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Revocable Trust, Joseph and Beth Dotan, Dotan Family Trust
7 (collectively, "Objecting LPs")

8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
11

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 v.

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

23 Defendants.

Case No.: 2:11-cv-08607-R-DTB

**EX PARTE APPLICATION FOR
ORDER TRANSFERRING FUNDS
TO A DEPOSITORY ACCOUNT
PENDING APPEAL**

Ctrm: 8, 2nd Floor

Judge: Hon. Manuel L. Real

24
25 **TO ALL INTERESTED PARTIES:**

26 **Please take notice that** Janet Ihde, Charles Schwab FBO Janet Ihde IRA, Sandra
27 Hayes, Melvyn and Ruth Ross, Melvyn and Ruth Ross Revocable Trust, Joseph and
28 Beth Dotan, Dotan Family Trust (collective the "Objecting LPs") hereby appear by

1 Ex Parte Application in regards to Copeland Properties 18, L.P. (“CP18”) to Request
2 an Order Transferring Funds to a Depository Account.

3 Good cause exists for this request, as set forth herein, and in (1) the
4 Memorandum Of Points And Authorities In Support Of Ex Parte Application For
5 Order Transferring Funds To A Depository Account Pending Appeal (“P&As”), (2)
6 the Supporting Declaration of Janet Kay Ihde (“Ihde Declaration”), (3) the Supporting
7 Declaration of William F. Ziprick (“W. Ziprick Declaration”), (4) the Declaration of
8 Notice by William F. Ziprick (“Notice Declaration”), and (5) Notice of Lodgment of
9 [Proposed] Order (“Notice of Lodgment”), all filed concurrently herewith.

10 As is described in detail in the “Procedural Background” section of the P&As, it
11 is clear from a review of the Receiver’s Report #7 (Dkt. #392, “Receiver’s Report”)
12 recently filed on December 3, 2013, by Thomas Hebrank (“Receiver”), that it is the
13 Receiver’s intention to make final distributions¹ from Copeland Realty² and wind
14 down the Receivership in fairly short order. The dilemma that this creates for
15 Objecting LPs is that if the funds disputed by the Objecting LPs (“Disputed CP18
16 Funds” as are described in detail in the P&As) are transferred from CP18 to Copeland
17 Realty pursuant to the Order of this Court (“Order”, Dkt. # 385) entered on November
18 6, 2013, it is anticipated that the Receiver shortly thereafter will dissipate such funds in
19 the payment of administrative fees and for other distributions as are described in the
20 Receiver’s Motion for Order Approving Classification of Claims and Future Claims
21 Distributions of the Assets of Copeland Realty (“Copeland Realty Distribution
22 Motion”). Irreparable injury will be caused to the Objecting LPs through such a
23 dissipation of the Disputed CP18 Funds once such funds are transferred to Copeland
24 Realty, so that even if they are successful on Appeal, it will be a hollow victory as the
25 Disputed CP18 Funds will already and irretrievably be gone.

26 As is discussed in the P&As, Objecting LPs recognized that their Appeal
27 of the Order might be deemed premature by the Ninth Circuit Court of Appeals. Just

28 ¹ It is recognized that the Receiver is proposing that there be more limited distributions over time.

² Copeland Realty, Copeland Wealth Management, CWM, and CWM Realty are used interchangeably in this Application and refer to the same entity.

1 earlier today the Objecting LPs received notice that this appears to be the case.
2 Objecting LPs intend to file a new appeal as permissible, but until that time arrives, if
3 the Disputed CP18 Funds are not protected, irreparable injury to the Objecting LPs
4 will, in fact, occur.

5 Based upon this, the Objecting LPs are respectfully requesting this Court
6 to order that the Disputed CP18 Funds be placed into a depository account, where the
7 Disputed CP18 Funds would be held until final determination of the Objecting LPs'
8 ultimate Appeal.

9 If it would please the Court, Objecting LPs would brief this Court on these
10 issues presented in this Application and the P&As in even greater detail. However,
11 given the exigency of the present circumstances and time constraints, and potential for
12 great irreparable injury to the Objecting LPs, the Objecting LPs are respectfully
13 requesting the Court to consider this Ex Parte Application on this expedited basis.

14 Respectfully submitted,
15 ZIPRICK & CRAMER, LLP

16 Dated: December 11, 2013

17 /s/ William F. Ziprick
18 **WILLIAM F. ZIPRICK**
19 **ROBERT H. ZIPRICK**
20 **JONATHAN R. ZIPRICK**

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(collectively, "Objecting LPs")

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

CHARLES P. COPELAND,
COPELAND WEALTH
MANAGEMENT, A FINANCIAL
ADVISORY CORPORATION, AND
COPELAND WEALTH
MANAGEMENT, A REAL ESTATE
CORPORATION

Defendants.

Case No.: 2:11-cv-08607-R-DTB

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
EX PARTE APPLICATION FOR
ORDER TRANSFERRING FUNDS
TO A DEPOSITORY ACCOUNT
PENDING APPEAL**

Ctrm: 8, 2nd Floor

Judge: Hon. Manuel L. Real

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1 **1. INFORMATION ON COUNSEL (PER LOCAL RULE 7-19):**

2 The information for counsel for the parties for which opposition to the Ex
3 Parte Application is potential is as follows:

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17 **2. PROCEDURAL BACKGROUND:**

18 On August 16, 2013, the Receiver Thomas Hebrank (“Receiver”) filed
19 with this Court the Motion for Order: (1) Approving the Receiver's Distribution of
20 Assets to the Investors of Copeland Properties 18, L.P.; and (2) Authorizing
21 Termination and Cancellation of Copeland Properties 18, L.P. as an Entity (Dkt. #319,
22 the "CP18 Distribution Motion").

23 On August 26, 2013, Janet Ihde (“Ihde”), Charles Schwab FBO Janet
24 Ihde IRA (“Schwab IRA”), Sandra Hayes (“Hayes”), Melvyn and Ruth Ross, Melvyn
25 and Ruth Ross Revocable Trust (collectively “Ross”), Joseph and Beth Dotan, Dotan
26 Family Trust (collectively “Dotan”; each may be referred to as an “Objecting LP”
27 and collectively, the “Objecting LPs”) filed their Opposition to the CP18 Distribution
28 Motion (Dkt. #333, “Objecting LPs’ Opposition”).

 On September 24, 2013, the Receiver filed Receiver’s Reply to the
Objecting LPs’ Opposition (Dkt. #356, “Receiver’s Reply”).

 On October 7, 2013, Objecting LPs filed their Sur-Reply to the
Receiver’s Reply (Dkt. #368, “Sur-Reply”) pursuant to this Court’s order.

1 On October 28, 2013, this Court heard Receiver's CP18 Distribution
2 Motion. Based upon its findings from that hearing, the Court entered an Order on
3 the CP18 Distribution Motion (Dkt. # 385, "Order") on November 6, 2013.

4 Objecting LPs filed a Notice of Appeal (Dkt. # 397, "Appeal") on
5 December 4, 2013, appealing the following described provisions of the Order:

- 6 (A) the provisions of Paragraphs 1 through 5, inclusive, of the Order,
7 and
8 (B) the provisions of Paragraph 7 of the Order were appealed from
9 only to the limited extent that distribution of the assets of CP18
10 would be changed by the appeal from the provisions of Paragraphs
11 1 through 5, inclusive, of the Order as described above.
12 (collectively the "Disputed CP18 Funds").

13 Other than the Disputed CP18 Funds, which total (at a minimum)
14 \$678,513.52¹, the balance of the Receiver's Proposed Distribution for CP18 (Dkt. #
15 319-2, Hebrank Dec., Ex. A) was not disputed or appealed from by the Objecting
16 LPs. However, Objecting LPs received just a few hours ago, the Order from the
17 Ninth Circuit Court of Appeals stating that "The district court's order challenged in
18 this appeal did not dispose of the action as to all claims and all parties", so that
19 Objecting LPs must either show cause why the Appeal should not be dismissed or
20 voluntarily dismiss the Appeal. In essence, the Appeal was deemed premature.

21 Just last week, on December 3, 2013, the Receiver filed Receiver's
22 Report #7 (Dkt. #392) describing Receiver's various activities over the last interim
23 period ("Receiver's Report"). The Receiver stated that "At this time, the Receiver
24 does not anticipate any distributions being made to the following entities...Copeland
25 Properties Twelve, L.P." (4:16-25). The Receiver indicated that it has commenced
26
27

28

¹ The \$678,513.52 amount is comprised of the following four figures as described in W. Ziprick Dec. (Dkt. #368-1, Exhibits 11 and 12): \$200,524.68+\$165,466.80+\$156,261.02+\$156,261.02=\$678,513.52.

1 preparation of a Motion for Order Approving the Receiver’s Final Report and
2 Accounting, and Discharging the Receiver (9:1-4). The Receiver then further stated
3 that he plans to “file final motions for hearing on the Court’s February 3, 2014,
4 calendar” (10:19-20).

5 This Court currently has scheduled for hearing on December 16, 2013,
6 among other items, (a) Receiver’s Motion for Order approving Classification of
7 Claims and Future Claims Distributions of the Assets of Copeland Realty² (Dkt.
8 #376, “Copeland Realty Distribution Motion”), and (b) a hearing adjudicating the
9 merits of Tri Tool’s claim against certain of the Receivership Entities, specifically
10 Copeland Property 18, L.P. (“CP18”).

11 Per ¶ 7 of the Order, following the adjudication of Tri Tool’s claim, it is
12 anticipated that the Receiver will distribute the assets of CP18 and cancel the CP18
13 entity, as soon as legally permissible.

14 **3. INTRODUCTION - REASONS FOR SEEKING AN EX PARTE**
15 **ORDER:**

16 As was described hereinabove in the Procedural Background, it is clear
17 from the review of the Receiver’s Report that it is the Receiver’s intention to make
18 final distributions from Copeland Realty and wind down the Receivership in fairly
19 short order.³ The dilemma that this creates for Objecting LPs is that if the Disputed
20 CP18 Funds are transferred from CP18 to Copeland Realty pursuant to the Order, it is
21 anticipated that the Receiver shortly thereafter will dissipate such funds in the
22 payment of administrative fees and for other distributions as are described in the
23 Receiver’s Copeland Realty Distribution Motion. Objecting LPs will suffer
24 irreparable injury through such a dissipation of the Disputed CP18 Funds once such
25 funds are transferred to Copeland Realty, as even if the Objecting LPs are ultimately
26

27
28 ² Copeland Realty, Copeland Wealth Management, CWM, and CWM Realty are used interchangeably in this Brief and refer to the same entity.

³ It is recognized that the Receiver is proposing that there be more distributions over time.

1 successful on Appeal, it will be a hollow victory as the Disputed CP18 Funds will
2 already and irretrievably be gone.

3 Objecting LPs recognized that the Appeal might be deemed premature by
4 the Ninth Circuit Court of Appeals, because of the unique nature of receiverships.
5 Objecting LPs intend to file a new appeal as permissible, but until that time arrives, if
6 the Disputed CP18 Funds are not protected, irreparable injury to the Objecting LPs
7 will, in fact, occur.

8 Knowing this could well be the case, the Objecting LPs are respectfully
9 requesting this Court to order that the Disputed CP18 Funds be placed into a
10 depository account, where the Disputed CP18 Funds would be held until final
11 determination of the Objecting LPs' forthcoming Appeal. Even though this is not a
12 request for a preliminary injunction, the underlying premise of maintaining the status
13 quo so that irreparable injury is not suffered is similar. Based upon that, the Objecting
14 LPs believe that a discussion of the key factors which are analyzed in a preliminary
15 injunction hearing may be useful for this Court in making its determination on
16 Objecting LPs requested relief.

17 In the Ninth Circuit, generally, for a preliminary injunction request, if the
18 balance of hardships tips sharply in the moving parties' favor, that party need show
19 only that serious questions are raised on the merits of the case. *Rodde v. Bonta*, 357
20 F.3rd 988, 994, n. 8 (9th Cir. 2004). Objecting LPs contend that the balance of
21 hardships is clearly in their favor, as will be discussed below, and also maintain that
22 they will be successful on most, if not all, of their appealed claims concerning the
23 Disputed CP18 Funds.

24 Objecting LPs would be pleased to brief this Court on these issues in
25 greater detail. However, given the exigency of the present circumstances and time
26 constraints, in this Ex Parte Application an overview of certain of the key arguments
27 will demonstrate not only the great potential irreparable injury, but also the
28 probability of success on appeal.

///

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1 **4. ARGUMENT:**

2 **A. Irreparable Injury Will Occur to the Objecting LPs if the**
3 **Court Does Not Grant the Requested Relief, So The Balance Of Potential**
4 **Hardships Tips Sharply In Favor Of Objecting LPs:**

5 In the Copeland Realty Distribution Motion, the Receiver indicates
6 that based on the current assets of Copeland Realty and the claims filed against it, it
7 “is unlikely that general partnership liability claimants will receive any distributions”
8 from Copeland Realty, after payment of Administrative Claims, Priority Claims, Note
9 Payable Claims and Direct Claims Against Copeland Realty. (Dkt. #376-1, 7:19-23).
10 In other words, the claims far outstrip the available assets, so that to the extent the
11 Disputed CP18 Funds are immediately transferred to Copeland Realty, such funds
12 will be extinguished in short order.

13 However, in the Receiver’s Declaration (Dkt. #376-2, 3:1-6) the
14 Receiver acknowledges that “the specific dollar amount of each distribution is
15 currently unknown, as the Receiver, and any potential successor-in-interest, will
16 continue to collect obligations due to CWM Realty [Copeland Realty].” So the
17 Receiver’s proposal already anticipates that in the future limited funds will continue
18 to come in, with distributions to be then calculated, based upon the Court’s order.
19 So if the Court established a depository account for the Disputed CP18 Funds, and
20 ultimately the Objecting LPs were unsuccessful in any part in their Appeal, any of the
21 Disputed CP18 Funds to which the Objecting LPs are not entitled would simply then
22 be distributed according to the same order of the Court. Other than a potential delay
23 in time, there is absolutely no prejudice or injury of any type to the distributees.

24 In contrast, failure to safeguard such funds in a depository account
25 subjects the Objecting LPs to an almost certainty that they will never receive the
26 Disputed CP18 Funds, even upon successfully prevailing in their ultimate Appeal.
27
28

1 Respectfully, Objecting LPs contend that this evidences that the
2 balance of potential hardship tips sharply in their favor.

3 Next, the focus will turn to the probability of success for Objecting
4 LPs on their Appeal. Between Objecting LPs' Opposition to Receiver's CP18
5 Distribution Motion (Dkt. #333) and Objecting LPs' Sur-Reply to Receiver's Reply
6 (Dkt. #368), the Objecting LPs briefed the Court on the numerous of the underlying
7 issues, facts, and legal authority which will form the basis for the Appeal of the Order.
8 In the interests of brevity, the Objecting LPs will highlight only certain additional
9 items on several of those disputed matters from the Order. However, concerning
10 Receiver's proposed withholding of all of the CP18 distribution to the Schwab & Co.,
11 Inc., Custodian, Rollover Ira Of Janet K. Ihde ("Schwab IRA"), Objecting LP Ihde
12 will provide further briefing in support of Objecting LP Ihde's respectful contention
13 that there is a high probability of success on those issues at the Appellate level. The
14 foundation for this further briefing is found in Objecting LP Ihde's Sur-Reply Brief
15 (Dkt. #368), where the following statement was made: "For the sake of brevity,
16 Objecting LP Ihde will not present here the numerous legal defenses and arguments
17 which counter any alleged claim of the Receiver. Such defenses would appropriately
18 be brought up in a separate action, if a claim, such as it is, is brought by the
19 Receiver." 8:10-13.

