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8 Attorneys for Objecting Limited Partner  
9 Neal Bricker, M.D.

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 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; and  
21 COPELAND WEALTH  
22 MANAGEMENT, A REAL ESTATE  
23 CORPORATION,

24 Defendants.

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

OBJECTING LIMITED  
PARTNER NEAL BRICKER  
M.D.'S SUR-REPLY TO  
RECEIVER'S REPLY IN  
SUPPORT OF RECEIVER'S  
MOTION FOR ORDER: (1)  
APPROVING RECEIVER'S  
DISTRIBUTION OF ASSETS TO  
THE INVESTORS OF  
COPELAND PROPERTIES 18,  
L.P.; AND (2) AUTHORIZING  
TERMINATION AND  
CANCELLATION OF  
COPELAND PROPERTIES 18,  
L.P. AS AN ENTITY;  
DECLARATION OF MARSHALL  
BRUBACHER IN SUPPORT  
THEREOF; EXHIBIT THERETO

Date: October 21, 2013  
Time: 10:00 a.m.  
Dept: 8, 2nd Floor  
The Honorable Manuel R. Real

1 **I. The Court Has Authorized The Filing Of This Sur-Reply**

2 By its order entered August 30, 2013, this Court granted the ex parte  
3 application of Thomas C. Hebrank, the court-appointed permanent receiver for  
4 Copeland Wealth Management, a Financial Advisory Corporation, Copeland  
5 Wealth Management, a Real Estate Corporation, and their subsidiaries and  
6 affiliates, (the “Receiver”), and in so doing, it authorized Neal Bricker, M.D. (“Dr.  
7 Bricker”) to file this sur-reply. [See Doc. No. 345].<sup>1</sup>

8 **II. Introduction**

9 It is easy to get lost in the bookkeeping entries and math related to the  
10 Receiver’s Motion for an Order: (1) Approving Receiver's Distribution Of Assets  
11 To The Investors Of Copeland Properties 18, L.P.; And (2) Authorizing  
12 Termination And Cancellation Of Copeland Properties 18, L.P. As An Entity (“the  
13 Motion”).

14 Dr. Bricker’s objection to the Motion, however, turns on a narrow and  
15 simple issue – the propriety of the transfer of Copeland Properties 18, LP’s  
16 \$423,544.11 note payable to Copeland Properties 3, LP (“the \$423K Note”) from  
17 Copeland Properties 3, LP (“CP3”) to Copeland Realty, Inc. (“CRI”).

18 In his opposition, Dr. Bricker pointed out that the Receiver's planned  
19 distribution, as described in the Motion, was not fair and equitable to CP3 because  
20 it did not provide for CP18 to repay the \$423K Note. [Doc. No. 330, pg. 6, lns. 23-  
21 28].

22 In his opposition, Dr. Bricker anticipated that the Receiver might argue that  
23 CP18 did not owe the \$423K Note to CP3 because CP3 had transferred its rights  
24 pursuant to that note to CRI. [*Id.* pg. 7, lns. 1-3]. Dr. Bricker explained that in the  
25 event that the Receiver made such an argument, the Court should reject it because  
26

27  
28 <sup>1</sup> All references to document numbers herein are to the document numbers  
referenced on this Court’s electronic docket.

1 the Receiver had offered no evidence to prove such a transfer had occurred, and as  
2 a result, the Receiver had failed to carry his burden to show that his proposed plan  
3 of distribution was fair and equitable. [*Id.* at pg. 7, lns. 4-19].

4 Predictably, the Receiver argues in his reply that, although the \$423K Note  
5 was previously a debt owed by CP18 to CP3<sup>2</sup>, that CP18 is no longer obligated to  
6 repay the \$432K Note to CP3 because CP3 transferred its rights to CRI. [Doc. No.  
7 357, pg. 14, ln. 24 - pg. 15, ln. 10]. In support of his argument, the Receiver  
8 claims that CP3 transferred the \$423K Note to CRI to satisfy another note that CP3  
9 was liable on to CRI in the amount of \$372,709.92 (the "\$372K Note"). [*Id.* at pg.  
10 14, ln. 24 - pg. 15, ln. 1]. With respect to the remaining \$50,834.19 (i.e., the  
11 \$423K Note minus the \$372K Note), the Receiver speculates that CP3 paid that  
12 amount to CRI for CRI's "interest in CP3's property." [Doc. No. 356-1, pg. 9, lns.  
13 12-16].

14 The Receiver's argument that CP3 transferred the \$423K Note to CRI fails  
15 for several reasons.<sup>3</sup>

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16  
17  
18 <sup>2</sup> The Receiver claimed in his moving papers that monies provided by CP3 to  
19 CP18, which totaled \$2,128,544.11 and included the amount reflected in the  
20 \$423K Note, were an investment by CP3 into CP18, not a debt owed by CP3 to  
21 CP18. The Receiver has reversed course and acknowledged that the \$423,544.11  
22 was a debt owed by CP18 to CP3. [Doc. No. 357, pg. 15, lns. 6-7 ("CP3's transfer  
23 of \$423,544.11 on CP18's *remaining debt obligation*") (Emphasis added).

24 <sup>3</sup> In his reply papers, the Receiver claims that it is "clear from the facts set forth  
25 Bricker's Opposition that he has had access to and reviewed the Receiver's books  
26 and records related to CP18" notwithstanding that the Receiver had no authority to  
27 provide them to Dr. Bricker's counsel. The only evidentiary references in Dr.  
28 Bricker's opposition were to documents filed by the Receiver with this Court.

1 **III. The \$372,709.92 Allegedly Owed By CP3 To CRI Was Subordinate To**  
2 **CP3's Obligation To Reimburse The Initial Capital Contributions Made By**  
3 **CP3's Limited Partners To Them And To CP3's Other Debts**

4 The Receiver's claim that CP3 transferred the \$423K Note to CRI to offset  
5 the \$372K Note allegedly owed by CP3 to CRI is without merit.

6 For one thing, it ignores the fact that CRI expressly agreed that the 372K  
7 Note was subordinate to CP3's obligation to return the initial capital contributions  
8 to its limited partners, including Dr. Bricker. [Declaration of Marshall Brubacher  
9 attached hereto ("Brubacher Decl."), ¶ 2, Exh. A, pgs. 268-270, 303-308, Exhs. 22  
10 and 120 thereto].

11 For another thing, the \$372K Note was further subordinated to CP3's legal  
12 obligation to pay its other creditors, including the contingent liability owed to Tri  
13 Tools, Inc. in the form of the \$200,000 note payable to Tri Tools, Inc. in the event  
14 that CP3 was unable to clear the easement that encumbered the property sold by  
15 CP3 to Tri Tools, Inc. ("the Tri Tools Note"), as a matter of law.

16 California's Revised Limited Partnership Act, which applied to transfers by  
17 CP3 prior to January 1, 2008<sup>4</sup>, including the transfer of the \$423K Note, restricted  
18 CP3 from making such a transfer if as a result of doing so, CP3's liabilities would  
19 exceed its assets, which is the position the Receiver takes in claiming that CP3, not  
20 CRI, has to pay the Tri Tools Note. Cal. Corp. Code 15666(a) (West 2007) ("A  
21 partner is obligated to return a distribution from a limited partnership to the extent  
22 that at the time of the distribution the partner knew that immediately after giving  
23 effect to the distribution, . . . all liabilities of the limited partnership, other than  
24 liabilities to partners on account of their interest in the limited partnership and  
25 liabilities as to which recourse of creditors is limited to specified property of the  
26 limited partnership, exceed the fair value of the partnership assets").

27  
28 <sup>4</sup> Cal. Corp. Code §§ 15912.04 and 15912.07 (West 2013).

1 CRI expressly acknowledged in CP3's Limited Partnership Agreement that  
2 it, as the General Partner of CP3, was subject to all of the restrictions imposed on it  
3 by the Revised Limited Partnership Act, including the above-described restriction  
4 on the transfer of the \$423K Note. [Brubacher Decl., ¶¶ 2, 4; Exhs. "A" hereto, pg.  
5 276 -277, 293-294; Exhibit "C" hereto, § 7.04 therein ("General Partner is subject  
6 to all restrictions imposed on general partner by the California Revised Limited  
7 Partnership Act and the California Uniform Partnership Act")].

8 In addition, Charles Copeland, who was the majority owner, President and a  
9 member of CRI's Board of Directors at the time of the alleged transfer of the  
10 \$423K Note, has testified under penalty of perjury that CRI agreed not to withdraw  
11 is equity and to subordinate other amounts that CP3 owed CRI (e.g., amounts that  
12 CRI lent to CP3, management fees payable by CP3 to CRI, etc.) until after CP3  
13 fulfilled its obligation to return the initial contributions made by the limited  
14 partners of CP3 plus an annualized six percent return on those initial contributions.  
15 [Brubacher Decl., ¶ 2, Exh. "A" hereto, pg. 219, lns. 15-24, pg. 264, ln. 18 – pg.  
16 266, ln. 20].

