limited Partners.

Counterparts

14.10. This Agreement may be executed in several counterparts and all counterparts so executed constitute one agreement that is binding on all of the parties, notwithstanding that all of the parties are not signatory to the original or the same counterpart.

Headings

14.11. The headings preceding the paragraphs of this Agreement are for convenience of reference only, are not a part of this Agreement, and are to be disregarded in the interpretation of any portion of this Agreement.

Other Instruments

14.12. The parties to this Agreement covenant and agree that they shall execute all other instruments and documents that are or may become necessary or convenient to effectuate and carry out the Partnership created by this Agreement.

Executed on this _____ day of _____, 2004, at _____,
California.

GENERAL PARTNER

Copeland Realty, Inc.
Donald E. Copeland, President

LIMITED PARTNERS

Dorothy Ziilch

W.W. Eure

Lillian Franklin

Melvyn Ross

Joseph Dotan

Charles Schwab FBO Janet Ihde

Neal Bricker

Sandra Hayes

1 Everett G. Barry, Jr. (SBN 053119)
2 John H. Stephens (SBN 82971)
3 Patrick L. Prindle (SBN 87516)
4 MULVANEY BARRY BEATTY LINN & MAYERS LLP
5 401 West A Street, 17th Floor
6 San Diego, CA 92101-7994
7 Telephone: 619-238-1010
8 Facsimile: 619-238-1981
9 Attorneys for Permanent Receiver,
10 Thomas C. Hebrank

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 v.

17 CHARLES P. COPELAND, ET
18 AL.,

19 Defendants.

CASE NO. 11-cv-08607-R-DTB

CERTIFICATE OF SERVICE

DATE: August 19, 2013

TIME: 10:00 a.m.

Crtrm: 8, 2nd Floor

Judge: Hon. Manuel L. Real

20 I, Laura A. Brayton, declare that I am over the age of 18 years and
21 not a party to the action. I am employed in the County of San Diego,
22 California, within which county the subject service occurred. My
23 business address is 401 West A Street, 17th Floor, San Diego, California,
24 92101-7994.

25 On July 29, 2013, I served the following documents:

26 **1. OPPOSITION OF PERMANENT RECEIVER TO MOTION OF
27 CREDITOR TRI TOOL INC. FOR AN ORDER TO MODIFY STAY;
28 AND, MEMORANDUM OF POINTS AND AUTHORITIES**

**2. DECLARATION OF JOHN H. STEPHENS IN SUPPORT OF
OPPOSITION OF PERMANENT RECEIVER TO MOTION OF
CREDITOR TRI TOOL INC. FOR AN ORDER TO MODIFY STAY**

3. DECLARATION OF THOMAS C. HEBRANK IN OPPOSITION TO MOTION OF CREDITOR TRI TOOL INC. FOR AN ORDER TO MODIFY STAY

BY MAIL. I placed each envelope for collection and mailing following ordinary business practices. I am readily familiar with Mulvaney Barry Beatty Linn & Mayers LLP's practice for collection and processing correspondence for mailing with the United States Postal Service pursuant to which practice all correspondence will be deposited with the United States Postal Service the same day in the ordinary course of business by placing a true copy of the foregoing document(s) in a separate, sealed envelope with postage fully prepaid, for each addressee named hereafter.

[SEE ATTACHED SERVICE LIST]

X BY ELECTRONIC NOTICE VIA THE ECF SYSTEM. I electronically filed the document(s) listed above with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered EM/ECF users will be served by mail or by other means permitted by the court rules.

X FEDERAL. I hereby certify that I am employed in the office of a member of the Bar of the United States Bankruptcy Court for the Southern District of California, at whose direction this service was made.

Executed on July 29, 2013, at San Diego, California.

/s/ Laura A. Brayton
Laura A. Brayton

MULVANEY BARRY BEATTY LINN & MAYERS
A LIMITED LIABILITY PARTNERSHIP
SEVENTEENTH FLOOR
401 WEST A STREET
SAN DIEGO, CALIFORNIA 92101-7944
TELEPHONE 619 238-1010
FACSIMILE 619 238-1981

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