20
21 Because of the importance of demonstrating the probability of
22 success on Appeal concerning the Receiver's proposed taking of the \$156,261.02
23 which was to be distributed to the Schwab IRA, a more detailed discussion of these
24 legal defenses and arguments follow, evidencing that Ihde's defenses to such claim
25 would prevail if she had been afforded the opportunity to defend herself against these
26 claims, and therefore any withholding should not be allowed.

27 **B. Objecting LPs Respectfully Submit That Their**
28 **Probability Of Success On Appeal Is High:**

1 (1) Respectfully, The Receiver's Withhold From The
2 Schwab IRA Of The \$156,261.02 CP18 Distribution Violates Numerous
3 Constitutional And Other Legal Protections:
4

5 (a) The Receiver's asserted claim against Ihde and Janet K.
6 Ihde, M.D., Inc.⁴ ("Ihde P.C."), now appears in major part to be based upon fraud
7 perpetrated by the Copelands and Copeland Realty, with Ihde and Ihde P.C. as the
8 victims.⁵

9 In Receiver's Legal Counsel's demand letter to
10 Dr. Ihde dated May 29, 2012 (Dkt. #333-1, R. Ziprick Dec., ¶ 19, Ex. 10, "Ihde
11 Demand Letter"), it alleges that as of April 30, 2012, that Copeland Properties
12 Twelve, L.P. ("CP12") was owed \$385,030.22 of principal (plus interest) for a total of
13 \$455,619.09⁶ out of a total alleged amount owed by Ihde and Ihde P.C. of
14 \$579,135.55.

15 In a July 9, 2010, letter from Copeland Wealth
16 Management ("Copeland 7/9/10 Letter") to Ihde's legal counsel (W. Ziprick Dec. ¶ 4,
17 Ex. 1), the exact same \$385,030.22 figure from the Ihde Demand Letter is referenced
18 as being owed, and the letter clearly identifies this claim as being related to tenant
19 improvements related to the "lease agreement" for 4,764 square foot of space. The
20 only Lease Agreement between CP12 and Dr. Ihde or the Ihde P.C. is the "Standard
21 Multi-Tenant Office Lease – Net" for "approximately 4,727 rentable square feet",
22 entered into between CP12 and Ihde P.C. ("Lease", see Ihde Dec., ¶ 5, Ex. 1).

23 The QuickBooks records for CP12 for Account
24 1451 – Note Receivable – Ihde, also clearly shows that the basis for this supposed
25

26 ⁴ The Ihde P.C. is misidentified as "Janet Idhe, (sic) M.D., A Professional Corporation" in the Ihde Demand Letter (as
27 defined herein).

⁵ Objecting LP Ihde is not asserting that Receiver was part of the apparent fraudulent activities, but was greatly
28 disappointed that the Receiver did not adequately investigate before making claims against Ihde and Ihde P.C. that
grossly inflated, apparently fraudulent numbers, with the Court in turn relying upon those numbers from the Receiver.

⁶ \$385,030.22 of principal (plus interest) was alleged as owed.

1 Note Receivable was allegedly the Ihde P.C. Tenant Improvement cost overages, with
2 the balance showing as of July 9, 2010, being \$385,030.22 (W. Ziprick Dec., ¶ 5, Ex.
3 2), also the exact figure claimed by Receiver to be owed to CP12 in the Ihde Demand
4 Letter.

5
6 So the Receiver's claim is based upon alleged
7 overages in building out the tenant improvements ("T.I.s") at the suite located at 35-
8 800 Bob Hope Drive, #225, Rancho Mirage, CA. Several documents located by
9 Ihde's legal counsel in the Receiver's files become very critical for the next steps of
10 this analysis. The first document (with the Receiver's Counsel bate stamping on it)
11 is AIA Document A114 – 2001 "Standard Form of Agreement Between Owner and
12 Contractor where the basis of payment is the Cost of the Work Plus a Fee without a
13 Guaranteed Maximum Price" (W. Ziprick Dec., ¶6, Ex. 3), which clearly shows on the
14 first page that the Project is: "Dr. Idhe Tenant Improvement, Rancho Mirage
15 Professional Plaza" ("T.I. Contract"). Neither Ihde nor Ihde P.C. are even parties to
16 this T.I. Contract, but it is signed instead by Don Copeland as "Owner", and by the
17 Contractor, Norby Construction Company, by its President. The T.I. Contract is dated
18 September 4, 2007, on the first page. Attached as Exhibit C to the T.I. Contract is an
19 estimated cost summary as of that date, on Norby Construction stationary, showing a
20 total cost of \$586,503 ("Project Cost"), a very large sum simply for tenant
21 improvements for an office suite of only 4,330 sq. ft., as described on the same
22 exhibit.

23
24 However, on the "Application For Certificate
25 For Payment" (prepared pursuant to the T.I. Contract) which was signed and dated by
26 the same Norby Construction only a few short weeks later (on September 25, 2007), it
27 shows that the Project Cost for the T.I.s had suddenly escalated by \$183,049.50 (W.
28 Ziprick Dec. ¶7 Ex. 4), with the total cost skyrocketing now to \$769,552.50 ("9/25/07
Payment Application").

1 But a critical “smoking gun” spreadsheet was
2 discovered by Ihde’s Legal Counsel in the Receiver’s records obtained for some of the
3 Receivership Entities, and bate stamped ZC-CP12-001937 (“Smoking Gun
4 Spreadsheet”, W. Ziprick Dec., ¶ 8, Ex. 5). This Smoking Gun Spreadsheet also has
5 the printed name of “Norby Construction Company” on it, with the document entitled
6 “Change Order Disbursement”. It is dated at the top right hand corner as of
7 “10/31/2007”.⁷ Amazingly, this Smoking Gun Spreadsheet shows that in reality the
8 Project Cost had actually DECREASED by \$8,520.50 from the original Project Cost,
9 instead of having massively INCREASED by almost \$200,000 (as the 9/25/07
10 Payment Application would have one believe).⁸

11 The conclusion from this Smoking Gun
12 Spreadsheet is fairly clear: There appears to have been two sets of books: One
13 highly suspect set of books (the one used by Copeland Realty for charging Ihde P.C.,
14 and then used in turn by the Receiver in asserting the inflated claim against Ihde)
15 which alleges that **T.I. costs rapidly massively increased to almost \$1 Million** for a
16 relatively small office suite (as stated in the Copeland 7/9/10 Letter), and, a Second
17 set of books (from which the Smoking Gun Spreadsheet appears to have come) which
18 shows that the true Project Costs **were actually decreasing**.

19 What makes this even more troubling is that it
20 was also discovered in documents from the Receiver that at the same time there was a
21 another construction project going on in the building right next to Dr. Ihde’s suite,
22 building out the corridor, and along with other building construction costs (W. Ziprick
23 Dec., ¶9, Ex. 6). How convenient for shifting costs from the corridor project or any
24 other building construction to the unsuspecting Ihde (a busy cancer surgeon who is
25 relying on the Copelands to be watching out for her interests, while she is busy
26

27
28 ⁷ The bottom right hand corner of the Smoking Gun Spreadsheet appears to show a print date of 12/26/2007 at 4:35PM.

⁸ It should be emphasized that this Smoking Gun Spreadsheet is dated just over a month AFTER what now appears to be fraudulent 9/25/2007 Payment Application.

1 operating to save the lives of severely ill cancer patients). This perfectly explains
2 how her supposedly straightforward Tenant Improvement project (which per Exhibit
3 C to the T.I. Contract was to be completed in only 4 months) ended up “allegedly”
4 **having a total staggering cost of \$920,870.22, or almost \$200 per sq. ft.** One can
5 easily build an entire building at that type of cost per square foot, in contrast to merely
6 tenant improvements for a suite inside of a building. Based upon industry norms for
7 similar type construction (W. Ziprick Dec., ¶10), the costs for physician office build
8 outs should typically run in the range of \$60 - \$80 a sq. ft., which would be consistent
9 with the \$60 per sq. ft. T.I. allowance provided for in the First Amendment to
10 Standard Multi-Tenant Office Lease – Net (“1st Lease Amendment”, ¶ 4 (Ihde Dec.,
11 ¶¶ 6-7, Ex. 2), and not the astronomical sum of almost \$200 per sq. ft. as Copeland
12 Realty claimed, in its efforts to fraudulently charge such amounts to Ihde P.C.
13

14 These facts alone emphasize the importance, as
15 stressed in the next section, of why Dr. Ihde was absolutely entitled to her day in
16 court, along with the accompanying discovery that would accompany such litigation,
17 which would have provided even further information as to what really transpired, and
18 how Ihde in truth was even a further victim of Copeland and Copeland Realty.

19 As described above, the Lease provided a T.I.
20 allowance of \$60 a sq. ft., and Ihde P.C. paid another \$250,000 on January 25, 2008,
21 toward the T.I.s as shown in the CP12 QuickBooks records (W. Ziprick Dec., ¶ 5, Ex.
22 2), so it is strongly suspected, based upon the facts already uncovered, that if Ihde had
23 her day in court, and the full truth came to light, that CP12 would in fact owe back to
24 Ihde P.C. a very significant amount of the \$250,000 Ihde P.C. paid, as an
25 overpayment of T.I. “expenses” fraudulently charged to it, instead of Ihde P.C. owing
26 anything to CP12.

27 In concluding this section, it is also very
28 disturbing that the Receiver, apparently without reviewing documents in its own

1 possession, simply accepted the numbers that Copeland indicated were owed by Ihde
2 P.C., when even a simple review of those numbers on the surface should have led to
3 further investigation to determine why such an astronomical sum had been charged to
4 Ihde P.C. supposedly for its T.I. Improvements. As previously noted in Footnote #5,
5 Objecting LP Ihde is not asserting that Receiver was part of Copeland's apparent
6 fraudulent activities, but was greatly disturbed that the Receiver did not adequately
7 investigate the grossly inflated, apparently fraudulent numbers before asserting the
8 large claims against Ihde and Ihde P.C., with the Court in turn relying upon those
9 numbers from the Receiver. Instead, these obviously inflated numbers were used to
10 justify the attempted taking of precious Schwab IRA retirement funds that should be
11 safeguarded for Ihde's retirement.

12
13 (b) Numerous Constitutional Rights of Ihde Were Violated:

14 The above section amply demonstrates how critical it would
15 be for Ihde and Ihde P.C. to have their day in court, with the full opportunity for
16 discovery, in appropriately defending themselves against various claims, including the
17 apparent fraudulently based claims related to the T.I. Improvements.

18 Consistent with this, Objecting LP Ihde has previously
19 repeatedly raised the issue that the Receiver's proposed confiscation of the Schwab
20 IRA's share of the CP18 distribution proceeds violated due process rights and her
21 right to appropriately litigate these issues. The following excerpts evidence Ihde's
22 repeated raising of this violation of her Constitutional Rights:

23 i. "The Receiver ignores all of Ihde's due process
24 rights...." (Dkt. #333, 11:1).

25 ii. "There is another fatal flaw, among many, in
26 Receiver's attempted confiscation. The Receiver, in his haste to seize these funds,
27 regardless of how many California statues this would violate, not to mention the due
28 process rights of Ihde, must believe that he can act as prosecutor, judge and jury. In

1 the Receiver’s Memorandum of P&As, Page 6 - 7, Receiver simply makes the
2 conclusory statement that the funds allocated to Ihde will be retained by the Receiver
3 and not paid to her. Ihde is entitled to her day in court, and contends that she owes no
4 money to any Receivership Entities....” (Dkt. #333, 12:24-13:3).

5 iii. “Ihde would certainly be entitled to her day in
6 court, and should not be subjected to the unsubstantiated attempted raiding of assets
7 which have been in a retirement account now for almost 10 years.” (Dkt. # 368, 8:10-
8 15).

9 The failure to provide Ihde with fundamental due process
10 rights, and her day in court, violates numerous provisions of both the United States
11 and California Constitutions, including the following:

- 12 • U.S. Const. amend. V: “No person ... [shall] be **deprived of life,**
13 liberty, or **property, without due process of law....”** (Emphasis
14 added).
- 15 • U.S. Const. amend. VII: Right to jury trial.
- 16 • California Const., article 1, § 7(a): “**A person may not be deprived**
17 **of life, liberty, or property without due process of law....”**
18 (Emphasis added).
- 19 • California Const., article 1, § 16 is equally clear: “**Trial by jury is an**
20 **inviolable right and shall be secured to all . . .”** (Emphasis added).
21 California Code of Civil Procedure § 631(a) then codifies this as
22 follows: “The right to a trial by jury as declared by Section 16 of
23 Article I of the California Constitution shall be preserved to the
24 parties **inviolable.**” (See *Grafton Partners L.P. v. Superior Court*, 36
25 Cal. 4th 944 (2005)).

26 Respectfully, this failure to recognize the violation of
27 numerous constitutional rights of Ihde is a fundamental flaw in the Court’s Order.
28

1 (c) A Further Fatal Flaw is that the Receiver's Claims Are Also
2 Barred by the Statute of Limitations:

3 The CP12 QuickBooks accounting records obtained from
4 the Receiver (W. Ziprick Dec. ¶ 5, Ex. 2), "Account 1451 Note Receivable – Ihde",
5 shows that the last funds allegedly loaned from CP12 to Ihde P.C. was on 10/9/2008,
6 well over 5 years ago, with the only activity since then being a downward adjustment
7 by journal entry on 7/9/2010. The last payment from Ihde P.C. was credited on
8 1/25/2008, almost 6 years ago.

9 In ¶ 4 of the 1st Lease Amendment (previously referred to)
10 between Ihde P.C. and CP12, (Ihde Dec., ¶¶ 6-7, Ex. 2), it clearly states that any
11 reimbursement of Lessor (CP12) from Lessee (Ihde P.C.) for construction costs in
12 excess of the Lessee Construction Allowance would be paid "on or before the
13 Commencement Date", which was December 31, 2007. So the four year Statute of
14 Limitations provided for a written contract (here the Lease) as provided in Cal. Code
15 of Civil Procedure § 337 ran, at the latest, in October, 2012, and arguably as early as
16 January, 2012. As discussed hereinafter on pages 23-24, this comprises almost 80%
17 of the total amount of the Receiver's claim against Ihde and Ihde P.C.