17 CP18 was aware of the above-described restrictions on CRI's ability to  
18 transfer the \$423K Note. CRI was the General Partner of CP 18. [Brubacher  
19 Decl., ¶¶ 2-3, Exh. "A" hereto, pg. 208; Exh. "B" hereto, pg. 484]. CRI clearly  
20 had knowledge of those restrictions and that knowledge is chargeable to CP 18.  
21 Cal. Corp. Code, § 16102 (West 2013) ("partner's knowledge, notice, or receipt of  
22 a notification of a fact relating to the partnership is effective immediately as  
23 knowledge by, notice to, or receipt of a notification by the partnership"). Armed  
24 with the knowledge of the restrictions on CP3's transfer of the \$423K Note to CRI,  
25 CP 18 cannot now claim that the transfer of that note is binding on CP3. *Cowan v.*  
26 *Tremble*, 111 Cal. App. 458, 463 (1931) ("where a person dealing with a partner  
27 has notice of restrictions on that partner's authority, acts of that partner in  
28

1 contravention of those restrictions are not binding on the firm or the other  
2 partners”); 48 Cal. Jur. 3d Partnership § 75 (2013) (same).

3 **IV. CRI’s Transfer of the \$423K Note Was Contingent On CRI’s**  
4 **Assumption Of The Obligation To Pay The Tri Tools Note**

5 It is undisputed that to the extent that CRI did transfer the \$423K Note to  
6 CRI, the transfer was contingent on CRI’s assumption of CP3’s liabilities,  
7 including the Tri Tools Note. Mr. Copeland has testified thereto repeatedly under  
8 penalty of perjury. [Brubacher Decl., ¶ 2; Exh. “A” hereto, pg. 357, lns. 8-21  
9 (“Copeland Realty had a responsibility that would have put in place to repay  
10 Copeland Properties Three if it’s deemed Copeland Properties Three had this  
11 liability” on the Tri Tools Note), Exh. “B” hereto, pgs. 449, 468, ln. 16 – 469, ln. 9  
12 (“The Tri Tool note was not an issue at all with the distributions to the limited  
13 partners, . . . [because of CRI’s] responsibility to return to the partnership the funds  
14 that we had benefited from the partnership for, that obligation, we owed enough  
15 back if it was necessary to cover that Tri Tool expenditure.”).

16 The Receiver’s plan of distribution for CP18’s assets, however, seeks to  
17 allow CRI to have its cake (i.e., bind CP3 to the transfer of the \$423K Note) and to  
18 eat it too (i.e., disclaim the concomitant obligation of CRI to pay the amounts owed  
19 pursuant to the Tri Tools Note). That is neither fair nor equitable.

20 **V. The Receiver’s Claim That CP3 Transferred the \$423K Note To CRI To**  
21 **Because CP3 Was Obligated To Give A Credit To CRI In The Amount Of**  
22 **\$50,834.19 Lacks Any Evidentiary Support And Is Untenable**

23 The Receiver has not offered a shred of admissible evidence in his moving  
24 papers or in his reply papers to support his claim that the transfer by CP3 to CRI of  
25 the remaining \$50,834.19 (i.e., \$423,544.11 minus \$372,709.92 equals  
26 \$50,834.19). The Receiver speculates in his declaration that transfer of the  
27 remaining \$50,834.19 was a credit for an unidentified interest that CRI allegedly  
28 held in CP3’s property. [Doc. No. 356-1, pg. 9, lns. 12 – 16]. The Receiver

1 argues that CP3 had an obligation to provide such a credit to CRI pointing to  
2 Exhibit 15 to his reply papers, which is an unsigned copy of CP18's Limited  
3 Partnership Agreement. [Doc No. 356-1, pg. 9, lns. 15-16, Exh. 15 thereto]. That  
4 Limited Partnership Agreement imposes obligations on CP18, not CP3.

5 Additionally, Mr. Copeland's testimony reflects that the \$50,834.19 could  
6 not be a credit for CRI's interest in the property it provided to CP3 to sell to Tri  
7 Tools, which is sometimes referred to as the "wraparound parcel," because CP3's  
8 obligation to pay CRI for the wrap around parcel was reflected in the \$314,965.56  
9 entry, which was contained in the \$372,709.92

10 In any event, the fact remains that to the extent that CP3 owed any amounts  
11 to CRI, those amounts, whatever they were, were subordinate to CP3's obligation  
12 to return the initial capital contributions to CP3's limited partners and, to the extent  
13 that the \$423K Note was transferred to CRI, the transfer was contingent on CRI's  
14 payment of the Tri Tools Note, which the Receiver refuses to do.

15 **VI. Dr. Bricker's Allegedly "Concealed" Motivation Is Irrelevant**

16 In his reply papers, the Receiver accuses Dr. Bricker of having concealed his  
17 true motivation, which is to cause CP18 to distribute money to CP3 so that Dr.  
18 Bricker is "off the hook" for the Tri Tools Note. [Doc. No. 357, pg. 2, ln. 24 – pg.  
19 3, ln. 3]. Dr. Bricker's motivation in seeking to compel the Receiver to adopt a fair  
20 and reasonable plan with respect to CP3 is irrelevant to this Motion. Nevertheless,  
21 a bit of perspective is in order.

22 It is undisputed that Dr. Bricker is a victim and that he invested \$215,000  
23 into CP3. CP3 then, without his knowledge, transferred his \$215,000 interest to  
24 Copeland Fixed Income 2, LP ("CFI2"). It is also undisputed that CFI2, which is  
25 also under the Receiver's control, is insolvent, and that its investors, including Dr.  
26 Bricker, will receive either nothing or a negligible amount. In other words, Dr.  
27 Bricker lost his entire \$215,000 investment.

1 To make matters worse, Dr. Bricker now finds himself on the wrong end of  
2 the lawsuit filed by Tri Tools, which claims that CP3's "distribution" to him,  
3 which resulted in no cash in Dr. Bricker's pocket, was fraudulent and in violation  
4 of the California Corporations Code.

5 Dr. Bricker does wish to have CP18 distribute money to CP3, as opposed to  
6 CRI, which is entirely appropriate for the reasons described above, so that CP3 can  
7 distribute it to Tri Tools in satisfaction of the Tri Tools Note thus putting this  
8 nightmare to an end.

9 In light of the fact that Receiver, who was appointed by this Court to act on  
10 behalf of CP3, is doing nothing to protect the interest of CP3 or its limited partners,  
11 Dr. Bricker had no choice but to file his objections on behalf of CP3, which, as  
12 described above, is a creditor of CP18 and has every right to object to the  
13 Receiver's plan of distribution.

14 **VII. Receiver's Counsel Did Fail To Comply With This Court's Pre-Filing**  
15 **"Meet and Confer" Requirement**

16 The Receiver's counsel claims that he did comply with this Court's pre-  
17 filing "meet and confer" requirement. [Doc. 357, pgs. 10-11]. As described in Dr.  
18 Bricker's opposition to the Motion, that is simply not true. It is curious that the  
19 Receiver's counsel claims that he spent hours meeting and conferring with counsel  
20 for Tri Tools and counsel for the objecting parties and that his Firm's records  
21 contain "60 billing entries relating" thereto. However, upon receipt of the  
22 opposition to this Motion, the Receiver's counsel applied ex parte for a  
23 continuance of the hearing on the Motion claiming that the Receiver had not had  
24 "sufficient time to fully investigate the factual allegations raised, specifically in  
25 response to the Motion. [Doc. No. 335, pg. 3, lns. 9-14 (The arguments raised in  
26 opposition to the Motion "are not entirely new to the Receiver, as it is my  
27 understanding that they have been raised at various times by counsel in other  
28



1 contexts. However, . . . the Receiver has had insufficient time to fully investigate  
2 the factual allegations raised, specifically in response to the Motion.”)].

3 **VIII. Conclusion**

4 For the foregoing reasons, Dr. Bricker respectfully requests that this Court  
5 deny the planned distribution as reflected in the Receiver’s Motion and that instead  
6 the Court enter the Objecting LP’s Proposed Revised Distribution Schedule, which  
7 is attached as Exhibit 12 to W. Ziprick’s Declaration, Document No. 368-1.

8 Dated: October 7, 2013

MUNDELL, ODLUM & HAWS, LLP  
MARSHALL BRUBACHER

9  
10 By: */s/ Marshall Brubacher*  
11 Marshall Brubacher  
12 Attorneys for Objecting Limited Partner Neal  
13 Bricker, M.D.  
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**DECLARATION OF MARSHALL BRUBACHER**

1  
2  
3 1. I am an attorney, licensed to practice before the above-entitled Court,  
4 and an attorney with Mundell, Odlum & Haws, LLP, counsel for Neal Bricker,  
5 M.D. I have personal knowledge of the facts below and if called as a witness I  
6 could and would testify competently thereto.