18 The Ihde Demand Letter also asserts that Ihde owes
19 \$15,562.99 (R. Ziprick Dec., Dkt. #333-1, ¶ 19, Ex. 10), plus interest, to Copeland
20 Wealth Management, a Real Estate Corporation ("Copeland Realty"). From a
21 review of the Copeland Realty QuickBooks accounting records obtained from the
22 Receiver, it shows that the last funds allegedly loaned to Ihde were loaned from
23 Copeland Realty on January 5, 2009 (W. Ziprick Dec., ¶ 11, Ex. 7). No payments
24 have been made since that time. Accordingly, the four year statute of limitations
25 also ran on any such loan as of January 5, 2013.

26
27 Ihde, at present, does not have access to the records of the
28 Copeland Fixed Income Three, L.P., whom Receiver in the Ihde Demand Letter

1 claimed was also owed funds by Ihde, as well as by Ihde P.C. However, it is
2 anticipated that any such loans were also made during the same time frame, so all
3 Receiver claims are likely also barred by the applicable Statute of Limitations. This
4 also demonstrates how Ihde has been adversely prejudiced by not having her day in
5 court, so that such records, through appropriate discovery, would be fully accessible
6 to Ihde and Ihde P.C.

7
8 It should be remembered that the Receiver, in the Ihde
9 Demand Letter, threatened that, unless payment of the alleged amounts owed had
10 been paid, or arrangements to pay had been made, within fourteen days of the date of
11 the Letter (May 29, 2012), it might well initiate litigation. However, the Receiver
12 never took any action against Ihde, the Ihde PC, or the Schwab IRA. Receiver's
13 attempt to withhold the rightful distribution to be made from CP18 to the Schwab IRA
14 appears to be nothing more than an attempt to circumvent the running of the statute of
15 limitations.

16 However, the Receiver's failure to so file a claim against
17 Ihde, the Ihde P.C., or the Schwab IRA within the applicable statute of limitations,
18 cannot be overridden by Court order which eviscerates the constitutional protections
19 to which those parties are entitled.

20 (d) The Receiver Has No Legal Authority Authorizing a
21 Withhold of Schwab IRA Funds, Based Upon Claims Barred By The Statute of
22 Limitations:

23 When the Statute of Limitations has run on claims, such as
24 for the claims asserted by the Receiver against Ihde and the Ihde P.C., then the
25 Receiver must look to Cal. Civil Code of Procedure § 431.70 to determine whether
26 any set off is allowed. There are numerous problems with application of this Code
27 Section to the present facts, which conclusively show that the limited exception
28

1 contained in Cal. Civil Code of Procedure § 431.70 are not available.⁹ These
2 problems include the following:

- 3 i. No litigation has been filed by any party.
4 ii. There is not the required mutuality present, which
5 requires that there be mutual claims existing between the same persons in the same
6 capacities.

7 The leading California case of *Carnation Co. v. Olivet Egg*
8 *Ranch* (1986) 189 Cal. App. 3d 809 has great application to the present situation, and
9 emphasizes the necessity that for any set off based upon mutuality of claims, the
10 claims must be due to/from “the same parties and in the same capacity”.

11 The Court stated as follows:

12
13 “The language of section 431.70 and the cases
14 discussing its interpretation and application **make**
15 **clear that the statute was intended to protect**
16 **mutual claims existing between the same persons**
17 **in the same capacities**. We believe it would require
18 stretching section 431.70 far beyond its intended
19 boundaries to allow appellants to assert Joint Venture
20 I's claim against Carnation when Carnation is not
21 maintaining any claim against Joint Venture I” (p.
22 820, emphasis added).

23 “Section 431.70 requires that claims must be
24 mutual if they are to qualify as ‘cross-demands’ under
25 the statute. In considering a claim under former Cal.
26 Code of Civil Procedure section 440, 16 predecessor
27 to section 431.70, our Supreme Court stated: “[there]
28 can be no question but that the general rule as to the

26 ⁹ Cal. Civil Code of Procedure § 431.70 in relevant part states: “Where cross-demands for money have existed
27 between persons at any point in time when neither demand was barred by the statute of limitations, and an action is
28 thereafter commenced by one such person, the other person may assert in the answer the defense of payment in that the
two demands are compensated so far as they equal each other, notwithstanding that an independent action asserting the
person's claim would at the time of filing the answer be barred by the statute of limitations. If the cross-demand would
otherwise be barred by the statute of limitations, the relief accorded under this section shall not exceed the value of the
relief granted to the other party.”

1 necessity of mutuality is as asserted by respondent,
2 and it may be conceded that in a strict sense there is
3 no mutuality between the claims here under
4 consideration; **they are not due to and from the**
5 **same parties and in the same capacity.**" (People v.
6 California, etc. Trust Co. (1914) 168 Cal. 241, at p.
7 248 [141 P. 1181], italics added; see also, Lyon v.
8 Petty (1884) 65 Cal. 322, 324 [4 P. 103] [concluding
9 that under former § 440 the claims must be in the
10 nature of a counterclaim and "**existing in favor of a**
11 **defendant and against a plaintiff,** between whom a
12 several judgment might be had in the action . . .").
13 "**Thus, a partnership obligation or claim may not**
14 **be set off against the personal obligation or claim**
15 **of the partners . . .**" (16 Cal.Jur.3d (rev. 1983)
16 Counterclaim and Setoff, § 9, at p. 259.) 17 (p. 820-
18 821).

13 Objecting LP Ihde has repeatedly raised through her
14 Opposition documents these very issues, that a set off/withhold is not appropriate, as
15 there is not mutuality of obligations between the same parties. For example:

- 16 • "...tellingly, the Receiver does not claim that Ihde
17 owes anything to CP18." (Objecting LPs' Opposition, Dkt. #333,
18 10:24).
- 19 • "The Receiver neither makes the claim that: (1) the
20 Schwab IRA owes any liabilities to any Receivership Entities; nor
21 that (2) Ihde individually owes any obligation to CP18."
22 (Objecting LPs' Opposition, Dkt. #333, 13:25-27).
- 23 • "However, the Receiver is even more egregiously
24 attempting to pool assets from the Schwab IRA against alleged
25 unproven liabilities of Ihde, which if you will, is a double layer of
26 impermissible consolidation of assets and liabilities." (Objecting
27 LPs' Opposition, Dkt. #333, 14:3-6).

1 The concept of mutuality in a limited partnership
2 context is very clearly enunciated in Cal. Corporations Code § 15905.07, as was also
3 previously raised by Objecting LP Ihde, as follows:
4

5 “The Corp Code has specific requirements for limited
6 partnership offsetting of a limited partner’s
7 distributions. Corp Code § 15905.07 provides that
8 distributions to a limited partner are subject to offset
9 “for any amount owed to the limited partnership by
10 the partner ...” (Emphasis added). (Objecting LPs’
11 Opposition, Dkt. #333, 14:14-17).

12 “Second, the above-referenced Corp Code provides
13 that the obligation must be owed to the specific
14 limited partnership which is making the distribution.
15 Here, the distribution is being made from CP18.
16 The Receiver in his declaration (Id.) identifies the
17 entities which it claims Ihde individually owes money
18 to as being CWM Realty, CP3 and CP12. Glaringly
19 absent from this list is CP18. So, the Receiver’s
20 proposed offset also fails to meet the requirement of
21 Corp Code § 15905.07, in that the Receiver is
22 proposing to improperly raid and forceably take,
23 without any due process, funds which are being
24 distributed to the Schwab IRA, not to pay obligations
25 owed to CP18 (as is required by the law), but to pay
26 alleged obligations of Ihde to other Receivership
27 Entities.” (Objecting LPs’ Opposition, Dkt. #333,
28 14:24-15:5; see also Sur-Reply, Dkt. #368, 7:20-25).

23 (e) Further Emphasizing the Lack of Mutuality, The Vast
24 Majority of Alleged Funds Owed Are Not Owed By Ihde Individually, But Are Owed
25 By An Entirely Separate Professional Corporation:

26 As previously discussed, the Lease was between Ihde P.C.
27 and CP12, which further underscores the lack of the required mutuality between the
28 parties. Ihde P.C. was not a partner in CP18. The Ihde Demand Letter incorrectly

1 alleges that the funds owed to CP 12 are owed by Dr. Ihde individually, which was
2 not the case. Any funds owed were owed by Ihde P.C.

3 (f) Receiver’s Proposed Withholding of Distributions is Being
4 Used Wrongfully in an “Offensive” Manner, Not in a “Defensive” Posture:

5 As stated by the California Supreme Court in *Construction*
6 *Protective Services, Inc. v. TIG Specialty Insurance Company* (2002) 29 Cal 4th 189:

8 “We think the best reading of Section 431.70 is that a
9 set off claim **may only be used defensively**, being in
10 nature a defensive pleading asserting that the claim
11 constituted prior payment for the amount sought in
12 the Plaintiff’s complaint. Indeed, Section 431.70
expressly refers to the set off claim as ‘the defense of
payment’ (pp 197-198, emphasis added).

13 In contrast, the Receiver’s proposed set off is purely being
14 used in an “offensive” manner, and not defensively. Neither Ihde nor the Schwab
15 IRA have initiated any claim against CP18, with the Receiver in turn then merely
16 defensively raising the alleged amounts owed as a set off against any such claim.
17 Instead, the Receiver is using claims barred by the statute of limitations offensively to
18 attempt to confiscate the Schwab IRA funds. Such is not allowed under the Cal.
19 Code of Civil Procedure § 431.70, it is not allowed under Cal. Corporations Code §
20 15905.07, or otherwise under California law.

21 (g) The Court’s Narrow Interpretation of the Protections
22 Afforded Retirement Assets under Cal. Code of Civil Procedure § 704.115, Would
23 Essentially Make Income Producing Assets Placed in IRAs Worthless (in the context
24 of a claim), As the Asset’s Cash Returns Could Be Confiscated Before Simple
25 Transmittal To The IRA:

26 Ihde has previously briefed her arguments why Cal. Code of
27 Civil Procedure § 704.115 prevents the Receiver from unilaterally confiscating CP18
28 distributions which are a Schwab IRA asset. The Court’s Order essentially

1 determined that the protections of Cal. Code of Civil Procedure § 704.115 did not
2 apply because the Receiver was not attempting to enforce a judgment (because he
3 didn't have one), and the CP18 Distribution funds were not covered by the terms of
4 the statute because they were not held, controlled or in process of the distribution by a
5 private retirement plan, because they were in the control of the Receiver. However,
6 such a narrow reading of Cal. Code of Civil Procedure § 704.115 goes against the
7 public policy for the protection of retirement funds, which was the basis for that Code
8 Section's enactment in the first place.

9
10 If taken to its logical conclusion, it would mean that
11 creditors could unilaterally grab any cash returns being generated by assets in an IRA
12 immediately before those cash returns make into the IRA account, by arguing that
13 those funds were not yet "held or controlled" by the IRA. Effectively, this could
14 essentially make such IRA-based assets worthless, as the IRA would never be able to
15 receive the benefit of cash returns to which it is rightly entitled.

16 The Receiver's very designation of those funds as being
17 distributable to the Schwab IRA (but for the proposed withhold) in the Receiver's
18 Proposed CP18 Distribution, along with the corresponding Court Order, is exactly
19 what brings those funds within the control of the Schwab IRA for protection purposes.

20 The focus will now shift from the Schwab IRA issues to the
21 other Appeal issues.

22 (2) Respectfully, The Court's Finding that CP18 Does
23 Not Owe Copeland Properties Three, L.P. ("CP3") Any More Money Based on
24 the \$423,544.11 Note Is Incorrect, Based Upon Conflict of Interest Violations
25 and Critical Subordination Issues:

26 In the original Complaint for violations of the Federal Securities
27 Law (Dkt. #1) filed in 2011 by the Securities and Exchange Commission ("SEC"),
28 the SEC repeatedly condemned the various Copeland Defendants for violating and

1 breaching various conflict of interest protections mandated in numerous controlling
2 agreements, as well as for their failure to disclose critical information to limited
3 partners. (For examples, please see Dkt. #1, 2:23-28, 8:1-7, 9:9-21, 10:15-26).

4 This same violation of the rights of limited partners, particularly
5 where the Managing General Partner wantonly and egregiously engaged in conflict of
6 interest transactions to the benefit of the General Partner, and to the detriment of the
7 limited partners, goes to the heart of the Objecting LPs argument as to why the
8 \$423,000 promissory note from CP18 has always been and remains an asset of CP12
9 (Sur-Reply Brief, Dkt. #368, 8:16-13:22).

10 First, Copeland Realty, as the Managing General Partner, never
11 obtained the numerous limited partner consents which were absolutely required prior
12 to any attempt to transfer this valuable asset to itself, clearly a conflict of interest
13 violation. But perhaps even more egregiously, Copeland Realty, which was fully
14 aware of the subordinated nature of any debt owed by CP12 to Copeland Realty,
15 (which Charles Copeland has recently acknowledged and admitted repeatedly in his
16 deposition testimony, see Dkt. #368, 14:8-16), wrongfully attempted to transfer the
17 \$423,000 note to itself, as payment on the subordinated debt which was not even yet
18 due or payable, and is not due or payable to this day, as described in great detail in
19 Objecting LPs' Sur-Reply Brief (Dkt. #368, 13:23-20:13). Accordingly, it is
20 respectfully asserted that the Court's findings and Order in this regard will be
21 overturned on Appeal.
22

23 (3) Respectfully, The Court's Order that Management
24 Fees Were Owed to Copeland Realty from CP18 Is Not Supported by the
25 Partnership Agreement or Any Contract:

26
27 Objecting LPs in their Opposition to Receiver's CP18 Distribution
28 Motion (Dkt. #333, 9:20-10:16) and Sur-Reply Brief (Dkt. #368, 2:15-5:24) provided

1 numerous arguments as to why the \$165,466.80 for management fees claimed by
2 Receiver are not due or owing, and should not be paid. The Court's finding from the
3 October 28, 2013, Transcript of Proceedings (W. Ziprick Dec., ¶ 12, Ex. 8, 6:11-15)
4 stated as follows:

5 "CP 18 is obligated by contract and its own partnership agreement
6 to pay the management fees and, therefore, the receiver is
7 authorized to make those payments."

8 Respectfully, this finding is incorrect, as the CP18 Partnership
9 Agreement did not provide for the amount of management fees that were unilaterally
10 booked by Copeland Realty, as described in some detail in Objecting LPs Sur-Reply.
11 Further, based on the equity losses of the CP18 limited partners, and California law,
12 no management fees were owed (Dkt. #368, 4:19-5:24).

13 (4) Even While The Court's Order Is Being Contested In
14 Part In Regards to the Ross Claim, The Receiver Has Not Followed The
15 Court's Order Regarding The Ross's Claim Application to Copeland Realty:

16 In Receiver's Reply to Objecting LP's Opposition, the Receiver
17 stated: "Ross's claim will be considered when all claims against CP12 and CWM
18 Realty are evaluated for possible distributions." (Dkt. #356, 23:6-7, filed 9/24/13,
19 emphasis added).