7 2. Attached as Exhibit "A" hereto is a true and correct copy of the  
8 relevant pages from the deposition of Charles P. Copeland, Volume II taken in the  
9 matter entitled *Tri Tool, Inc. v. Copeland Properties Three, LP, et al.* (the "Tri  
10 Tools Action"), which I attended.

11 3. Attached as Exhibit "B" hereto is a true and correct copy of the  
12 relevant pages from the deposition of Charles P. Copeland, Volume III taken in the  
13 Tri Tools Action, which I also attended.

14 4. Attached as Exhibit "C" hereto is a true and correct copy of Exhibit  
15 18 to the transcript of the deposition of Joseph Dotan taken on December 10, 2012  
16 in the Tri Tools Action, which I also attended. At his deposition, Mr. Dotan  
17 identified, the Limited Partnership Agreement for Copeland Properties 3, L.P.  
18 ("CP3"), which he signed and which is attached hereto as Exhibit "C" as being a  
19 true and correct copy of the Limited Partnership Agreement for CP3.

20  
21 I declare under penalty of perjury under the laws of the United States of  
22 America that the foregoing is true and correct and that this Declaration was  
23 executed on October 7, 2013.

24  
25 /s/ Marshall Brubacher

26 Marshall Brubacher

**EXHIBIT "A"**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
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,	)	
et al.,	)	
	)	
Defendants.	)	
	)	

DEPOSITION OF : CHARLES P. COPELAND, VOLUME II  
TAKEN BY : ROLLIE PETERSON, ESQUIRE  
Commencing : 10:35 A.M.  
Location : 707 Brookside Avenue  
Redlands, California 92373  
Day, Date : Monday, September 23, 2013  
Reported by : MICHELLE CASTELLANOS, C.S.R. NO. 11699  
Pursuant to : Notice  
Original to : THE WITNESS

PAGES 199 - 425

JOB NO. 133807

1	
2	
3	
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9	BY: ROLLIE A. PETERSON, ESQUIRE
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11	FOR THE DEFENDANTS CHARLES SCHWAB, FBO JANET I, SANDRA
12	HAYES, MELVYN ROSS & JOSEPH DOTAN:
13	LAW OFFICES OF ZIPRICK & CRAMER
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19	FOR THE DEFENDANTS NEAL BRICKER AND LILLIAN FRANKLIN:
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	BY: MARSHALL BRUBACHER, ESQUIRE
	THE VIDEOGRAPHER:           Ali Saheb-Nasab
	Dean Jones Videos

1 REDLANDS, CALIFORNIA, MONDAY, SEPTEMBER 23, 2013

2 10:35 A.M.

3 -000-

4

5 THE VIDEOGRAPHER: Good morning, everyone.

6 Before we get started, I'd like to remind everyone that  
7 the microphones are very sensitive. They can pick up  
8 mild whispers and at times cell phone interference.

9 With that said, this is the videotaped  
10 deposition of Charles P. Copeland, Volume No. II, taken  
11 at 707 Brookside Avenue, in the city of Redlands,  
12 California, on the date of Monday, September 23, 2013, in  
13 the matter of Tri Tool, Inc., versus Copeland Properties  
14 Three, LP, et al, Case No. 34-2009-00054045. This case  
15 is being heard in the Superior Court of the State of  
16 California in and for the County of Sacramento. This  
17 deposition is on behalf of the Plaintiff.

18 My name is Ali Saheb with Dean Jones Attorney  
19 Video Service of Los Angeles and Santa Ana, California.  
20 This deposition is commencing at 10:35 a.m. Would all  
21 present please identify themselves beginning with the  
22 deponent.

23 THE WITNESS: Charles Copeland.

24 MR. PETERSON: Rollie Peterson on behalf of Tri  
25 Tools.

1 partnerships?

2 A All of the CPs are California -- are Copeland  
3 Properties real estate limited partnerships.

4 Q Okay. And we talked a few minutes ago about  
5 Copeland Realty, Inc., and generally speaking -- well,  
6 not generally speaking. Specifically speaking, Copeland  
7 Realty, Inc., or CRI was the general partner of each one  
8 of those California limited partnerships; correct?

9 A That would be correct.

10 Q And that would be true of CP Three; right?

11 A Yes.

12 Q CP Fourteen?

13 A Yes.

14 Q And CP Eighteen?

15 A Yes.

16 Q And so essentially CP Eighteen then, the general  
17 partner's name changed to Copeland Wealth Management Real  
18 Estate, Inc.?

19 A Yes.

20 Q Now, you say that you were talking to the -- a  
21 representative of the receiver today about the note  
22 payable to CRI. And what was discussed specifically?

23 A The receiver asked about the nature of the  
24 origin of the note. I explained that in the sale of the  
25 CP Three real estate, there were two parcels that were

1 Copeland Real Estate, Inc., contracted to buy and bought  
2 in the name of CP Three a building in Rancho Cordova on  
3 Sunrise Boulevard that was leased by the United States  
4 Internal Revenue Service; correct?

5 A Correct.

6 Q And in that particular transaction, the IRS had  
7 a lease in which they could vacate the building; correct?

8 A That's correct.

9 Q As a matter of fact, that was a disclosure I  
10 think you made to at least one of the limited partners  
11 that I've seen. And I didn't have any other information,  
12 but do you believe you made that disclosure to all of  
13 them?

14 A I believe so, yes.

15 Q You own 70 percent or owned 70 percent of CRI;  
16 correct?

17 A Just less than 70 percent. I own two-thirds.  
18 My son Don owns one-third.

19 Q And Donald was the president of CRI?

20 A Yes.

21 Q And you were vice president?

22 A Correct.

23 Q You both sat on the board of directors?

24 A Yes.

25 Q And you both had authority to act on behalf of



1 that I'm looking at that authorizes it is dated  
2 February 15, 2007, and the transaction paying it off, I  
3 think was shortly thereafter, but I don't remember the  
4 exact date.

5 Q BY MR. PETERSON: This is a document that we had  
6 given you -- actually, I think maybe you had produced it  
7 at your last deposition, and it's Exhibit No. 113. It  
8 has a number of various financial documents in it. And I  
9 think you testified at the end of the day for CP Three,  
10 that there was a negative liability in the partnership  
11 when it wrapped up CP Three of about a hundred and ninety  
12 some odd thousand dollars. \$191,410.68 was the exact  
13 number as of the end of its business.

14 A What was the figure?

15 Q \$191,410.68.

16 A That is the equity that CRI had in Copeland  
17 Properties Three.

18 Q At the end of the day, that's the -- Copeland  
19 Properties Three didn't get its equity because the  
20 partnership was upside down \$191,410.68; correct?

21 A Copeland -- Copeland Realty was not entitled to  
22 its equity.

23 Q Right.

24 A Because it had not fulfilled its obligations of  
25 the required distributions to the limited partners per

1 the partnership agreement. And this was the amount that  
2 it repaid -- needed to repay in order to make the  
3 obligations to the limited partners exactly what they  
4 should have been.

5 Q And that did not include the \$200,000 that  
6 CP Three had in liabilities, contingent liabilities, owed  
7 Tri Tool; right?

8 A That's correct. If -- if that had been recorded  
9 on the books, this number would have been 391,000 that  
10 CP Three would have had to turn in to Copeland Properties  
11 Three -- Copeland Realty would have had to transfer to  
12 Copeland Properties Three.

13 MR. PETERSON: Gentlemen, I don't have any  
14 further questions.

15 MR. ZIPRICK: Can I just -- the last point  
16 there, if I can to clarify, so to -- just to go through  
17 what you were saying, Mr. Copeland, you're saying if the  
18 200,000 had been booked on the records of CP Three, that  
19 Copeland Properties would have reduced that note amount  
20 by another 200,000?

21 THE WITNESS: Copeland Realty --

22 MR. ZIPRICK: Copeland Realty.

23 THE WITNESS: -- would have owed back to -- if  
24 Copeland Properties Three had -- let's call it paid. Had  
25 paid that, then Copeland Real Estate would have had to

1 send in 391,000 rather than 191,000. The ending entry on  
2 the books would have showed Copeland Realty getting only  
3 a -- leaving a capital account of 391,000 behind when the  
4 partnership closed.

5 MR. ZIPRICK: So what I hear you saying is that  
6 if there was a negative balance on that account, Copeland  
7 Realty would have written off whatever amount it needed  
8 to get it back to zero.

9 THE WITNESS: Correct. Yeah. If you read the  
10 partnership agreement, the partnership agreement says  
11 that there can be no payment to the general partner  
12 unless, and that "unless" gives you criteria. One of  
13 those criteria is that there is a 6 percent distribution  
14 to the limited partners over and above their initial  
15 capital investment per year. So you calculate however  
16 long the partnership went, what the distributions to the  
17 partners were, and if they are less than 6 percent or if  
18 less than the full capital account is returned to the  
19 partners, then Copeland Realty has the obligation to  
20 return any monies that it got out of the partnership.