20 However, in the Declaration of the Receiver in Support of
21 Receiver's Copeland Realty Distribution Motion (Dkt. #376-2, ¶ 9, 3:22-4:5, Exhibit
22 A), filed 10/18/13, almost a month later, the Receiver's Exhibit A spreadsheet
23 showing all proof of claims and the Receiver's analysis of the claims ("Copeland
24 Realty Proposed Distribution"), there is absolutely no reference to the Ross Claim,
25 contrary to what the Receiver had represented to this Court.
26

27 The Court's finding from the October 28, 2013, Transcript of
28 Proceedings (W. Ziprick Dec., ¶ 12, Ex. 8, 6:11-15) made specific reference to this

1 representation by the Receiver in its findings: “The receiver states that he will
2 address the claim of the Rosses in connection with his distributions of CWM and CP
3 12. This is proper, as those are entities that the Rosses have -- have a claim against”
4 (W. Ziprick Dec., ¶ 12, Ex. 8, 6:11-15). Further, the Court in its Order entered
5 November 6, 2013, was very specific in its direction to the Receiver concerning the
6 Ross claim: “The Receiver shall consider the Rosses’ claims in connection with
7 distributions by CWM Realty and CP12” (Order, 3:2-4, emphasis added).

8
9 It is incumbent on the Receiver, consistent with its prior
10 representation to the Court and the Court’s above referenced Order, to address
11 payment of the Ross claim in connection with the Copeland Realty Proposed
12 Distribution (Dkt. #376-3) and Copeland Realty Distribution Motion (Dkt. #376).
13 As evidenced above, Receiver in the Copeland Realty Distribution Motion failed to
14 address the Ross claim, and (as was only just discovered in the preparation of this Ex
15 Parte Application), it appears from a review of the Court’s docket, that Receiver has
16 failed to appropriately amend the Copeland Realty Proposed Distribution Motion and
17 Proposed Distribution to properly address the Ross claim. The Ross claim is
18 nowhere to be found in any of Receiver’s documents. When this was discovered,
19 legal counsel for Objecting LP Ross raised this issue with Receiver’s legal counsel by
20 phone on 12/10/13 (W. Ziprick Dec., ¶ 15).

21 In this regard, Objecting LP Ross respectfully requests that the
22 Court order the Receiver, so that the Receiver is in compliance with the Court’s
23 November 6, 2013, Order concerning the Ross claim.

24 Further, even though the Receiver also committed to addressing
25 the Ross’s claim in connection with distributions from CP12, just a few days ago, in
26 Receiver’s Report Receiver, Receiver stated that it did not anticipate any CP12
27 distributions. (Dkt. #392, 4:16-25).

28

1 Yet, as addressed in more detail in the next section, the Receiver
2 asserted in the Ihde Demand Letter that a specified amount of the claim against Ihde
3 was on behalf of CP12, and that is yet another reason supporting the establishment of
4 a separate depository account to safeguard such funds until such time as an
5 appropriate distribution is determined.

6 Objecting LP Ross also respectfully contends that the Court's
7 finding and Order that the Rosses do not have an interest in CP18 is flawed.

8 (5) Should It Ultimately Be Determined That The
9 Withholding Of The \$156,261.02 From The Schwab IRA Was Justified, Most
10 of Those Funds Should Go To CP12, And Not To Copeland Realty:
11

12 There is a further reason that the interests of justice would be
13 served by the establishment of a separate depository account to hold the Disputed
14 CP18 Funds, and specifically the Schwab IRA funds. As previously referenced, just
15 a few days ago, in Receiver's Report, Receiver stated that "At this time, Receiver
16 does not anticipate any distributions being made to the following entities . . .
17 Copeland Properties Twelve, L.P. (Dkt. #392, 4:16-25). Yet, in Receiver's Proposed
18 Distribution Schedule for CP18 Sales Proceeds attached to Receiver's previously filed
19 Declaration as Exhibit A (Dkt. #319-2), Receiver indicated that the \$156,261.02 it
20 proposed to withhold from the "Janet Ihde IRA" was based upon amounts allegedly
21 owed to various Receivership entities, including CP12. In fact, in the Ihde Demand
22 Letter, Receiver's counsel alleges that as of April 30, 2012, that CP12 was owed
23 \$455,619.09¹⁰ out of a total alleged amount owed by Dr. Ihde and Ihde P.C. of
24 \$579,135.55¹¹ (Dkt. #333-1, R. Ziprick Dec., ¶19, Ex. 10 p. 1, ¶¶ 2-3).
25
26
27

28 ¹⁰ \$385,030.22 of principal (plus interest) was alleged as owed.

¹¹ Receiver's counsel alleged the following amounts as owed: \$102,400 + \$21,116.46 + \$455,619.09 = \$579,135.55 total.

1 So according to the Receiver's own calculations in the Ihde
2 Demand Letter, \$123,071.17 of the Schwab IRA share of the CP18 proceeds for
3 distribution should be distributed to CP12, if the Receiver's withhold of the Schwab
4 IRA funds is ultimately upheld.¹²

5 Placing the \$156,261.02 into a separate depository account will
6 protect such funds until the ultimate determination of whether such funds should go to
7 the Schwab IRA, or if not, the appropriate proration of those funds between CP12 and
8 other Receivership Entities. Such funds should not be allowed to be inappropriately
9 diverted to Copeland Realty as proposed by the Receiver, as such a diversion would
10 be inconsistent with the Court's prior denial of Receiver's Motion to Consolidate
11 Receivership Entities and Pool Assets and Liabilities of Receivership Entities (Dkt.
12 #130).

13
14 Alternatively, if the Court is not inclined to grant Objecting LPs
15 request for an order transferring the Disputed CP18 Funds to a depository account,
16 they would request that the \$123,071.17 be appropriately distributed to CP12, and not
17 to Copeland Realty.

18 **5. THE BROAD POWER OF THE DISTRICT COURT TO FASHION**
19 **APPROPRIATE RELIEF:**

20 Objecting LPs agree with the Receiver (Dkt. #376-1, p. 8) that a District
21 Court has broad power of a Court of equity to determine the appropriate action in the
22 administration and supervision of an equity Receivership *SEC v. Wencke*, 622 F.2d
23 1363, 1369 (9th Cir. 1980), *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986).
24 This would certainly include the power of the District Court in the interests of justice
25 and equity to establish a depository account for the Disputed CP18 Funds until there
26 has been a final determination upon Appeal of the rightful distributees of such funds,
27 so that the ultimate distribution of the assets would be done equitably and fairly, as

28 ¹² \$455,619.09 (the amount alleged owed to CP12) / \$579,135.55 (the total amount alleged as owed) = 78.76% (the percent owed to CP12). 78.76% x \$156,261.02 = \$123,071.17 (the pro rata alleged amount owed to CP12).

1 mandated by the Court in *S.E.C. v. Elliot*, 953 F.2d 1560, 1569 (11th Cir. 1992) where
2 it held, as the appointment of a receiver is authorized by the broad equitable powers of
3 the court, any distribution of assets must also be done equitably and fairly.

4 **6. CONCLUSION AND REQUESTED RELIEF:**

5 For the reasons set forth above, the Objecting LPs respectfully pray that
6 this Honorable Court, for good cause:

7 A. Enter an order requiring the Receiver to transfer the Disputed
8 CP18 Funds (in the amount of \$659,625.09) from CP18 to a depository account, with
9 such account to be determined by order of the Court. The Disputed CP18 Funds are to
10 be held in said depository account, pending final disposition of the Objecting LPs'
11 ultimate Appeal, and until such further order of this Court, or upon order of the Ninth
12 Circuit Court of Appeals.

13 B. In the alternative, if the Court does not enter an order requiring the
14 Receiver to transfer the Disputed CP18 Funds to a depository account per A above,
15 the Objecting LPs would request that \$123,071.17 of the Disputed CP18 Funds be
16 appropriately transferred to CP12, not to Copeland Realty.

17 C. Enter an order requiring the Receiver to comply with this Court's
18 previous Order entered November 6, 2013 (Dkt. #385), as follows: "The Receiver
19 shall consider the Rosses' claims in connection with distributions by CWM Realty
20 and CP12", with appropriate inclusion of the Rosses' claim in any Copeland Realty
21 Proposed Distribution by the Receiver.

22 Respectfully submitted,
23 ZIPRICK & CRAMER, LLP

24 Dated: December 11, 2013

25 /s/ William F. Ziprick

26 William F. Ziprick

27 Robert H. Ziprick

28 Jonathan R. Ziprick

1 Robert H. Ziprick, SBN 069571
2 William F. Ziprick, SBN 096270
3 **ZIPRICK & CRAMER, LLP**
4 707 Brookside Avenue
Redlands, California 92373
Telephone (909) 798-5005 / Facsimile (909) 793-8944

5 Attorneys for Janet Ihde, Charles Schwab FBO Janet Ihde IRA,
6 Sandra Hayes, Melvyn and Ruth Ross, Melvyn and Ruth Ross
7 Revocable Trust, Joseph and Beth Dotan, Dotan Family Trust
(collectively the "Objecting LPs")

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 v.

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

21 Defendants.
22

)
) **DECLARATION OF WILLIAM F.**
) **ZIPRICK IN SUPPORT OF**
) **EX PARTE APPLICATION FOR**
) **ORDER TRANSFERRING FUNDS**
) **TO A DEPOSITORY ACCOUNT**
) **PENDING APPEAL**

) Ctrm: 8, 2nd Floor
) Judge: Hon. Manuel L. Real

23 I, WILLIAM F. ZIPRICK, declare as follows:

24 1. I am over the age of eighteen (18) years and am not a party to the above-
25 entitled action.

26 2. I have personal knowledge of the matters set forth herein, except as to
27 those matters stated upon information and belief, and as to those matters, I believe
28 them to be true. If called upon as a witness, I could and would competently testify

1 thereto.

2 3. I am an attorney representing certain Limited Partners of Copeland
3 Properties 18, LP (“CP18”): Charles Schwab FBO Janet Ihde IRA, Dotan Family
4 Trust, Sandra Hayes, and Melvyn and Ruth Ross Revocable Trust (“Objecting LPs”),
5 and others.

6 4. I have attached hereto and incorporated herein by this reference as
7 Exhibit 1 a copy of the letter our law office received from Copeland Wealth
8 Management dated July 9, 2010, signed by Charles P. Copeland (“Copeland 7/9/10
9 Letter”). In the Copeland 7/9/10 Letter, Charles Copeland asserts that \$385,030.22
10 is still owed for tenant improvements.

11 5. I have attached hereto and incorporated herein by this reference as
12 Exhibit 2 a copy of the QuickBooks records for Copeland Properties Twelve, L.P.
13 (“CP12”) for “Account 1451 – Note Receivable – Ihde”, which came from the
14 QuickBooks records we received from the Receiver’s counsel. This QuickBooks
15 record shows a balance owing of \$385,030.22 as of July 9, 2010. It also shows that
16 the last funds loaned from CP12 was on October 9, 2008, with the last payment from
17 Ihde P.C. being credited on January 25, 2008, when Ihde P.C. made a payment in the
18 amount of \$250,000.

19 6. I have attached hereto and incorporated herein by this reference as
20 Exhibit 3 a copy of the “Standard Form of Agreement Between Owner and Contractor
21 where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed
22 Maximum Price” which clearly shows on the first page that the Project is: “Dr. Idhe
23 Tenant Improvement, Rancho Mirage Professional Plaza” (“T.I. Contract”). Neither
24 Ihde nor Ihde P.C. are even parties to this T.I. Contract, but it is signed instead by Don
25 Copeland as “Owner”, and by the Contractor, Norby Construction Company, by its
26 President. The T.I. Contract is dated (on the first page) September 4, 2007. Attached
27 as Exhibit C to the T.I. Contract is an estimated cost summary as of that date, on
28 Norby Construction stationary, showing a total cost of \$586,503 (“Project Cost”)

1 which is a very large sum for solely tenant improvements for an office suite of only
2 4,330 sq. ft., as described on the same exhibit.

3 7. I have attached hereto and incorporated herein by this reference as
4 Exhibit 4 a copy of the Application for Certificate for Payment dated 9/17/07,
5 (prepared pursuant to the T.I. Contract) which was signed and dated by Norby
6 Construction on September 25, 2007. It shows that the Project Cost for the tenant
7 improvements had suddenly escalated by \$183,049.50, with the total cost
8 skyrocketing now to \$769,552.50 (“9/25/07 Payment Application”).

9 8. I have attached hereto and incorporated herein by this reference as
10 Exhibit 5 a copy of a critical “smoking gun” spreadsheet which was discovered by
11 Ihde’s Legal Counsel in the Receiver’s records obtained for some of the Receivership
12 Entities, and bate stamped ZC-CP12-001937 (“Smoking Gun Spreadsheet”). This
13 Smoking Gun Spreadsheet also has the printed name of “Norby Construction
14 Company” on it, with the document entitled “Change Order Disbursement”. It is
15 dated at the top right hand corner as of “10/31/2007”. Amazingly, this Smoking Gun
16 Spreadsheet shows that in reality the Project Cost had actually DECREASED by
17 \$8,520.50 from the original Project Cost, instead of having massively INCREASED
18 by almost \$200,000 (as the 9/25/07 Payment Application states).

19 9. I have attached hereto and incorporated herein by this reference as
20 Exhibit 6 a copy of the “Standard Form of Agreement Between Owner and Contractor
21 where the basis of payment is a STIPULATED SUM” dated September 17, 2007
22 (without exhibits) which clearly shows on the first page that the Project is: “Rancho
23 Mirage Professional Plaza Corridor TI”.

24 10. I have first hand spoken with real estate industry experts, in both the real
25 estate construction industry and real estate brokerage industry, who are well familiar
26 with the Palm Springs region, and who indicated that construction costs for good
27 quality medical office tenant improvements typically run in the range of \$60 - \$80 per
28 sq. ft.

1 11. I have attached hereto and incorporated herein by this reference as
2 Exhibit 7 a copy of the Copeland Wealth Management QuickBooks accounting
3 records obtained from the Receiver, which shows that the last funds allegedly loaned
4 to Ihde were loaned from Copeland Wealth Management on January 5, 2009. No
5 payments have been made since that time.

6 12. I have attached hereto and incorporated herein by this reference as
7 Exhibit 8 a copy of the October 28, 2013, Transcript of Proceedings of the hearing on
8 the CP18 Distribution Motion.

9 13. After having given notice to Receiver's counsel earlier in the morning on
10 December 10, 2013, as described in the Declaration of Notification of Parties filed
11 concurrently herewith, I continued work on the Ex Parte Application. As a part of
12 that preparation work, I was carefully reviewing the record concerning the Ross claim,
13 including the Order of the Court entered November 6, 2013 ("Order") where the Court
14 was very specific in its direction to the Receiver concerning the Ross claim as
15 follows: "The Receiver shall consider the Rosses' claims in connection with
16 distributions by CWM Realty and CP12" (Order, 3:2-4, emphasis added). In follow-
17 up, I then reviewed the following: (1) the Receiver's Motion for Order approving
18 Classification of Claims and Future Claims Distributions of the Assets of Copeland
19 Realty (Dkt. #376, "Copeland Realty Distribution Motion"), (2) Receiver's
20 Declaration in Support of Copeland Realty Distribution Motion (Dkt. # 376-2) and,
21 (3) Exhibit A to the Receiver's Declaration, (Dkt. # 376-3), which is Receiver's
22 proposal for the future distributions of the assets of CWM Realty, in accordance with
23 this distribution schedule ("Copeland Realty Distribution Schedule").