21 Copeland Real Estate got a commission when the  
22 property closed and it got management fees during the  
23 period of ownership time, and the sum total of those two  
24 amounts would have been Copeland Realty's obligation to  
25 Copeland Properties Three in the event the owner -- the

1 you were helping us understand. So I just -- I wanted to  
2 come back to that for a couple minutes here.

3 MR. ZIPRICK: And we will mark this exhibit  
4 which is -- is Exhibit 120.

5 (Plaintiff's Exhibit 120 was marked  
6 for identification by the court  
7 reporter and is attached hereto.)

8 MR. PETERSON: If you hand it to Mr. Copeland,  
9 he might be able to hand me a -- thank you, sir. I  
10 appreciate it.

11 MR. ZIPRICK: I have an extra one there too that  
12 you can keep in case you need -- how do you want me to do  
13 that? Just keep them there?

14 THE REPORTER: He can keep them.

15 MR. ZIPRICK: Just keep them right there. Okay.

16 Q BY MR. ZIPRICK: So this is from CP Three, the  
17 QuickBooks, and I can represent that these are the  
18 QuickBooks that we got from the receiver, which I  
19 believe, I think from prior conversations, all the  
20 various QuickBooks files, you guys had sent down to the  
21 receiver; is that correct?

22 A I'm sorry. I didn't understand.

23 Q No problem. That you had -- you've indicated  
24 previously, I think, that the various QuickBook  
25 accounting records for CP Three and CP Eighteen, you

1 would send to the receiver previously?

2 A Yes.

3 Q Yes.

4 A We have some electronic files that Don will  
5 bring with him tomorrow on a flash drive that one of you  
6 can transfer to whoever else needs it or whatever or  
7 we'll make available.

8 Q That's fine. So -- but from the standpoint of  
9 just kind of the chain of the title on these, these are  
10 QuickBooks that we actually got from the receiver.

11 A Okay.

12 Q And I believe -- so those would have come from  
13 when you turned over the QuickBooks to the receiver  
14 before that.

15 A This looks like the QuickBooks that we would  
16 have prepared.

17 Q Good. Okay. So this is Account 2020, the note  
18 payable CRI that I think we were talking about before.  
19 So, Mr. Copeland, I'll just -- I'll direct your attention  
20 down at the bottom of this, and if we go down to -- there  
21 is a 12 -- well, there is a number of entries at 12/31,  
22 and if I'm looking at this correctly, there is a balance  
23 showing on here of \$57,744.36 about three lines up from  
24 the bottom if you see that.

25 A I do.

1 Q Okay. And then when you were referring earlier  
2 in your testimony to the 314,965 entry, that would be the  
3 next entry here which was done -- there is a journal  
4 entry also on 12/31/2007.

5 A That entry you're referring to is Journal Entry  
6 No. 3 dated 12/31/2007.

7 Q Correct. Okay. Which would bring it up to the  
8 balance, according to this QuickBook records, of 372,709  
9 skipping the cents.

10 A Correct.

11 Q Okay. And just to come back then, to make sure  
12 I understood your testimony correctly, is this is the  
13 balance in the account of CP Three of note payable to CRI  
14 which when you were referring to the partnership  
15 agreement and -- not to put words in your mouth -- that  
16 the 6 percent return, you're saying this is what the  
17 amount that would be offset by that to get the limited  
18 partners up to that return, is that correct, or let me  
19 just --

20 A I'm not certain that it would have been this  
21 account that would have been offset, if cash would have  
22 been transferred, how that reconciliation would have been  
23 accomplished, but it would have been accomplished in some  
24 way, shape, or form.

25 Q Got it. Okay.

1 sold?

2 A If there was one, which I don't think there was.

3 Q You're talking about on the CP Three parcel or  
4 are you talking about on the wrap-around parcel?

5 A On the CP Three being sold, I don't think we  
6 took a commission. But it's possible. I'd have to look  
7 at the escrow to be sure.

8 Q Okay. And then the ongoing management fees such  
9 as were charged, or other fees -- I guess any fees that  
10 would be going to Copeland Real Estate would be subject  
11 to this -- I'll call it the offset?

12 A The management fee would be subject. If we paid  
13 a utility expense and got reimbursed or something of that  
14 nature, it wouldn't be so it was --

15 Q Right.

16 A It's exclusive to the management fee.

17 Q Got it. Gain, profit, increase to Copeland  
18 Realty as opposed to reimbursement for third party  
19 expenditures?

20 A Correct.

21 MR. ZIPRICK: And let me just mark this. That  
22 was Exhibit 120. I'm going to just -- and I've even got  
23 the right tag. This has a -- will this be confusing?  
24 Well, maybe, Rollie, just for clarification, one of the  
25 documents -- I think this was the Dotan I'm looking at

1 it -- one of the exhibits in that, Exhibit 18. I haven't  
2 checked it, but we'll just identify it that way.

3 MR. PETERSON: Okay.

4 MR. ZIPRICK: So it will not be a new exhibit,  
5 and if you would pass one of those down to --

6 MR. PETERSON: I've got it here.

7 MR. ZIPRICK: You've got it. Great. Okay.

8 Q BY MR. ZIPRICK: Mr. Copeland, just to -- I'll  
9 let you take a look here, but I can say this was from  
10 the -- actually Dotan.

11 A Lillian Franklin deposition, FRA --

12 Q Yeah, it's interesting. You know, I think what  
13 this was is I think this document came from Lillian  
14 Franklin and then I'm thinking it was used by  
15 Mr. Peterson in the Dotan deposition and that's where it  
16 became an exhibit. That's why it's got the two different  
17 things of numbers on there, if that makes sense.

18 A That's fine.

19 Q Okay. So let me just -- I wanted to go through  
20 a few things on this, and I think was covered in an  
21 earlier deposition but just to note it, this is one of  
22 those documents which the pagination is a little funny at  
23 the end. It goes to page 24 of 27, 25 of 27, and then it  
24 appears the signature, 26 of 27, and the last two  
25 signature pages are 24 of 24. But my understanding is at



1 A That's correct.

2 Q And as you testified before, I believe, Don  
3 Copeland was the president during this -- the whole time  
4 frame here. Well, let me say from -- Copeland Realty  
5 began in when?

6 A Copeland Realty began in the beginning of 2003.

7 Q Okay. And I'm not sure if it's still -- well,  
8 it's still in existence, but it had the name change?

9 A It had a name change, and then it was  
10 surrendered to the receiver in the SEC action I'm a party  
11 to.

12 Q So at least from 2003 through 2010, Don Copeland  
13 was the CEO/president of Copeland Realty?

14 A I believe so.

15 Q Okay.

16 MR. PETERSON: I think it was October of 2011 is  
17 when the receiver took over the property. So through --

18 MR. ZIPRICK: Sounds right.

19 MR. PETERSON: -- 2011 up and --

20 THE WITNESS: Correct.

21 Q BY MR. ZIPRICK: And you were the vice  
22 president?

23 A I was vice president.

24 Q Do you know who the corporate secretary was?  
25 CFO?

1           A     I don't know. I might have been the corporate  
2 secretary. I might have been the corporate treasurer.  
3 Don might have been the corporate treasurer. I'm not  
4 sure.

5           Q     Okay. Let me just go to the signature pages  
6 here. It -- we'll start with, I think, what's labeled as  
7 the FRA 000130, or it says page 26 of 27 on that, page 3  
8 from the end.

9           A     Uh-huh.

10          Q     Okay. So on this one, even though there are no  
11 signatures on this particular page, but let me ask you,  
12 would it be your -- your opinion that this would be the  
13 limited partnership agreement for CP Three?

14          A     Yes.

15          Q     And what would you base that on? Just knowing  
16 the -- knowing the documents well enough, how they are,  
17 that this would be the authentic agreement?

18          A     Yes.

19          Q     Okay. At least a copy of it?

20                MR. PETERSON: And you're testifying from  
21 Exhibit 18?

22                THE WITNESS: Pardon?

23                MR. PETERSON: You're testifying from  
24 Exhibit 18?

25                THE WITNESS: I'm testifying from FRA 000105 and

1 delta pie Exhibit 18, Deponent Dotan, 12/10/12.

2 MR. PETERSON: Sure. And that exhibit runs  
3 through FRA 000132?

4 THE WITNESS: Correct.

5 MR. PETERSON: And you recognize that as being  
6 the entire CP Eighteen agreement?

7 MR. ZIPRICK: CP Three.

8 THE WITNESS: I don't recognize it as being the  
9 entire agreement potentially because there are multiple  
10 signature pages so they may or may not all be here. If  
11 you want, I can take a look at that.

12 MR. PETERSON: Okay. And you'll get to that.

13 I --

14 MR. ZIPRICK: Absolutely.

15 MR. PETERSON: -- wanted to clarify for the  
16 record what document we were discussing.

17 MR. ZIPRICK: Good. Good. Thank you.

18 Q BY MR. ZIPRICK: Would it be your practice, and  
19 I think this may have come up in other depositions  
20 before, that there could be signature pages which would  
21 be circulated out to different limited partners to sign  
22 and then -- almost like counterparts -- and bring them  
23 back together again for one original?

24 A Correct.

25 Q Okay. So that would not be an unusual event for

1 begin Video No. 3 in today's deposition.

2 Q BY MR. ZIPRICK: All right. I think that's it  
3 for the partnership agreement for right now. We'll come  
4 back.

5 I'm going to show you another document, and this  
6 is actually Exhibit 22 previously. I think -- does this  
7 document look -- does this look familiar at all as you  
8 look at it here?

9 A Yes, I believe we looked at this earlier today.

10 Q Correct. And this was the -- a memorandum dated  
11 May 3, 2005, signed by Don Copeland for Copeland Realty?

12 A Yes.

13 Q Okay. And I think we talked about some of the  
14 stuff about the IRS building, et cetera. And the second  
15 paragraph, maybe I'll have you read just the first  
16 sentence of that, if you would. I think it ties into  
17 what you've been testifying to.

18 A "As general partners, our pledge to you is for  
19 us not to profit unless the limited partners receive at  
20 least 6 percent return on their investment each year."

21 Q Good. And one question on that too. Would it  
22 be your understanding that that is a cumulative 6  
23 percent?

24 A Yes.

25 Q Each year. Okay. And this would be referring

1 to that same 6 percent we've been talking about a little  
2 bit, but you were just reconfirming it for the partners  
3 at that time?

4 A Correct.

5 Q And you were reconfirming it there because of --  
6 with some of the issues with the IRS and the other  
7 things, the concern that you were going to have to  
8 suspend the monthly distribution checks for a period of  
9 time and so was it kind of a reassurance that we haven't  
10 forgotten about this?

11 A I'm not exactly sure what the motivation was for  
12 this letter. It was a communication to the partners.

13 Q Okay. And Don Copeland is the CEO and also  
14 board member of Copeland Realty as you've testified?

15 A Correct.

16 Q And you two, would it be your practice if you  
17 were going to send something like this out, that normally  
18 you would probably look at it together, talk it over, or  
19 would Don sometimes -- would he have the authority just  
20 to send this off?

21 A Well, Don had the authority to send it off as  
22 the president of the company. He also valued his  
23 position as my son.

24 Q Touche. I understand that fully.

25 So I take it your answer would be is that he

1 would run these things by you, or would this be the type  
2 of thing that you might have even drafted?

3 A I am certain I was involved in this document to  
4 some degree.

5 Q Got it. Okay. So you would have been in full  
6 100 percent agreement with the document before it went  
7 off?

8 A Correct.

9 Q Okay. So let me just draw your attention then  
10 to the third paragraph and just have you read that as  
11 well.

12 A "Copeland Realty will make a subordinated loan  
13 to the partnership to cover all costs until the property  
14 covers its cost. The loan will be subordinated to the  
15 first mortgage and to all limited partners' initial  
16 contributions."

17 Q Okay. And in your lay terminology here, what  
18 would that -- what would that mean to you? What were you  
19 or you and Don conveying to the limited partners there?

20 A We're going to keep the partnership running  
21 until we can sell it. When we sell it, you'll get your  
22 money back and your return before we get the money that  
23 we put into this to keep it going.

24 Q Okay. And that would be the basis of using the  
25 term "subordinated loan"?

1           A     Correct.

2           Q     Okay.  And what's the date again on this  
3 document?

4           A     May 3, 2005.

5           Q     Okay.  So I'd just like to draw your attention  
6 back to Exhibit 120 for a moment.  And I think that --  
7 yes, that's -- that's fine there.  It is the note payable  
8 for CRI.

9           A     Correct.

10          Q     The QuickBooks.  Okay.  So is it a fair  
11 statement, because this document we just looked at where  
12 you all were agreeing with CP Three to make subordinated  
13 loans to keep the business going during this -- that  
14 time, that that's on May 3rd.  And it appears if I'm  
15 reading this right on the QuickBooks report for the  
16 Account 2020, note receivable, CRI, that within a couple  
17 months -- actually with the first entry being 7/31/2005,  
18 that would have been the first subordinated loan pursuant  
19 to this transmittal.

20                   Is that a fair --

21          A     That's correct.

22          Q     Okay.  So would it be a fair statement to then  
23 say that because there were various -- as we look down  
24 through here on the QuickBooks report, there were various  
25 loans which were made.  Then there were some payments

1 back on this. But that these loans here were part of  
2 this subordination, that they would be deemed a  
3 subordinated loan?

4 A Correct.

5 Q So everything on this sheet, all this would be  
6 subordinated?

7 A All -- everything on this is what we were  
8 talking about in this letter that you've just asked me to  
9 look at.

10 Q Great. Okay.

11 MR. PETERSON: Just for record purposes, "this  
12 letter" being Exhibit 22.

13 THE WITNESS: This letter being Exhibit 22 of  
14 the Dotan deposition.

15 MR. ZIPRICK: Deposition. Right.

16 MR. PETERSON: And the subordinated portion is  
17 coming off of Exhibit 120.

18 MR. ZIPRICK: Yes, 120 is what we were referring  
19 to when you were saying that these were all --

20 THE WITNESS: And the subordinated document is  
21 Exhibit 120 of the C. Copeland deposition.

22 MR. PETERSON: I don't mean to be a pest. Just  
23 trying to keep this record --

24 MR. ZIPRICK: Absolutely.

25 Q BY MR. ZIPRICK: So this -- this is -- another



1 description of this would be this is a -- this is the  
2 accounting record of the ongoing balance of that  
3 subordinated -- subordinated loan referred to in the  
4 Exhibit 22?

5 A That's a fair way to classify it.

6 Q Okay. Good. Just one other quick thing I  
7 forgot to mention here too, but I -- just while I'm at  
8 it, on the -- this is on Exhibit 120. Well, strike that.  
9 Okay. I think that's it for that document.

10 Oh, just maybe one other quick question. The  
11 last paragraph there of Exhibit 22 refers to here's  
12 basically what -- since it seems like the memo is saying  
13 here is what we're committing too, but then we're going  
14 to have a meeting to just go through this in more detail,  
15 answer questions, et cetera.

16 A Correct.

17 Q Is that fair? Okay.

18 MR. ZIPRICK: This is -- we'll get to use one of  
19 our stickies. We'll do it on the bottom right; right?  
20 Is that good? This may have been an exhibit on here, but  
21 I'll just put it out there because I don't have --

22 MR. PETERSON: Thanks.

23 MR. ZIPRICK: We have labeled this -- again,  
24 what is that? Exhibit 121?

25 THE WITNESS: Yes.

1 instruction again, Copeland Realty is going to be at risk  
2 for the \$200,000 note regardless; right?

3 THE WITNESS: Correct.

4 Q BY MR. ZIPRICK: Right. The issue would be  
5 whether CP Three was also at risk?

6 A Yes.

7 Q Right. And -- but following up into Rollie's  
8 question, based on your testimony today and Rollie's  
9 point, almost like you thought the ultimate liability  
10 would rest with Copeland Realty for this 200,000 -- I'll  
11 call it the easement, potential contingent liability on  
12 the easement?

13 A Copeland Realty had a responsibility that would  
14 have put it in place to repay Copeland Properties Three  
15 if it's deemed Copeland Properties Three had this  
16 liability.

17 Copeland Realty, Inc., would have had a  
18 responsibility to cover that liability for Copeland  
19 Properties Three provided there was enough monies paid to  
20 Copeland Realty profiting from this transaction, which I  
21 believe there were, but I'm not 100 percent certain.

22 Q Or as the general partner as Mr. Peterson was  
23 just raising is another alternative --

24 A Yes.

25 Q -- which is not subject to any limitation on the

Witness name Charles P. Copeland

Job #: 13807 Job Date: 9/23/13

### TRANSCRIPT ERRATA SHEET

The reasons for making changes are as follows:

- (1) To clarify the record;
- (2) To conform to the facts;
- (3) To correct major transcription errors.

Page/Line	Change from	Change to	Reason

  
Signature of Deponent

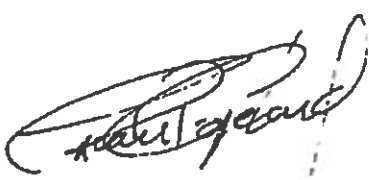
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PENALTY OF PERJURY CERTIFICATE

I, the undersigned, declare under penalty of perjury that I have read the foregoing transcript, and I have made any corrections, additions or deletions that I was desirous of making; that the foregoing is a true and correct transcript of my testimony contained therein.