24 14. It is incumbent on the Receiver, consistent with its prior representation to
25 the Court and the Court's above referenced Order, to address payment of the Ross
26 claim in connection with the Copeland Realty Distribution Motion and the Copeland
27 Realty Distribution Schedule. Neither the Copeland Realty Distribution Motion nor
28 the Copeland Realty Distribution Schedule address the Ross claim, and from my

1 review of the Court's docket, the Receiver has failed to appropriately amend the
2 Copeland Realty Distribution Motion or Copeland Realty Distribution Schedule to
3 properly address the Ross claim, as would be required to be in compliance with the
4 Court's Order.

5 15. Upon this discovery, I immediately called John Stephens, Receiver's
6 counsel around 1 p.m. on December 10, 2013, to raise the issue concerning the Ross
7 claim. He indicated that he would look into it, and contact me back to address the
8 situation. As of the time of completing this Declaration (approximately 9:15 p.m.
9 the next day, 12/11/13), I had not yet heard back from Mr. Stephens.

10 16. As is described in detail in the "Procedural Background" section of the
11 Memorandum Of Points And Authorities In Support Of Ex Parte Application For
12 Order Transferring Funds To A Depository Account Pending Appeal ("P&As"), it is
13 clear from a review of the Receiver's Report #7 (Dkt. #392, "Receiver's Report")
14 recently filed on December 3, 2013, by Thomas Hebrank ("Receiver"), that it is the
15 Receiver's intention to make final distributions¹ from Copeland Realty² and wind
16 down the Receivership in fairly short order. The dilemma that this creates for
17 Objecting LPs is that if the funds disputed by the Objecting LPs ("Disputed CP18
18 Funds" as are described in detail in the P&As) are transferred from CP18 to Copeland
19 Realty pursuant to the Order of this Court (Dkt. #385) entered on November 6, 2013,
20 it is anticipated that the Receiver shortly thereafter will dissipate such funds in the
21 payment of administrative fees and for other distributions as are described in the
22 Receiver's Motion for Order Approving Classification of Claims and Future Claims
23 Distributions of the Assets of Copeland Realty ("Copeland Realty Distribution
24 Motion"). Irreparable injury will be caused to the Objecting LPs through such a
25 dissipation of the Disputed CP18 Funds once such funds are transferred to Copeland
26

27 _____
28 ¹ It is recognized that the Receiver is proposing that there be more limited distributions over time.

² Copeland Realty, Copeland Wealth Management, CWM, and CWM Realty are used interchangeably in this Application and refer to the same entity.

1 Realty, so that even if they are successful on appeal, it will be a hollow victory as the
2 Disputed CP18 Funds will already and irretrievably be gone.

3 17. Objecting LPs recognized that their Appeal of the Order might be
4 deemed premature by the Ninth Circuit Court of Appeals. Just earlier today the
5 Objecting LPs received notice that this appears to be the case. Objecting LPs intend
6 to file a new appeal as permissible, but until that time arrives, if the Disputed CP18
7 Funds are not protected, irreparable injury to the Objecting LPs will, in fact, occur.

8 18. Based upon this, the Objecting LPs are respectfully requesting this Court
9 to order that the Disputed CP18 Funds be placed into a depository account, where the
10 Disputed CP18 Funds would be held until final determination of the Objecting LPs'
11 ultimate Appeal.

12 I declare under penalty of perjury under the laws of the State of California that
13 the foregoing is true and correct and if called upon to testify in this matter, I could and
14 would testify as set forth above.

15 This Declaration is made this 11th day of December, 2013, in Redlands,
16 California.

17 Respectfully submitted,

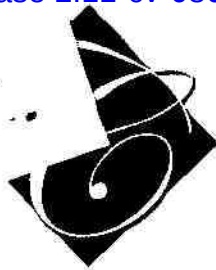
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19
20 Dated: December 11, 2013

/s/ William F. Ziprick
WILLIAM F. ZIPRICK

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EXHIBIT 1

**EXHIBIT
EX PARTE APPLICATION FOR ORDER FOR PARTIAL STAY PENDING APPEAL,
OR FOR ORDER TRANSFERRING FUNDS TO A DEPOSITORY ACCOUNT PENDING APPEAL**



171

COPELAND WEALTH MANAGEMENT
 REAL ESTATE
Lic. 01403456

July 9, 2010

Kathleen M. Cramer
 Ziprick & Cramer, LLP
 707 Brookside Avenue
 Redlands, CA 92373-5101

Dear Ms. Cramer:

In response to your letter dated June 30, 2010 regarding the amount owing for Janet Ihde, we provide the following:

Her lease agreement provides her with the Shell Space and \$60.00 per square foot to accommodate the types of things you identified in your letter. The total amount allowed for her 4,764 square foot space was \$285,840.00.

The costs for her suite are as follows:

A. Paid from the Construction Loan	\$687,432.30
B. Paid from CP12 Bank Account	179,695.51
C. Paid by CWM Real Estate	51,838.98
D. Payments to Schindler Elevator (for her private elevator)	<u>1,903.43</u>
Total	<u>\$920,870.22</u>

Against this amount she has paid a total of \$250,000 on January 25, 2008.

Total Costs	\$920,870.22
Allowance	(285,840.00)
Paid	<u>(250,000.00)</u>
Amount Due	<u>\$385,030.22</u>

In addition to the above amount we request your client reimburse the 4.5% interest the partnership paid to the bank for these improvements.

Enclosed is Pacific Western's summary of the \$687,432.30 from their construction loan. Also enclosed are the general ledger detail for payments made directly from CP12 and Copeland Realty.

Kathleen M. Cramer
Ziprick & Cramer, LLP
July 9, 2010
Page 2

We are providing a copy of this letter to all those copied in the original letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles P. Copeland". The signature is fluid and cursive, with a large initial "C" and "P".

Charles P. Copeland
Managing General Partner
Copeland Properties 12, LP

P.S.

Your assumption that I handled Dr. Ihde's accounts is incorrect. I never had any level of contact with any of her bank accounts. I prepared her tax returns from information she sent us after the year was complete.

Pacific Western Bank

Loan Accounting Analysis, (Borrower)

Printed on June 1, 2009 2:01:38 PM

Page 1 of \$2.00

ITEM NUM AND NAME	Original Budget	Changes to Budget	Revised Budget	Disbursed Paid & In-process	% Disbur	Available Balance
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LOAN NUMBER: 16041021

Copeland Properties Twelve LP
 25809 Business Center Dr
 Redlands, CA 92374

296 Copeland Properties Twelve LP: 35-800 Bob Hope Drive

ITEM NUM AND NAME	Original Budget	Changes to Budget	Revised Budget	Disbursed Paid & In-process	% Disbur	Available Balance
0					0.0%	0.00
1 Grading / Sitework	341,596.00	99,374.29	440,970.29	440,970.29	100.0%	0.00
2 Irrigation & Landscaping	238,050.00	948.01	238,998.01	238,998.01	100.0%	0.00
3 Concrete	1,252,364.00	36,356.29	1,288,720.29	1,288,720.29	100.0%	0.00
4 Architectural Precast Concrete	357,000.00		357,000.00	357,000.00	100.0%	0.00
5 Cast Stone Col & Balustrade Sy	156,330.00	35,524.00	191,854.00	191,854.00	100.0%	0.00
6 Masonry	59,142.00		59,142.00	59,142.00	100.0%	0.00
7 Structural Steel & Metal Deckin	1,267,979.00	39,007.00	1,306,986.00	1,306,986.00	100.0%	0.00
8 Rough Carpet./Finish Carpet	142,776.00	38,000.00	180,776.00	180,776.00	100.0%	0.00
9 Insulation	32,714.00		32,714.00	32,714.00	100.0%	0.00
10 Lath & Plaster	214,700.00	10,060.00	224,760.00	224,760.00	100.0%	0.00
11 Roofing/Sheet Metal/Skylight	257,240.00	2,400.00	259,640.00	259,640.00	100.0%	0.00
12 Doors/Frames/Hard /Store./Wi nd	186,119.00	5,646.00	191,765.00	191,765.00	100.0%	0.00
13 Gypsum Dry.& Metal Stud Fram	346,600.00		346,600.00	346,600.00	100.0%	0.00
14 Cerm.Tile/Conan/Carpet Res Fl	78,574.00	330.00	78,904.00	78,904.00	100.0%	0.00
15 Painting & Wallcovering	74,760.00	2,000.00	76,760.00	76,760.00	100.0%	0.00
16 Toilet Part. Access. & Misc.	11,025.00	1,369.53	12,394.53	12,394.53	100.0%	0.00
17 Fire Sprinklers	99,728.00	7,065.00	92,663.00	92,663.00	100.0%	0.00
18 Hydraulic Elevators	91,800.00		91,800.00	91,800.00	100.0%	0.00
19 Plumbing	80,000.00		80,000.00	80,000.00	100.0%	0.00
20 HVAC	43,040.00		43,040.00	43,040.00	100.0%	0.00
21 Electrical & Fire Alarm System	264,455.00	28,119.55	292,574.55	292,574.55	100.0%	0.00

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Pacific Western Bank

Loan Accounting Analysis, (Borrower)

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Page 2 of \$2.00

ITEM NUM AND NAME	Original Budget	Changes to Budget	Revised Budget	Disbursed Paid & In-process	% Disbur	Available Balance
22 General Conditions	390,309.00	52,112.52	442,421.52	442,421.52	100.0%	0.00
24 Contractor's Contingency @ 2%	121,430.00	39,674.46	39,674.46	39,674.46	100.0%	0.00
25 Nordby Overhead/Profit @ 6.5%	402,541.00	39,464.96	442,005.96	442,005.96	100.0%	0.00
26 General Liability Insur @1.18%	77,827.00	4,325.31	82,152.31	82,152.31	100.0%	0.00
27 Architectural & Engineering	150,000.00	-29,740.50	120,259.50	119,898.87	99.7%	360.63
28 A & E Reimbursables	19,976.00	11,254.65	31,230.65	30,259.06	96.9%	971.59
29 Testing	51,389.00	-5,730.00	45,659.00	43,293.00	94.8%	2,366.00
30 Entitlement & Tap fees	590,850.00	112,864.00	703,714.00	703,714.00	100.0%	0.00
31 Legal Fees	30,000.00	22,900.97	7,099.03	2,082.50	29.3%	5,016.53
32 Audit Fees & Appraisal	14,982.00	13,982.00	1,000.00		0.0%	1,000.00
33 Insurance	50,000.00	50,000.00			0.0%	0.00
34 Advertising & Marketing	36,707.00	33,149.06	3,557.94	149.65	4.2%	3,408.29
35 Monument & Interior Signs	9,788.00	5,506.27	15,294.27	15,286.18	99.9%	8.09
36 Travel	50,000.00	-11,930.74	38,069.26	37,177.99	97.7%	891.27
37 Operational Start-up	100,000.00	84,801.90	15,198.10	13,809.38	90.9%	1,388.72
38 Property Tax Carry	50,000.00	-28,743.06	21,256.94	21,256.94	100.0%	0.00
39 Contingency	300,000.00	-291,462.97	8,537.03	299.41	3.5%	8,237.62
40 Developer Overhead & Fees	352,932.00	11,699.19	364,631.19	364,161.55	99.9%	469.64
42 Leasing/Sale Commissions	82,000.00	-82,000.00			0.0%	0.00
43 Tenant Improvements-future leases-HOLD	2,000,000.00	-1,430,470.00	569,530.00	216.96	0.0%	569,313.04
44 Additional Tenant Improvements	713,560.00	-713,560.00			0.0%	0.00
45 Loan Fees	88,711.37	63,387.00	152,098.37	152,098.37	100.0%	0.00
46 Land	1,417,616.66		1,417,616.66	1,417,616.66	100.0%	0.00
47 Interest Reserve	753,388.97		753,388.97	753,388.97	100.0%	0.00
48 Dr Inde T.I STE 225		687,432.30	687,432.30	687,432.30	100.0%	0.00
49 Radnet T.I STE 150		623,150.00	623,150.00	601,956.15	96.6%	21,193.85
50 Common area improvements		288,290.94	288,290.94	288,073.98	99.9%	216.96
51 Surgery Center STE 100		4,001,909.93	4,001,909.93	3,992,073.00	99.8%	9,836.93
52 Dr Serenity ste 245		54,000.00	54,000.00	53,970.00	99.9%	30.00
53 CWM Real Estate ste 210		59,760.00	59,760.00	58,223.96	97.4%	1,536.04

Copeland Properties Twelve, LP
General Ledger
As of December 31, 2007

Type	Date	Num	Name	Memo	Debit	Credit	Balance
1451 · Note Receivable - lnde							
Check	03/12/2007	4254	Franchise Tax Board	lnde Conston, Inc. Return	800.00		800.00
Check	07/11/2007	4273	JMA Architecture, Inc.	Architecture	0.00		800.00
General Journal	12/31/2007	GJ1202		Reclassify lnde expenses as receivable	179,695.51		180,495.51
Total 1451 · Note Receivable - lnde					180,495.51	0.00	180,495.51
6501 · Construction Expense							
Check	08/29/2007	4287	Donna Schuler Design Studio	Down Payment	10,000.00		10,000.00
Check	09/12/2007	4290	Brian E. LaFleur	Deposit / Rancho Mirage Medical Bldg	2,410.00		12,410.00
Check	09/12/2007	4291	Donna Schuler Design Studio	wall coverings	5,396.34		17,806.34
Check	09/12/2007	4292	Donna Schuler Design Studio	Draperies	7,633.27		25,439.61
Check	09/12/2007	4293	CDW Government, Inc.	Quote HLF4683; Acct 10399960	9,966.96		35,406.57
Check	09/14/2007	4296	Donna Schuler Design Studio	Cabinets	4,140.00		39,546.57
Check	09/14/2007	4298	Spectrum Custom Design		27,860.00		67,406.57
Check	09/17/2007	4299	Donna Schuler Design Studio	Furniture	27,086.17		94,492.74
Check	09/17/2007	4300	Donna Schuler Design Studio	Furniture/Drawings	5,351.28		99,844.02
Check	09/17/2007	4301	Donna Schuler Design Studio	Carpet	13,006.00		112,850.02
Check	09/19/2007	4302	Surray Technology Integration	Voice & Data (Cat 5)	3,858.68		116,708.70
Check	09/19/2007	4303	Prime Clinical Systems, Inc.	Data conversion	1,250.00		117,958.70
Check	09/19/2007	4304	Randy Lee	Installation of hardware & software	0.00		117,958.70
Check	09/19/2007	4304	Randy Lee	Installation of hardware & software	0.00		117,958.70
Check	09/19/2007	4305	David Hollis	Installation of hardware	800.00		118,758.70
Check	09/27/2007	4306	Randy Lee	Invoice #1	1,500.00		120,258.70
Check	09/27/2007	4307	JMA Architecture, Inc.	Reimb of expenses: blueprints	483.35		120,742.05
Check	11/13/2007	4329	Donna Schuler Design Studio	Furniture	32,510.47		153,252.52
Check	11/30/2007	4332	Donna Schuler Design Studio	Various Invoices	26,442.99		179,695.51
General Journal	12/31/2007	GJ1202		Reclassify lnde expenses as receivable		179,695.51	0.00
Total 6501 · Construction Expense					179,695.51	179,695.51	0.00
					<u>360,191.02</u>	<u>179,695.51</u>	<u>180,495.51</u>

8:34 AM
07/07/10
Accrual Basis

Copeland Wealth Management - A Real Estate Corporation
General Ledger
As of July 7, 2010

Type	Date	Num	Name	Memo	Split	Amount	Balance
1450 - N/R - Private Investors							
1481 - Note Receivable - Janet Inde							
Check	5/9/2007	3852	JMA Architecture, Inc.	Invoice #1577 & 1594	1110 - First Calif...	7,000.00	0.00
Check	8/22/2007	4022	Town of Apple Valley	15985 Wintun Rd.	1110 - First Calif...	50.00	7,050.00
Check	9/25/2007	4079	Town of Apple Valley	15985 Wintun Rd.	1110 - First Calif...	7,222.29	7,222.29
Check	9/25/2007	4080	SCE	15985 Wintun Road	1110 - First Calif...	3.98	7,226.27
Check	10/22/2007	4138	Physician Sales & Service	Down Payment Acct No 23249209-23...	1110 - First Calif...	9,087.14	16,313.41
Check	10/24/2007	4139	Sunray Technology Integration	Labor	1110 - First Calif...	750.00	17,063.41
Check	10/24/2007	4139	Sunray Technology Integration	Equip & Tax	1110 - First Calif...	891.09	17,954.50
Check	11/6/2007	4168	CDW Government, Inc.	Acct No. 103999660; Quote #HQP1066	1110 - First Calif...	14,675.59	32,630.09
Check	11/12/2007	4169	Physician Sales & Service	Customers P.O. #17511263	1110 - First Calif...	6,437.11	39,067.20
Check	11/20/2007	4183	Physician Sales & Service	Customers P.O. #17511263	1110 - First Calif...	6,437.11	45,504.31
Check	11/21/2007	4185	Town of Apple Valley	15985 Wintun Rd.	1110 - First Calif...	71.08	45,575.39
Check	11/26/2007	4184	Physician Sales & Service	Customers P.O. #17511263	1110 - First Calif...	6,437.12	52,012.51
Check	1/24/2008	4276	Town of Apple Valley	15985 Wintun Rd.	1110 - First Calif...	71.08	52,083.59
Deposit	1/25/2008	OL0125	Copeland Properties 12, LP	Janet Inde's funds - payoff remainder ...	1110 - First Calif...	-50,000.00	2,083.59
Check	3/21/2008	4387	Town of Apple Valley	15985 Wintun Rd.	1110 - First Calif...	65.04	2,148.63
Check	5/2/2008	4427	Apple Valley Glass	Wintun Road	1110 - First Calif...	100.42	2,249.05
Check	5/30/2008	4455	Town of Apple Valley	15985 Wintun Rd.	1110 - First Calif...	85.04	2,334.09
Check	7/25/2008	4562	Town of Apple Valley	15985 Wintun Rd.	1110 - First Calif...	80.40	2,414.49
Check	8/4/2008	4569	Apple Valley Weed Abatement	Order # 0025	1110 - First Calif...	3,964.49	6,378.98
Check	9/18/2008	4657	Town of Apple Valley	15985 Wintun Rd.	1110 - First Calif...	80.40	6,459.38
Check	10/15/2008	4734	Mirage Developers	15985 Wintun Rd.	1110 - First Calif...	123.82	6,583.20
Check	11/20/2008	4795	Apple Valley Ranchos Water Co	Installation ceiling tile	1110 - First Calif...	75.00	6,658.20
Check	12/1/2008	4803	Apple Valley Ranchos Water Co	Deposit to turn water on @ Wintun Rd	1110 - First Calif...	80.40	6,738.60
Check	12/8/2008	4827	Town of Apple Valley	15985 Wintun Rd.	1110 - First Calif...	398.00	7,136.60
Check	12/15/2008	wire	M & T	Estimate #11-19-2Wintun Road	1110 - First Calif...	10,000.00	17,136.60
Check	12/24/2008	4839	Southwest Gas Corporation	Wintun Road	1110 - First Calif...	172.62	17,309.22
Check	12/24/2008	4840	So. Calif. Edison	Wintun Road	1110 - First Calif...	16.02	17,325.24
Deposit	1/2/2009		Southwest Gas Corporation	Wintun Road	1110 - First Calif...	-126.43	17,198.81
Bill	1/2/2009		Mountain View Termite Control	Inv #12309	2016 - Accounts ...	965.00	18,163.81
Bill	1/5/2009		So. Calif. Edison	Customer #2-31-043-5664	2016 - Accounts ...	1.41	18,165.22
Deposit	1/16/2009		Apple Valley Ranchos Water Co	Deposit to turn water on @ Wintun Rd	1110 - First Calif...	-47.54	18,117.68
Deposit	4/13/2009		Town of Apple Valley	15985 Wintun Rd.	1110 - First Calif...	-40.20	18,077.48
Total 1481 - Note Receivable - Janet Inde						15,562.99	15,562.99
Total 1450 - N/R - Private Investors						15,562.99	15,562.99
TOTAL						15,562.99	15,562.99

** BUILDOUT OF Rancho Mirage
ACPI08.
\$ 51,838.99*

5

**Rancho Mirage Professional Plaza
Phase 2**

Tenant: Dr. Idhe Suite 225
Re: Tenant Improvement for Rancho Mirage
Date: 5/16/2008

	Current Lease	Proposed Lease Terms
Usable Sq Ft:	4,211	
Rentable Sq Ft:	4,764	
Common Area Factor:	1.1314	

Current Cost Estimations on Tenant Improvements				
Cost Type	% (i/a)	Amount	Per Sq. Ft.	Comment
A&E		\$ 7,940.37		Actual cost
Tenant Finish Design		\$ -		
Space Planning		\$ 7,686.00		Actual cost
Additional Services		\$ -		
Construction Cost - Norby		\$ 658,079.42		Actual cost
Interest Carry		\$ -	\$ -	
Sub-Total:		\$ 673,705.79	\$ 141.41	Per rentable square foot
Construction Mgmt.	2.0%	\$ 13,726.51	\$ -	
Less: Tenant Allowance:		\$ (285,840.00)	\$ -	Allowance calc as: \$60 X 4,764
Additional Cost owed by Dr. Idhe		\$ 401,592.30		
Less: Payment 1/25/08		(200,000.00)		250,000
Total Owed by Dr. Idhe 5/16/08		201,592.30		

Change Order Breakdown:	Contractor's Cost	Status	Comment
No. 1			
No. 2			
No. 3			
Total of all approved Change Orders:	\$ -		

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EXHIBIT 2

**EXHIBIT
EX PARTE APPLICATION FOR ORDER FOR PARTIAL STAY PENDING APPEAL,
OR FOR ORDER TRANSFERRING FUNDS TO A DEPOSITORY ACCOUNT PENDING APPEAL**

Copeland Properties Twelve, LP
Account QuickReport

All Transactions

10:46 AM
11/27/13

Accrual Basis

Type	Date	Num	Name	Split	Memo	Amount
1451 - Note Receivable - Ihde						
Check	3/12/2007	4254	Franchise Tax Board	1100 - 1st Centennial	Ihde Conston, Inc. Return	800.00
Check	7/11/2007	4273	JMA Architecture, Inc.	1100 - 1st Centennial	Architecture	0.00
General Journal	12/31/2007	GJ1202		6501.1 - Construction	Reclassify Ihde expenses as receivable	179,695.51
Deposit	1/25/2008		Janet K. Ihde, M.D., Inc	1100 - 1st Centennial	Deposit	-250,000.00
Check	1/25/2008	OL0125	Copeland Wealth Management Real Estate	1100 - 1st Centennial	CRI Loaned to CP12 for building-Pre release of funds used to pay CRI back	50,000.00
Check	1/29/2008	4347	Pacific Western Bank	1100 - 1st Centennial	Ihde overage of tenant improvements	200,000.00
Check	3/10/2008	4368	Franchise Tax Board	1100 - 1st Centennial	Ihde Conston, Inc.	800.00
Check	6/27/2008	4427	Schindler Elevator Corporation	1100 - 1st Centennial	Invoice # 7100131152	756.66
Check	7/25/2008	4462	Schindler Elevator Corporation	1100 - 1st Centennial	Invoice # 8102109660	1,146.77
Check	9/19/2008	4500	Pacific Western Bank	1100 - 1st Centennial	Loan #16041021/TL overage	200,000.00
Check	10/9/2008	4513	Pacific Western Bank	1100 - 1st Centennial	Loan #16041021	92,000.00
Check	11/7/2008	4539	Pacific Western Bank	1100 - 1st Centennial	VOID: Loan #16041021	0.00
General Journal	7/9/2010	NJB7910		1230 - Leasehold Improvements	Adjust Ihde construction cost	-90,168.72
Total 1451 - Note Receivable - Ihde						385,030.22
TOTAL						385,030.22

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EXHIBIT 3

EXHIBIT

**EX PARTE APPLICATION FOR ORDER FOR PARTIAL STAY PENDING APPEAL,
OR FOR ORDER TRANSFERRING FUNDS TO A DEPOSITORY ACCOUNT PENDING APPEAL**

 **AIA[®] Document A114[™] – 2001**

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price

AGREEMENT made as of the Fourth day of September in the year 2007.
(In words, indicate day, month and year)

BETWEEN the Owner
(Name, address and other information):

Copeland Properties Twelve, LP
25809 Business Center Drive, Ste. B
Redlands, CA 92374

and the Contractor
(Name, address and other information):

Nordby Construction Company
1550 Airport Blvd., Suite 201
Santa Rosa, CA 95403

The Project is
(Name and address):

Dr. Idhe Tenant Improvement
Rancho Mirage Professional Plaza
35800 Bob Hope Drive
Rancho Mirage, CA 92270

The Architect is
(Name, address and other information):

JMA Architecture & Engineering
73-995 El Paseo, Suite 201
Palm Desert, CA 92260

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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User Notes:

(3915983499)

TABLE OF ARTICLES

1. THE CONTRACT DOCUMENTS
2. THE WORK OF THIS CONTRACT
3. RELATIONSHIP OF THE PARTIES
4. DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
5. CONTRACT SUM
6. CONTROL ESTIMATE AND CONTRACT TIME
7. COSTS TO BE REIMBURSED
8. COSTS NOT TO BE REIMBURSED
9. DISCOUNTS, REBATES AND REFUNDS
10. SUBCONTRACTS AND OTHER AGREEMENTS
11. ACCOUNTING RECORDS
12. PAYMENTS
13. TERMINATION OR SUSPENSION
14. MISCELLANEOUS PROVISIONS
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ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. These listed form the Contract and are all as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

ARTICLE 2 THE WORK OF THIS CONTRACT

§ 2.1 The Contractor shall execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

§ 3.1 The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement if it differs from the date of this Agreement, or if applicable, state that the date will be fixed in a notice to proceed.)

The date of commencement shall be within five (5) working days of receipt of written Notice to Proceed from the Owner.

§ 4.2 The Contract Time shall be measured from the date of commencement.

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than TBD () days from the date of commencement or as follows:
(Insert the number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work	Substantial Completion date
------------------------	------------------------------------

, subject to adjustments of this Contract Time as provided in Section 6.2.4.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

None

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the actual Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.2 The Contractor's Fee is:

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§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's approval. See Article 14.7.3.

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify the personnel to be included, whether for all or only part of the time and the rates at which time will be charged to the Work.)

Person included	Status (full-time/part-time)	Rate (\$ 0.00)	Rate (unit of time)
-----------------	------------------------------	----------------	---------------------

§ 7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.3 Subcontract Costs

§ 7.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs including transportation and storage at the site of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 7.5.3 Costs of removal of legally disposed debris from the site.

§ 7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 7.5.5 That portion of the reasonable travel and subsistence expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.5.6 Costs of materials and equipment stored off-site at a mutually acceptable location, if approved in advance by the Owner.

§ 7.6 Miscellaneous Costs

§ 7.6.1 That portion of insurance and bond premiums that can be directly attributed to this Contract.

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-1997 or other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. Such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee, however. If such royalties, fees and costs are excluded by the last sentence of Section 3.17.1 of AIA Document A201-1997 or other provisions of the Contract Documents, they shall not be included in the Cost of the Work.

§ 7.6.6 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

§ 7.6.7 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Owner's prior written approval, which shall not be unreasonably withheld.

§ 7.6.8 Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 7.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of AIA Document A201-1997.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors or suppliers.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Sections 7.2.2 and 7.2.3, or as may be provided in Article 14.
- .2 Expenses of the Contractor's principal office and offices other than the site office.
- .3 Overhead and general expenses, except as may be expressly included in Article 7.

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- 4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.
- 5 Rental costs of machinery and equipment, except as specifically provided in Section 7.5.2.
- 6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
- 7 Any cost not specifically and expressly described in Article 7.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefore from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom there is reasonable objection on the Contractor's part.

§ 10.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement and shall not be awarded on the basis of Cost Plus a Fee without the prior consent of the Owner.

ARTICLE 11 ACCOUNTING RECORDS

§ 11.1 The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 Progress Payments

§ 12.1.1 Based upon Applications for Payment submitted to the Owner by the Contractor, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 12.1.3 Provided that an Application for Payment is received by the Owner not later than the last day of a month, the Owner shall make payment to the Contractor not later than the tenth day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than ten (10) days after the Owner receives the Application for Payment.

§ 12.1.4

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§ 12.1.5 Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.

§ 12.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 take the Cost of the Work as described in Article 7;
- .2 add the Contractor's Fee, less retainage of five percent (5%). The Contractor's Fee shall be computed upon the Cost of the Work described in the preceding Section 12.1.6.1 at the rate stated in Section 5.2; or if the Contractor's Fee is stated as a fixed sum in that paragraph, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the preceding clause bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 subtract the aggregate of previous payments made by the Owner;
- .4 subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .5 subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment as provided in the Contract Documents.

§ 12.1.7 Additional retainage, if any, shall be as follows:

None

§ 12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of not less than five percent (5%). The Owner and Contractor shall agree on a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

§ 12.1.9 In taking action on the Contractor's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Owner has made exhaustive or continuous on-site inspections; or that the Owner has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 12.2 Final Payment

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work, as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Owner.

§ 12.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Owner's final Certificate for Payment, or as follows:

§ 12.2.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Owner by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Owner will, within seven days after receipt of written report of the Owner's accountants, make final payment to the Contractor.

§ 12.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to demand arbitration of the disputed amount. Such demand for arbitration shall be made by the Contractor within 30 days after the Contractor's receipt of the Owner's final payment. Failure to demand arbitration within this 30-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Contractor. Pending a final resolution by arbitration, the Owner shall pay the Contractor.

§ 12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 The Contract may be terminated by the Contractor, or by the Owner, as provided in Article 14 of AIA Document A201-1997. However, the amount to be paid to the Contractor under Section 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to receive under Section 13.2 below.