EXECUTED this 3RD day of October, 2013,  
at Redlands, California.



CHARLES P. COPELAND

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA        )  
  )    ss.  
COUNTY OF LOS ANGELES    )

I, MICHELLE CASTELLANOS, CSR No. 11699, Certified Shorthand Reporter for the State of California, do hereby certify;

That the deponent named in the foregoing deposition, prior to being examined, was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said deposition was taken before me at the time and place therein stated and was thereafter transcribed into print under my direction and supervision, and I hereby certify the foregoing deposition is a full, true, and correct transcript of my shorthand notes so taken.

I further certify that I am not of counsel nor attorney for either of the parties hereto or in any way interested in the event of this case and that I am not related to either of the parties hereto.

Witness my hand this 29th day of September, 2013.

*Michelle Castellanos*

MICHELLE CASTELLANOS, CSR No. 11699

**EXHIBIT "B"**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
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, )  
et al., )

Defendants. )

CASE NO.:  
34-2009-00054045

DEPOSITION OF : CHARLES P. COPELAND, VOLUME III  
TAKEN BY : ROLLIE PETERSON, ESQUIRE  
Commencing : 9:25 A.M.  
Location : 707 Brookside Avenue  
Redlands, California 92373  
Day, Date : Tuesday, September 24, 2013  
Reported by : MICHELLE CASTELLANOS, C.S.R. NO. 11699  
Pursuant to : Notice  
Original to : THE WITNESS

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JOB NO. 133808

1	
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	Dean Jones Videos



1	I N D E X		
2	WITNESS		PAGE
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6		Further Examination by Mr. Ziprick	564, 591
7		Examination by Mr. Brubacher	588
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9	EXHIBITS		
10	PLAINTIFF'S EXHIBIT NO.	DESCRIPTION	MARKED FOR IDENTIFICATION
11			
12	139	Pledge of Security Interest dated December 16, 2009	431
13	140	Copeland Properties Twelve Account Quick Report	432
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2			
3	PLAINTIFF'S	EXHIBITS	
4	EXHIBIT NO.	DESCRIPTION	MARKED FOR IDENTIFICATION
5	149	Copeland Properties Three Account Quick Report	557
6	150	Copeland Properties Eighteen Account Quick Report	563
7			
8			
9		INFORMATION REQUESTED	
10		(None)	
11			
12		QUESTIONS NOT ANSWERED	
13		(None)	
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1 REDLANDS, CALIFORNIA, TUESDAY, SEPTEMBER 24, 2013

2 9:25 A.M.

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4

5 THE VIDEOGRAPHER: Good morning, everyone.

6 Before we get started, I'd like to remind everyone that  
7 the microphones are very sensitive. They can pick up  
8 mild whispers and at times some cell phone interference.

9 With that said, this is the videotaped  
10 deposition of Charles P. Copeland, Volume No. III, taken  
11 at 707 Brookside Avenue, in the city of Redlands,  
12 California, on the date of Tuesday, September 24, 2013,  
13 in the matter of Tri Tool, Inc., versus Copeland  
14 Properties Three LP, et al., Case No. 34-2009-00054045.  
15 This case is being heard in the Superior Court of the  
16 State of California in and for the County of Sacramento.  
17 This deposition is on behalf of the Plaintiff.

18 My name is Ali Saheb with Dean Jones Attorney  
19 Video Services of Los Angeles and Santa Ana, California.  
20 This deposition is commencing at 9:25 a.m. Would all  
21 present please identify themselves beginning with the  
22 deponent.

23 THE WITNESS: Charles P. Copeland.

24 MR. PETERSON: Rollie Peterson, Peterson & Kell,  
25 on behalf of Tri Tool, Inc.

1 MR. ZIPRICK: Yeah, William Ziprick from Ziprick  
2 & Cramer on behalf of Defendants Eide, et al.

3  
4 CHARLES P. COPELAND,  
5 having been previously duly sworn,  
6 testified as follows:

7  
8 EXAMINATION - Continued

9 BY MR. ZIPRICK:

10 Q Okay. Mr. Copeland, good morning.

11 A Good morning.

12 MR. ZIPRICK: All right. We will -- I've got a  
13 few new exhibits here which we'll go into. And this  
14 first one, I think, will be Exhibit 139. If you can just  
15 pass that over there.

16 (Plaintiff's Exhibit 139 was marked  
17 for identification by the court  
18 reporter and is attached hereto.)

19 MR. ZIPRICK: And I think I'll -- since we'll be  
20 referring to these, I'm just going to pass out -- this  
21 next one will be Exhibit 140.

22 I'll get about three or four out here in front  
23 of us. And Exhibit 141. I should mark these other sets.  
24 139, 140, 141, and Exhibit 142. There you go.

25 //

1 bookable on Copeland Properties Three because Copeland  
2 Realty was going to satisfy the obligation.

3 We talked extensively yesterday and previously  
4 in this deposition about the mechanics of how Copeland  
5 Realty, Inc., had to return monies to the partnerships if,  
6 they did not make their required return if it had taken  
7 money for its commissions or management fees.

8 So this obligation was going to be satisfied  
9 either by Copeland Realty getting it removed through the  
10 payment of some kind of fee to the people who had the  
11 easement for them to drop it or by litigation that would  
12 get it removed. And we were confident that at the time  
13 of the note, we were very, very confident that that would  
14 happen, and for a very low amount.

15 And then later when it was determined that the  
16 time frame would run out and the note would become  
17 payable, we still expected Copeland Realty to pay the  
18 \$200,000 and offered to enter into some kind of judgment  
19 at that point, and we're not going to contest the lawsuit  
20 that was against Copeland Realty in this.

21 Q When you say the lawsuit against Copeland Realty  
22 or the lawsuit against CP Three?

23 A Or against CP --

24 Q CP Three; right?

25 A Yeah, against CP Three and --

1 had not been removed, was it your intent that Tri Tool  
2 would not get paid?

3 A No.

4 Q By any sources, CP Three, Copeland Realty, under  
5 your guarantees, under any of those?

6 A No.

7 Q Okay. Did you -- you were involved in the  
8 distributions of the -- distributions of funds or  
9 partnership interests in other entities, CP Fourteen,  
10 CP Eighteen, et cetera. I'll refer to those all as  
11 distributions.

12 When those distributions was made, was it your  
13 intent that those distributions would be a means so that  
14 there would be no assets to pay Tri Tool off on the note?

15 A No.

16 Q So is it a fair statement that because you view  
17 that as a remote contingent liability, which you did not  
18 think would have to be paid, that the payment or  
19 nonpayment of the Tri Tool note was not an issue at all  
20 relative to the distributions to the limited partners?

21 A The Tri Tool note was not an issue at all with  
22 the distribution to the limited partners, partly because  
23 of what you said and for other reasons.

24 Q Okay. Can you explain --

25 A Our responsibility to return to the partnership

1 the funds that we had benefitted from that partnership  
2 for, that obligation, we owed enough back if it was  
3 necessary to cover that Tri Tool expenditure.

4 Q So just to follow up on that, would have been  
5 your thinking and opinion that if necessary, Copeland  
6 Realty would put funds either back into CP Three or pay  
7 the note or through guarantees so there would not be a  
8 situation of a default on the note?

9 A Correct.

10 Q Okay. Mr. Copeland, let me ask you, because I  
11 think you said you've been a CPA for many years. Are you  
12 familiar with the term "insolvency"?

13 A Yes.

14 Q And can you just give me what your definition,  
15 what you believe insolvency means?

16 A The quick answer is when someone's liabilities  
17 exceed their assets, they're insolvent.

18 Q Does that ever tie into their inability to be  
19 able to make -- pay their liabilities as they come due?

20 A There are forms of insolvency that bankruptcy  
21 courts deal with and the terms, but generally speaking,  
22 the way I defined it is the way I understand it.

23 Q Okay. So that shorthand version, the  
24 liabilities exceed the assets?

25 A Correct.

1 the potential promissory note from CP Eighteen, which I  
2 don't think had been disbursed. You may be coming to  
3 that. I didn't want to misstate.

4 Q BY MR. PETERSON: Yeah. What I'm saying is that  
5 all the assets had gone someplace else by this point in  
6 time?

7 A The -- yes.

8 Q And, in fact by, I believe, around the 1st of  
9 July, CP Three had closed its checking account?

10 A That's probably correct. I would expect to have  
11 been closed about that time. I can be refreshed by  
12 direct dates in the general ledger but that sounds  
13 reasonable.

14 Q Sure. And in April and May of 2007, Copeland  
15 Realty, Inc., was the general partner of CP Eighteen,  
16 CP Fourteen, and CP Three; correct?

17 A Correct.

18 Q Okay. And, in effect, you as an officer of  
19 Copeland Realty, Inc., was managing all the financial  
20 affairs for all three organizations; right?

21 A Correct.

22 Q Plus Copeland Realty, Inc.?

23 A Correct.

24 Q Okay. And you were signing on the checking  
25 accounts for all of those entities; correct?



1 A I'm not sure that's correct.

2 Q Well, the money that went from CP Three to  
3 CP Fourteen ended up in this escrow; correct?

4 A Correct.

5 Q Okay. And that number was -- the loan was 1.8.  
6 I think 5,000 of it was for loan fees so it was 1.795.

7 A Yes.

8 MR. ZIPRICK: Right.

9 THE WITNESS: That would be correct.

10 MR. ZIPRICK: That was a Pacific Western Bank  
11 loan.

12 MR. PETERSON: Correct.

13 MR. ZIPRICK: Right.

14 Q BY MR. PETERSON: Then in addition to that,  
15 CP Three put in another 330,000 paying off the deferred  
16 payment to seller?

17 A CPC transferred money directly to the seller.

18 Q Correct.

19 A As a loan to CP Eighteen.

20 Q So at the end of the day, CP Three had put  
21 approximately \$2.1 million into CP Eighteen in the form  
22 of a loan?

23 A Yes.

24 Q Okay. And the balance then of the cash required  
25 for this transaction was approximately \$400,000; right?

1 THE WITNESS: But I would say again, to the  
2 extent Copeland Realty received management fees from  
3 Copeland Properties Three over its lifetime and received  
4 commissions on the purchase of the property for Copeland  
5 Properties Three, that it had an obligation per the  
6 partnership agreement to reimburse those funds to the  
7 partnership in order to be able to distribute the  
8 original capital contributions of the partners of  
9 CP Three.

10 MR. ZIPRICK: And above and beyond that, do you  
11 recall our discussion, just if I can, this was on  
12 Exhibit 22. Let me just -- this was the May 3rd which we  
13 talked about and I'll draw your attention to that  
14 paragraph about the subordination there.

15 THE WITNESS: This paragraph, if you read my  
16 testimony back, I think I will have clarified this to say  
17 the same thing that I just said. This paragraph is to  
18 communicate to the partners that there is to be a return  
19 of their initial capital and that enough money has been  
20 paid to Copeland Realty, Inc., for managing this  
21 investment that did not turn out so good, and for getting  
22 commissions on the purchase of this investment that did  
23 not turn out so good, for us to reimburse back to the  
24 partnership such that the partners will get their initial  
25 contribution out when the sale is concluded.

1 is that correct?

2 A No.

3 Q Okay. Please correct me.

4 A I think Copeland Realty had already satisfied  
5 its obligations under the partnership agreement by not  
6 taking money owed to it and by taking on the obligation  
7 of the clearing of the easement, which is the underlying  
8 premise for the \$200,000 note.

9 So I think at December 31, 2007, which is after  
10 the close of the Tri Tool transaction and at the close of  
11 the partnership, the partnership had no assets and the  
12 partnership had no liabilities. Copeland Realty had  
13 suffered a \$191,000 loss that year for its dealings with  
14 Copeland Properties Three, and it was fulfilling an  
15 obligation -- maybe not to the extent Tri Tool would like  
16 it but was attempting to fulfill an obligation to deal  
17 with the easement on the property.

18 Q Understood. And to the extent that any of the  
19 creditors of CP -- Copeland Properties Three whose debts  
20 had now been transferred over to Copeland Real Estate,  
21 Inc., including Tri Tools, had asked to be paid on  
22 December 31, 2007, did Copeland Real Estate, Inc.,  
23 have -- or Copeland Realty, Inc., have sufficient assets  
24 to be able to make a payment to pay off those amounts on  
25 December 31, 2007?

1           A     It had sufficient assets. The question that's  
2     come into play is was there sufficient cash flow at that  
3     time to provide cash rather than other kinds of assets.  
4     There were sufficient assets that a transfer of assets  
5     could have been done to satisfy the note at that time.

6           Q     And by "the note," you're referring to  
7     the contingent liability --

8           A     The Tri Tool note. Correct.

9                   MR. BRUBACHER: Thank you. That's all for now.

10

11                                   FURTHER EXAMINATION

12     BY MR. PETERSON:

13           Q     One follow-up. When you say it had sufficient  
14     assets to satisfy the Tri Tool note, what kind of assets  
15     are you talking about?

16           A     We would have to go to the balance sheet of  
17     Copeland Realty, but example, one example that's already  
18     in the record here, is it had an interest in Garden Ridge  
19     that was transferred -- that was not transferred but was  
20     pledged after that date to Mel Ross. And that asset was  
21     available for pledge or for transfer at that time.

22           Q     But there wasn't a cash asset at that time?

23           A     There was -- no, there was not dollar bills,  
24     bank account, CD that could be liquidated.

25                   MR. PETERSON: Okay. Thank you.

**COPELAND REALTY INC.**

Donald E. Copeland  
Broker

*A Real Estate Investment Corporation*

Lin. 01766027

May 3, 2005

RE: Copeland Properties Three L.P.

To: All Limited Partners

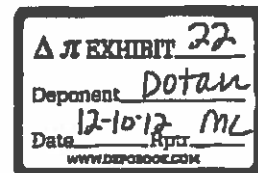
In November IRS gave notice of its intention to leave our building May 3, 2005 and they have done so. This check is the last distribution that will be available for the foreseeable future. In December of 2004 we contracted with CBRE in Sacramento, which is a large commercial leasing firm, to help us in our search for a replacement tenant. They have shown the property several times and are actively marketing it.

As General Partners our pledge to you was for us not to profit unless the Limited Partners received at least 6% return on their investment each year. Exhibit A shows the distributions paid out to each Limited Partner, including this month's check, have provided a 6% return through November 25, 2005. It is our intention to suspend monthly distributions checks until that date. If we do not have a tenant(s) in place by then we will offer to purchase your Limited Partnership interest in accordance with Exhibit B. There will not be any requests for Limited Partners to make a payment until after November 25, 2005.

Copeland Realty will make a subordinated loan to the Partnership to cover all costs until the property covers its costs. This loan will be subordinated to the first mortgage and to all Limited Partners initial contributions.

This letter only lays out the issues and a brief recap of our plan. We have scheduled Wednesday May 25<sup>th</sup> at 7:00 p.m. at The Copeland Group for a meeting of all interested Limited Partners. This is to go over our planning and your options in more detail.