§ 13.2 The Contract may be terminated by the Owner for cause or for convenience as provided in Article 14 of AIA Document A201-1997; however, the Owner shall then only pay the Contractor an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.2 or, if the Contractor's Fee is stated as a fixed sum in that Paragraph, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner.

§ 13.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 13.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997; in such case, the Contract Sum and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-1997, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.2 and 5.3 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any)

The Bank of America "Prime Rate" plus 5%.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and

elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 14.3 The Owner's representative is:
(Name, address and other information)

Don Copeland
25809 Business Center Drive, Suite B
Redlands, CA 92374

§ 14.4 The Contractor's representative is:
(Name, address and other information)

John Bare
Nordby Construction Company
1550 Airport Blvd., Suite 201
Santa Rosa, CA 95403

§ 14.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

§ 14.6 Dispute Resolution

§ 14.6.1 Claims, disputes or other matters in question between the parties to this Agreement shall be resolved by mediation or by arbitration. Prior to arbitration, the parties shall endeavor to reach settlement by mediation. (Refer to Sections 4.4 through 4.6 of AIA Document A201-1997, General Conditions of the Contract for Construction, for specific requirements related to mediation and arbitration provisions.)

§ 14.7 Other provisions:

- 14.7.1 For each additive Change in the Work, that results in an increase to the contract amount, the Contractor's Fee shall be increased by 6.5% of the cost of the change. The Contractor's Fee shall not be reduced as a result of deductive changes.
- 14.7.2 The intent of Exhibit C "Scope of Work Clarifications" shall govern and control over any conflicting provisions of the Contract Documents.
- 14.7.3 Reference Article 7.2.2 – That portion of the Contractors supervisory and administrative personnel's time spent working on this Project, whether it is on site or at Contractor's principal office, shall be included as a Cost of the Work.
- 14.7.4 The Owner's Representative Don Copeland shall act on behalf of the Owner for the administration of this Agreement. The Owner's Representative shall have the authority to review and approve (i) all changes, modifications, and amendments to this Agreement and (ii) all agreements, consents, directions, requirements, requests, notices and other communications required or permitted hereunder or requested by the Contractor.
- 14.7.5 The estimated Cost of the Work shall include the Contractor's Contingency, a sum established by the Contractor for use at the Contractor's sole discretion to cover costs that are properly reimbursable as a Cost of the Work but that are not the basis of a Change Order.
- 14.7.6 In the event of litigation, arbitration, or other dispute resolution procedure the court arbitrator, judge, or mediator may award reasonable attorney's fees and costs to the party it determines is the prevailing party in the litigation

ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

§ 15.1 The Contract Documents include:

AIA Document A114™ – 2001. Copyright © 2001 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 11:15:18 on 09/06/2007 under Order No.1000297691_1 which expires on 4/17/2008, and is not for resale.
User Notes: (3915983499)

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- .1 The Agreement is this executed 2001 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A114.
- .2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201.
- .3 The Supplementary and other Conditions of the Contract are as follows:

Document	Title	Pages
----------	-------	-------

§ 15.1.4 The Specifications and Addenda, if any, are as follows:
(Either list here or refer to an exhibit attached to this Agreement)

Title of Addenda exhibit:

(Rows deleted)

§ 15.1.5 The Drawings are as follows, and are dated unless a different date is shown below:
(Either list here or refer to an exhibit attached to this Agreement)

See attached Exhibit A

(Rows deleted)

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 15.

§ 15.1.6 Other Documents, if any, forming part of the Contract Documents are as follows:
(List here any additional documents, such as a list of allowances or unit prices that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements, such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid, are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

- 15.1.6.1 Exhibit B, Scope of Work Clarification
- 15.1.6.2 Exhibit C, Line Item Cost Breakdown
- 15.1.6.4 Exhibit D, "Nordby Labor Rates" shall be the rates used for estimating and billing the work.

ARTICLE 16 INSURANCE AND BONDS

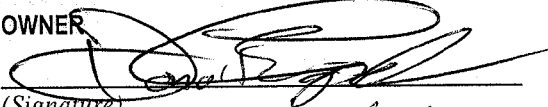
§ 16.1 The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-1997.

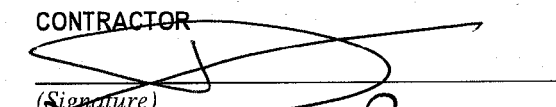
(List required limits of liability for insurance and bonds. AIA Document A201-1997 gives other specific requirements or insurance and bonds.)

Type of insurance	Limits of liability (\$ 0.00)
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This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER

(Signature)
Don Copeland
(Printed name and title)

CONTRACTOR

(Signature)
Del Nordeby, President
(Printed name and title)

Init.



ATTACHMENT 'A' - LIST OF CONTRACT DOCUMENTS

SHEET	DESCRIPTION	REVISION	DATE	DESIGNER/ENGINEER
ARCHITECTURAL				
T-1	Title Sheet		06/18/07	JMA Architecutre & Engineering
A-1	Notation and Dimension Floor Plan		06/18/07	"
A-2	Wall Sections and Details		06/18/07	"
A-3	Interior Elevations		06/18/07	"
A-4	Interior Elevations		06/18/07	"
A-5	Reflected Ceiling Plan		06/18/07	"
A-6	Door and Finish Schedules		06/18/07	"
A-7	Elevator Framing, Foundation, and Details		06/18/07	"
ELECTRICAL				
E-1	Electrical Power Plan		06/11/07	"
E-2	Electrical Lighting Plan and Title -24		06/11/07	"
MECHANICAL				
M-1	Mechanical Plan		06/08/07	"
M-2	Mechanical Plan			"
M-3	Title 24 Plan			"
PLUMBING				
P-1	Plumbing Plan		06/11/07	"



Estimate Summary

08/06/07

Dr. Janet K. Idhe Tenant Improvement
Rancho Mirage Professional Plaza
35-800 Bob Hope Drive, Rancho Mirage, CA 92270

Build Sqft.

4,330

Schedule

4 months

CSI Division	Description	Subcontractor	Bids
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Exclusions:

- 1 Permits & fees
- 2 Testing & inspection fees
- 3 Structural testing and observation are excluded. Recommended Owner allowance is \$ 5,000.
- 4 Security system
- 5 Security system power supplies
- 6 Network & telecommunications equipment, wiring & installation
- 7 FF&E items
- 8 Lockers (patient & staff)
- 9 Window treatments
- 10 Patient scale is excluded.
- 11 Curtains in Procedure Room & Exam Rooms 1-3
- 12 View Boxes
- 13 Shear studs per detail 3/A-8 are excluded pending clarification from Structural Engineer.
- 14 Appliances
- 15 Under cabinet lighting
- 16 Floor slope to floor drains
- 17 Carpet borders
- 18 Elevator smoke doors, hardware & pockets (not shown)

Qualifications:

- 1 All metal stud framing to be 20ga. 18 ga top and bottom track is excluded.
- 2 Ceiling on 1st floor lobby addition to be Level 4 painted drywall to match existing lobby.
- 3 Corridor doors, frames and hardware are excluded.
- 4 Owner to pay for power and water for construction.
- 5 Exterior side of common walls is taped only, ready for paint.
- 6 Cabinets to be flush faced plastic laminate exteriors, european style doors with melamine interiors.
- 7 Stone @ Reception is an allowance pending material selection.

Alt #1	Provide Kerfed wood frames for interior door jambs in lieu of Timely fram	\$800
Alt #2	Provide R-13 insulation in Patient Restroom walls (not shown)	\$75
Alt #3	Provide R-19 insulation in wall around new elevator (not shown)	\$195



Estimate Summary 08/06/07

Dr. Janet K. Idhe Tenant Improvement **Build Sqft. 4,330**

Rancho Mirage Professional Plaza

35-800 Bob Hope Drive, Rancho Mirage, CA 92270 **Schedule 4 months**

CSI Division	Description	Subcontractor	Bids
1000	General Conditions	Nordby	99,469
1702	Progressive Cleanup/Debris Boxes	Nordby	5,340
1703	Final Cleanup	Nordby	1,075
1902	Blueprints (submittals and as built)	Allowance	1,250
	Compaction Testing	NIC	By Owner
3300	Demolition/Concrete/Shoring	MCC	11,500
3600	Grouting	Nordby	900
5100	Structural Steel/Misc Metal	PSW	14,523
	Structural Steel Testing/Inspection	NIC	By Owner
6100	Misc. Rough Carpentry/Backing for Grab Bars	Nordby	1,500
	Finish Carpentry (wood base)	w/ 08100	-
6400	Cabinets/Countertops/Shelving	Spectrum	58,197
7200	Insulation @ Interior Walls	Paragon Schmid	3,579
7900	Roof Penetration/Sealants	Al Miller Roofing	3,300
8100	Doors, Frames, Hardware	JB Finish	15,029
9150	Drywall/Framing/Taping	Shepherd	62,170
	Cover steel in Waiting Room	Allowance	1,000
9300	Stone Countertops	Allowance	2,000
9510	Acoustical Ceilings	NTA	18,300
9680	Flooring	Dels Flooring	25,882
9900	Painting	Richken	10,576
10520	Fire Extinguishers/Cabinets	NCC	1,500
10800	Toilet Accessories	w/ 08100	-
13900	Fire Sprinklers	Shasta	7,900
14100	Elevators	Schindler	54,200
15400	Plumbing	SSW	30,500
	Dishwasher - supply and install	Allowance	1,500
15700	HVAC	SSW	36,800
16000	Electrical/Fire Alarm	Cove	53,650
16100	Temp Power/Lighting Distribution	Nordby/Cove	1,500
	Subtotal		523,140
	Contingency 4.00%		20,926
	General Liability Insurance 1.30%		7,073
	Nordby Overhead / Profit 6.50%		35,364
	TOTAL		\$ 586,503

NORDBY CONSTRUCTION COMPANY

Labor Rates

2006

HOURLY

LABORER	\$48.35
CARPENTER	\$66.45
EQUIPMENT OPERATOR	\$64.25
FOREMAN	\$69.75
SUPERINTENDENT	\$88.25
SERVICE TECHNICIAN (includes van, tools, and labor)	\$85.00
GENERAL SUPERINTENDENT	\$98.35
PROJECT FIELD COORDINATOR	\$42.50
PROJECT ENGINEER	\$56.75
PROJECT MANAGER	\$96.35
SENIOR PROJECT MANAGER	\$106.00
PRE-CON MANAGER	\$96.36

All labor rates include base hourly cost, medical, dental, vision, vacation accrual, holiday pay if applicable and sick days if applicable.

Exclusions: Vehicle, fuel, insurance, tools, Cell Phones etc., except where noted.

File Location: Microsoft Word/Sys on 'Nordby01'(U:)/Template/Hourly Labor Rates 2005

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EXHIBIT 4

EXHIBIT

**EX PARTE APPLICATION FOR ORDER FOR PARTIAL STAY PENDING APPEAL,
OR FOR ORDER TRANSFERRING FUNDS TO A DEPOSITORY ACCOUNT PENDING APPEAL**

APPLICATION FOR CERTIFICATE FOR PAYMENT AIA DOCUMENT G702

TO OWNER: RMPP II Dr. Idhe
 Copeland Properties Twelve LP
 25809 Business Center, Ste B
 Redlands, CA 92374

PROJECT: Dr. Idhe Tenant Improvements

APPLICATION NO.: 007362002
 PERIOD TO: 9/30/07
 PROJECT NOS.: #07/362
 CONTRACT DATE: 9/17/07

Distribution to:
 OWNER
 ARCHITECT
 CONTRACTOR
 OWNER'S REP

FROM CONTRACTOR: NORDBY CONSTRUCTION COMPANY
 1550 Airport Blvd., Suite 201
 Santa Rosa, CA 95403

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL BUDGET	\$586,503.00
2. BUDGET ADJUSTMENTS	\$183,049.50
3. CURRENT BUDGET (line 1 + 2)	\$769,552.50
4. TOTAL COMPLETED & STORED TO DATE	\$279,426.23

5. RETAINAGE:
 a. 5% of Completed Work \$13,971.31
 (Columns D + E on G703)

b. % of Stored Material
 (Column F on G703)

Total Retainage (line 5a + 5b or

Total in Column M of G703)	\$13,971.31
6. TOTAL EARNED LESS RETAINAGE	\$265,454.92

(line 4 less line 5 total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT
 (line 6 from prior Certificate)

\$146,377.91
\$119,077.01

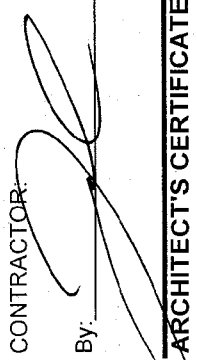
8. CURRENT PAYMENT DUE

\$504,097.58

9. BALANCE TO FINISH, INCLUDING RETAINAGE
 (line 3 less line 6)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	NA	
Total approved this Month		
TOTALS	NA	NA
NET CHANGES by Change Order	NA	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:  Date: 9/25/07

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$
 (Attach explanation if amount certified differs from the amount applied for: Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

OWNER: _____ Date: _____

CONTINUATION SHEET
 AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing
 Contractor's signed Certification is attached.
 In tabulations below, amounts are stated to the nearest dollar.
 Use Column I on Contracts where variable retainage for line items may apply.