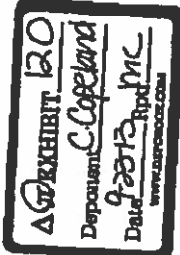
Sincerely,

  
Donald E. Copeland

Copeland Properties Three  
Account QuickReport  
All Transactions

9:11 PM  
09/20/13  
Accrual Basis

Type	Date	Num	Name	Memo	Split	Amount	Balance	
<b>2020 - Note Payable - CRI</b>								
Deposit	7/31/2005			Loan to cover Loan Pay		48,000.00	48,000.00	
Deposit	03/12/2005			Deposit	1100 - Travis CU- Checking	50,000.00	98,000.00	
Deposit	05/02/2005			Deposit	1100 - Travis CU- Checking	50,000.00	148,000.00	
Deposit	11/11/2005			Mortgage Loan	1100 - Travis CU- Checking	50,000.00	198,000.00	
Deposit	12/29/2005				1100 - Travis CU- Checking	50,000.00	248,000.00	
General Journal	12/31/2005	AJ107		TO RECORD WF LEASE PMTS MADE BY CRI		17,017.09	265,017.09	
General Journal	12/31/2005	AJ108		TO RECLASSIFY PMT TO D. ZALCH MADE BY CRI		285,815.74	550,832.83	
General Journal	12/31/2005	AJ112		TO RECLASSIFY SOURCE OF FUNDS		22,788.65	573,621.48	
General Journal	1/1/2006	GJ101		TO NET RECEIVABLE TO PAYABLE		-50,000.00	523,621.48	
Deposit	2/1/2006			Deposit	2040 - Note Payable-TCG Trust	-8,000.35	515,621.13	
Check	3/13/2006	1344		Reimbr. for GMA Building maint.	1100 - Travis CU- Checking	50,000.00	465,621.13	
Check	5/11/2006	1363		Partial Note Payable	1100 - Travis CU- Checking	-3,485.00	462,136.13	
Check	5/11/2006	1361		Partial Pay on Note Payable	1100 - Travis CU- Checking	-30,000.00	432,136.13	
Check	6/1/2006	3315		To Cover Mortgage until FEMA payment rec'd	1110 - Redlands Centennial Bank	32,000.00	464,136.13	
General Journal	6/30/2006	GJ10801		Partial Pay on Note Payable	1110 - Redlands Centennial Bank	-30,000.00	434,136.13	
Check	7/12/2006	3325		TO RECORD EXPENSES PAID BY CRI	-SPLIT-	21,382.81	412,753.32	
Check	06/30/2006	3353		Partial Pay on Note Payable	1110 - Redlands Centennial Bank	-20,000.00	392,753.32	
General Journal	12/31/2006	GJ1202		Advance to cover account(original loan by TCG)	1110 - Redlands Centennial Bank	176,117.30	568,870.62	
General Journal	12/31/2006	GJ1203		TO RECORD POSTAGE FEES PAID BY CRI	1110 - Redlands Centennial Bank	20,000.00	588,870.62	
Deposit	12/31/2006			TO RECLASSIFY CK #3381 AS CRI ADVANCE	8400 - Office	44.98	588,915.60	
Deposit	12/20/07			NP CRI	8200 - Interest Expense	-1,433.33	587,482.27	
Deposit	1/16/2007			Copeland Realty, Inc	1110 - Redlands Centennial Bank	42,000.00	629,482.27	
Deposit	1/28/2007			Copeland Realty, Inc	1110 - Redlands Centennial Bank	8,000.00	637,482.27	
General Journal	1/31/2007			Copeland Realty, Inc	1110 - Redlands Centennial Bank	6,425.00	643,907.27	
Check	2/2/2007			On-line transfer to cover mtg	1110 - Redlands Centennial Bank	41,782.85	685,690.12	
Deposit	2/2/2007			TO RECORD FEDERAL EXPRESS BILL PAID BY CRI	8400 - Office	42.87	685,732.99	
Check	2/2/2007			Partial Pay on Note Payable	1110 - Redlands Centennial Bank	0.00	685,732.99	
Check	2/7/2007			NP CRI	1110 - Redlands Centennial Bank	6,700.00	692,432.99	
Check	4/2/2007	3418		Partial Pay on Note Payable	1110 - Redlands Centennial Bank	-194,728.95	497,704.04	
Check	4/6/2007			Partial Pay on Note Payable	1110 - Redlands Centennial Bank	-35,000.00	462,704.04	
Check	8/11/2007	GJ101		TO RECORD CFI#2 INTEREST PAID BY CRI	1110 - Redlands Centennial Bank	-18,000.00	444,704.04	
Check	7/18/2007	1365		TO RECORD CFI#2 INTEREST PAID BY CRI	1100 - Travis CU- Checking	1,259.00	445,963.04	
General Journal	8/15/2007	GJ115		TO RECORD INTEREST PAID BY CRI TO CRI#2	8200.2 - Interest Expense - CFI#2	-100.00	445,863.04	
General Journal	8/28/2007	GJ116		Refund - Loan serv'd deposited into CWM#RE	2000 - Note Payable-Business Partners	1,410.00	447,273.04	
General Journal	9/5/2007	GJ108		CFI#2 INTEREST PAID BY CWM#RE	8200.2 - Interest Expense - CFI#2	-12.75	447,260.29	
General Journal	9/14/2007	GJ114		CLOSING UTILITY BILL PAID BY CWM#RE	7200 - Water/Sewer	705.00	446,555.29	
General Journal	10/6/2007	GJ1065		TO RECORD CFI#2 INTEREST PAID BY CWM#RE	8200.2 - Interest Expense - CFI#2	407.31	446,962.60	
General Journal	12/31/2007	GJ1201		VOID: To record interest paid by CRI	8200.2 - Interest Expense - CFI#2	705.00	447,667.60	
General Journal	12/31/2007	GJ1202		To record Oct & Nov Interest Paid by CRI	8200.2 - Interest Expense - CFI#2	0.00	447,667.60	
General Journal	12/31/2007	J15		To record balance of land purchase	4700.2 - Cost of Real Property Sold	1,410.00	449,077.60	
General Journal	12/31/2007	J15		To transfer assets and liabilities to CRI for closure	1401 - Note Receivable-CPI	314,965.58	764,043.18	
Total 2020 - Note Payable- CRI							0.00	764,043.18
<b>TOTAL</b>							<b>0.00</b>	<b>0.00</b>



Witness name CHARLES P. COPELAND  
Job #: 133808 Job Date: 9/29/13

**TRANSCRIPT ERRATA SHEET**

- The reasons for making changes are as follows:
- (1) To clarify the record;
  - (2) To conform to the facts;
  - (3) To correct major transcription errors.

Page/Line	Change from	Change to	Reason

None

Charles P. Copeland  
Signature of Deponent

10/3/13  
Dated

1 PENALTY OF PERJURY CERTIFICATE  
2  
3  
4  
5  
6  
7 I, the undersigned, declare under penalty of perjury  
8 that I have read the foregoing transcript, and I have  
9 made any corrections, additions or deletions that I was  
10 desirous of making; that the foregoing is a true and  
11 correct transcript of my testimony contained therein.  
12  
13 EXECUTED this 3RD day of October, 2013,  
14 at REDLANDS, California.  
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20 CHARLES P. COPELAND  
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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA        )  
  )    ss.  
COUNTY OF LOS ANGELES    )

I, MICHELLE CASTELLANOS, CSR No. 11699, Certified Shorthand Reporter for the State of California, do hereby certify;

That the deponent named in the foregoing deposition, prior to being examined, was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said deposition was taken before me at the time and place therein stated and was thereafter transcribed into print under my direction and supervision, and I hereby certify the foregoing deposition is a full, true, and correct transcript of my shorthand notes so taken.

I further certify that I am not of counsel nor attorney for either of the parties hereto or in any way interested in the event of this case and that I am not related to either of the parties hereto.

Witness my hand this 29th day of September, 2013.

*Michelle Castellanos*

MICHELLE CASTELLANOS, CSR No. 11699

**EXHIBIT "C"**

**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**

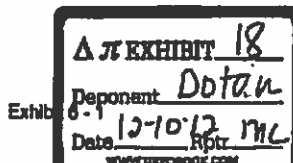
1.04. The principal place of business or executive office of the Partnership is at 25809 Business Center Drive, Suite F Redlands, CA 92374, San Bernardino County, State of California, or at any other place within San Bernardino County, California, as may be determined from time to time by the General 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 the 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



FRA 000105

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, financing, or liquidation of Partnership property, less cash expenses as well as any allowances or reserves for contingencies or for repair 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 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.

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 a name, address, contribution, and that Partner's share in Partnership profits or losses to the records 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 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 0% 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 30% 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 these 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, 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 name 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 a 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 a 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 other 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 a 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 2.2.

**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 Agreement 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 who 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) if 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 vote pursuant to Paragraph 7.08 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 or the receipt of the request by the General Partner, the General Partner must give notice to 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 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



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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 action 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 a 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 partners 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 as 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 cast, 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 granted 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 offeror, 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 provisions 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 90-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 of 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 netting 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 1% 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.

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**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, 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, a 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 presenting 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 12.08, 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, the record 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 60<sup>th</sup> 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 abilities 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 heirs, 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 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

\_\_\_\_\_  
V.W. Eure

\_\_\_\_\_  
William Franklin

\_\_\_\_\_  
Melvyn Ross

\_\_\_\_\_  
Joseph Dotan

\_\_\_\_\_  
Charles Schwab FBO Janet Ihde

\_\_\_\_\_  
Paul Bricker

\_\_\_\_\_  
Linda Hayes

18-26

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2004, at \_\_\_\_\_, California.

**GENERAL PARTNER**

\_\_\_\_\_  
Copeland Realty, Inc.  
Donald E. Copeland, President

**LIMITED PARTNERS**

\_\_\_\_\_  
met Ihde

\_\_\_\_\_  
William Franklin

\_\_\_\_\_  
Joseph Dotan

\_\_\_\_\_  
Brothy Ziilch

  
\_\_\_\_\_  
Melvin Ross

\_\_\_\_\_  
Bill Bricker

\_\_\_\_\_  
Rayland Eure

\_\_\_\_\_  
Alice Roth

\_\_\_\_\_  
Linda Hayes

\_\_\_\_\_  
Marjorie Hatfield

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2004, at \_\_\_\_\_, California.

**GENERAL PARTNER**

\_\_\_\_\_  
Copeland Realty, Inc.  
Donald E. Copeland, President

**LIMITED PARTNERS**

\_\_\_\_\_  
Walter Hinde  
\_\_\_\_\_  
*William Franklin*  
William Franklin

\_\_\_\_\_  
*Joseph Dotan*  
Joseph Dotan

\_\_\_\_\_  
Dorothy Ziilch

\_\_\_\_\_  
Elvin Ross  
\_\_\_\_\_  
*Paul Bricker*  
Paul Bricker

\_\_\_\_\_  
Rayland Eure

\_\_\_\_\_  
Alice Roth  
\_\_\_\_\_  
*Sandra Hayes*  
Sandra Hayes

\_\_\_\_\_  
Catherine Hatfield