A	B	C	D	E	F	G	H	I	J	K	L	M
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	ADDITIONAL WORK	CONTINGENCY USAGE	REVISED SCHEDULE OF VALUES	WORK COMPLETED FROM PREVIOUS APPLICATION	GROSS COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN G OR H)	TOTAL COMPLETED AND STORED TO DATE (G+H+I)	% (J/F)	BALANCE TO FINISH (F-J)	RETAINAGE BALANCE
01	General Conditions	99,469.00	22,250.00		121,719.00	11,672.88	16,504.91	0.00	28,177.79	23%	93,541.21	1,408.99
02	Progressive & Final Cleanup	7,665.00			7,665.00			0.00	0.00	0%	7,665.00	0.00
03	Demo/Concrete/Shoring	12,400.00			12,400.00	11,500.00		0.00	11,500.00	93%	900.00	575.00
04	Structural & Misc. Steel	14,523.00			14,523.00	14,523.00		0.00	14,523.00	100%	0.00	726.75
05	Rough Carpentry & Cabinets	59,697.00	24,403.00		84,100.00		27,860.00	0.00	27,860.00	33%	56,240.00	1,393.00
06	Insulation & sealants	6,879.00	1,200.00		8,079.00			0.00	0.00	0%	8,079.00	0.00
07	Doors/Frames/Hardware	15,029.00	8,641.00		23,670.00			0.00	0.00	0%	23,670.00	0.00
08	Drywall	63,170.00	9,717.50		72,887.50			0.00	58,853.50	81%	14,034.00	2,942.68
09	Stone Countertops	2,000.00	24,760.00		26,760.00	36,852.00	22,001.50	0.00	14,256.00	53%	12,504.00	712.50
10	Acoustical Ceilings	18,300.00	1,200.00		19,500.00	7,125.00		0.00	0.00	0%	19,500.00	0.00
11	Flooring	25,882.00	5,500.00		31,382.00			0.00	0.00	0%	31,382.00	0.00
12	Painting	10,576.00	6,500.00		17,076.00			0.00	0.00	0%	17,076.00	0.00
13	Fire Extinguishers & Cabinets	3,000.00			3,000.00			0.00	0.00	0%	3,000.00	0.00
14	Fire Sprinklers	7,900.00			7,900.00		3,555.00	0.00	3,555.00	45%	4,345.00	177.75
15	Elevators	54,200.00			54,200.00	13,175.00		0.00	13,175.00	24%	41,025.00	888.45
16	Plumbing	30,500.00			30,500.00	9,150.00	12,200.00	0.00	21,350.00	70%	9,150.00	1,067.90
17	HVAC	36,800.00	500.00		37,300.00	25,760.00	7,360.00	0.00	33,120.00	89%	4,180.00	1,536.00
18	Electrical	55,150.00	65,000.00		120,150.00	8,278.75	18,877.00	0.00	27,155.75	23%	92,994.25	1,947.79
19	Contingency	20,926.00			20,926.00			0.00	0.00	0%	20,926.00	0.00
20	Overhead and Profit 6.5%	35,364.00	11,030.00		46,394.00	8,972.38	7,506.81	0.00	16,479.19	36%	29,914.81	823.96
21	General Liability Ins. 1.3%	7,073.00	2,348.00		9,421.00	7,073.00	2,348.00	0.00	9,421.00	100%	0.00	471.05
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	TOTAL This Page	\$586,603.00	\$183,049.50	\$0.00	\$769,552.50	\$154,082.01	\$125,344.22	\$0.00	\$279,426.23	36%	\$490,126.27	\$13,973.31

Conditional Waiver and Release Upon Progress Payment

[California Civil Code 3262(d)(1)]

Upon receipt by the undersigned of

a check from Copeland Properties Twelve L.P.
(Maker of Check)

In the sum of \$ 119,077.01
(Amount of Check)

Payable to Nordby Construction Company
(Payee or Payees of Check)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanics' lien, stop notice or bond right the undersigned has on the job of

Copeland Properties Twelve L.P.
(Owner)

located at Dr. Idhe Tenant Improvements - Rancho Mirage Professional Plaza
(Job Description)

to the following extent. This release covers a progress payment for labor, services, equipment, or material furnished to

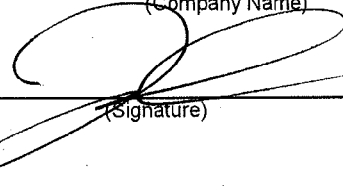
Copeland Properties Twelve L.P.
(Your Customer)

through 09/30/07 only and does not
(Date)

cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanics' lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

Dated: 09/25/07

Nordby Construction Company
(Company Name)

By  Project Manager
(Signature) (Title)

NOTE: This form of release is in accordance with the requirements of Civil Code Section 3262(d)(1). It is to be used by a party who applies for a progress payment when the progress payment check has not yet cleared the bank. This release only becomes effective when the check, properly endorsed, has cleared the bank.

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EXHIBIT 5

**EXHIBIT
EX PARTE APPLICATION FOR ORDER FOR PARTIAL STAY PENDING APPEAL,
OR FOR ORDER TRANSFERRING FUNDS TO A DEPOSITORY ACCOUNT PENDING APPEAL**

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EXHIBIT 6

**EXHIBIT
EX PARTE APPLICATION FOR ORDER FOR PARTIAL STAY PENDING APPEAL,
OR FOR ORDER TRANSFERRING FUNDS TO A DEPOSITORY ACCOUNT PENDING APPEAL**

 **AIA** Document A101™ – 1997

Standard Form of Agreement Between Owner and Contractor
where the basis of payment is a STIPULATED SUM

AGREEMENT made as of the seventeenth day of September in the year of 2007
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

Copeland Properties Twelve, LP
25809 Business Center Drive, Ste. B
Redlands, CA 92374

and the Contractor:
(Name, address and other information)

Nordby Construction Company
1550 Airport Blvd., Suite 201
Santa Rosa, CA 95403

The Project is:
(Name and location)

Rancho Mirage Professional Plaza Corridor TI
35800 Bob Hope Drive
Ranch Mirage, CA 92270

The Architect is:
(Name, address and other information)

JMA Architecture & Engineering
73-995 El Paseo, Suite 201
Palm Desert, CA 92260

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The date of commencement shall be within 5 working days of receipt of written Notice to Proceed from the Owner.

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

November 30, 2007

Portion of Work

Substantial Completion Date

subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Two Hundred Sixty-Eight Thousand, Five Hundred Thirty Dollars and 00/100's (\$ 268,530.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires)

§ 4.3 Unit prices, if any, are as follows:

Description	Units	Price (\$ 0.00)
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ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment to the Contractor not later than the 10th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than fifteen (15) days after the Architect receives the Application for Payment.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent (5%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-1997.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201-1997 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-1997.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

ARTICLE 6 TERMINATION OR SUSPENSION

§ 6.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-1997.

§ 6.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

Bank of America "Prime Rate" plus 5%

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 7.3 The Owner's representative is:
(Name, address and other information)

Don Copeland
25809 Business Center Drive, Suite B
Redlands, CA 92374

§ 7.4 The Contractor's representative is:
(Name, address and other information)

John Bare
Nordby Construction Company
1550 Airport Blvd., Suite 201
Santa Rosa, CA 95403

§ 7.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 7.6 Other provisions:

- 7.6.1 The intent of Exhibit "B" "Scope of Work Clarifications" shall govern and control over any conflicting provisions of the Contract Documents.
- 7.6.2 The Owner's Representative, Don Copeland, shall act on behalf of the Owner for the administration of this Agreement. The Owner's Representative shall have the authority to review and approve (i) all changes, modifications, and amendments to this Agreement; and (ii) all agreements, consents, directions, requirements, requests, notices and other communications, required or permitted hereunder or requested by the Contractor.
- 7.6.3 In the event of litigation, arbitration, or other dispute resolution procedure the court, arbitrator, judge, or mediator may award reasonable attorney's fees and costs to the party it determines is the prevailing party in the litigation or dispute.
- 7.6.4 Unless individual Allowance items are specified otherwise, Allowances shall include all labor, materials, equipment, subcontractors, taxes, freight, unloading, and handling costs; but shall not include the Contractor's profit or overhead.
- 7.6.5 All Value Engineering suggestions are to be evaluated and approved by the design professionals from a design and quality standpoint. The Architect shall be responsible for modifying the plans to be filed with the Building Department to incorporate and coordinate all accepted Value Engineering. Contractor's suggestions shall not create any responsibility or liability on the part of Contractor for the compliance of designs with applicable codes, for performance or aesthetics. Any re-design (or other) costs due to said items are not included in Value Engineering suggestions and shall be paid separately by the Owner.
- 7.6.6 In the event of significant delay or price increase of material occurring during the performance of the contract through no fault of the contractor or its subcontractors, the contract sum, time of performance or contract requirements shall be equitably adjusted by change order in accordance with the procedures of the contract documents. The change in price of an item or material shall be considered significant when the price of an item increases more than 5% between the date of this contract and the date of the purchase of such item. Such changes will be reasonably documented and validated by the Contractor.
- 7.6.9 For each additive Change in the Work the Contractor's Fee shall be increased by 6.5% of the cost of the change. The Contractor's Fee shall not be reduced as a result of deductive changes.
- 7.6.10 The Contract Sum shall include the Contractor's Contingency, a sum established by the Contractor for use at the Contractor's sole discretion to cover costs that are properly reimbursable as a Cost of the Work but that are not the basis of a Change Order. The fixed Contract Sum shall include this Contingency, which shall be for the Contractor's use and benefit. The Contract Sum shall be reduced by any remaining balance

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in the Contingency if the Contingency is not used in its entirety. Examples of purposes for which the Contingency sum may be used include, without limitation, costs incurred as a result of the details necessary to carry out the final design, cost attributable to weather, costs attributable to labor, materials, or equipment market conditions, costs that were not anticipated in establishing the Contract Sum, and/or costs to correct as-built conditions, etc.

ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS

§ 8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A101-1997.

§ 8.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

§ 8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows

Document	Title	Pages
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§ 8.1.4 The Specifications are those contained in the Project Manual dated as in Section 8.1.3, and are as follows: *(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

(Rows deleted)

§ 8.1.5 The Drawings are as follows, and are dated unless a different date is shown below: *(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*

See Exhibit A attached

(Rows deleted)

§ 8.1.6 The Addenda, if any, are as follows:

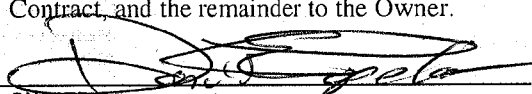
Number	Date	Pages
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Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

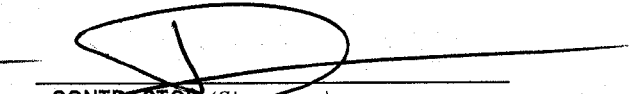
§ 8.1.7 Other documents, if any, forming part of the Contract Documents are as follows: *(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

- Exhibit B – Scope of Work Clarifications
- Exhibit C – Line item cost breakdown
- Exhibit D – “Nordby Equipment/Tool Rate Schedule” shall be the rates used for estimating the work and billing any Change Orders.

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.


OWNER (Signature)

Donald Copeland
(Printed name and title)


CONTRACTOR (Signature)

Del Nordby, President
(Printed name and title)

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EXHIBIT 7

**EXHIBIT
EX PARTE APPLICATION FOR ORDER FOR PARTIAL STAY PENDING APPEAL,
OR FOR ORDER TRANSFERRING FUNDS TO A DEPOSITORY ACCOUNT PENDING APPEAL**

Copeland Wealth Management - A Real Estate Corporation
Account QuickReport

All Transactions

5:31 PM
12/06/13

Accrual Basis

Type	Date	Num	Name	Memo	Split	Amount	Balance
1450 - N/R - Private Investors							
1481 - Note Receivable - Janet Ihde							
1481.1 - Accrued Int - Ihde							
General Journal	6/30/2008	GJ632		To record interest due 7/01/07-6/30/08	1402.1 - Accrued Interest - CP2	1,172.91	1,172.91
General Journal	8/31/2008	GJ807		To record July & Aug accrued int income	1403.1 - Accrued Int - CP5	47.09	1,220.00
General Journal	9/30/2008	GJ932		To accrue September Interest	1405.1 - Accrued Interest - CP6	29.59	1,249.59
General Journal	10/15/2008	GJ1002		To record July & Aug accrued int income	1403.1 - Accrued Int - CP5	0.00	1,249.59
General Journal	10/24/2008	GJ1010		To record October accrued int income		27.12	1,276.71
General Journal	11/30/2008	GJ1107		To record Nov accrued interest		27.12	1,303.83
General Journal	12/31/2008	GJ1212		To record Dec accrued interest		98.74	1,402.57
General Journal	1/31/2009	GJ107		To record Jan accrued interest income		104.02	1,506.59
General Journal	2/28/2009	GJ204		To record accrued interest receivable		104.02	1,610.61
General Journal	3/31/2009	GJ309		To record accrued interest receivable		104.02	1,714.63
General Journal	4/30/2009	GJ413		To record April accrued int income		103.75	1,818.38
General Journal	5/31/2009	GJ507		To record May accrued int income		1,922.13	1,922.13
General Journal	6/30/2009	GJ611		To record June accrued int income		103.75	2,025.88
General Journal	7/31/2009	GJ731		To record accrued interest receivable		103.75	2,129.63
General Journal	8/31/2009	GJ809		To record accrued interest receivable		103.75	2,233.38
General Journal	9/30/2009	GJ909		To record accrued interest receivable		103.75	2,337.13
General Journal	10/31/2009	GJ1009		To record accrued interest receivable		103.75	2,440.88
General Journal	11/30/2009	GJ1109		To record accrued interest receivable		103.75	2,544.63
General Journal	12/31/2009	GJ1209		To record accrued interest receivable		103.75	2,648.38
General Journal	1/1/2010	GJ111		To reclassify accrued int as account receivable	1200 - Accounts Receivable	-2,648.38	0.00
Total 1481.1 - Accrued Int - Ihde 0.00							
1481 - Note Receivable - Janet Ihde - Other							
Check	5/9/2007	3852	JMA Architecture, Inc.	Invoice #1577 & 1594	1110 - First California Bank	7,000.00	7,000.00
Check	8/22/2007	4022	Town of Apple Valley	15985 Wintun Rd.	1110 - First California Bank	50.00	7,050.00
Check	9/25/2007	4079	Town of Apple Valley	15985 Wintun Rd.	1110 - First California Bank	172.29	7,222.29
Check	9/25/2007	4080	SCE	15985 Wintun Road	1110 - First California Bank	3.98	7,226.27
Check	10/22/2007	4138	Physician Sales & Service	Down Payment Acct No 23249209-23249218	1110 - First California Bank	9,087.14	16,313.41
Check	10/24/2007	4139	Sunray Technology Integration	Labor	1110 - First California Bank	750.00	17,063.41
Check	10/24/2007	4139	Sunray Technology Integration	Equip & Tax	1110 - First California Bank	891.09	17,954.50
Check	11/6/2007	4168	CDW Government, Inc.	Acct No. 10399960; Quote #HQP1066	1110 - First California Bank	14,675.59	32,630.09
Check	11/12/2007	4169	Physician Sales & Service	Customers P.O. #17511263	1110 - First California Bank	6,437.11	39,067.20
Check	11/20/2007	4183	Physician Sales & Service	Customers P.O. #17511263	1110 - First California Bank	6,437.11	45,504.31
Check	11/21/2007	4185	Town of Apple Valley	15985 Wintun Rd.	1110 - First California Bank	71.08	45,575.39
Check	11/26/2007	4184	Physician Sales & Service	Customers P.O. #17511263	1110 - First California Bank	6,437.12	52,012.51
Check	1/24/2008	4276	Town of Apple Valley	15985 Wintun Rd.	1110 - First California Bank	71.08	52,083.59
Deposit	1/25/2008	OL0125	Copeland Properties 12, LP	Janet Ihde's funds - payoff remainder when bank releases funds	1110 - First California Bank	-50,000.00	2,083.59
Check	3/21/2008	4357	Town of Apple Valley	15985 Wintun Rd.	1110 - First California Bank	65.04	2,148.63
Check	5/2/2008	4427	Apple Valley Glass	Wintun Road	1110 - First California Bank	100.42	2,249.05
Check	5/30/2008	4455	Town of Apple Valley	15985 Wintun Rd.	1110 - First California Bank	85.04	2,334.09
Check	7/25/2008	4562	Town of Apple Valley	15985 Wintun Rd.	1110 - First California Bank	80.40	2,414.49
Check	8/4/2008	4569	Apple Valley Weed Abatement	Order # 0025	1110 - First California Bank	1,450.00	3,864.49
Check	9/18/2008	4657	Town of Apple Valley	15985 Wintun Rd.	1110 - First California Bank	80.40	3,944.89
Check	10/15/2008	4734	Mirage Developers	installation ceiling tile	1110 - First California Bank	123.82	4,068.71
Check	11/20/2008	4795	Apple Valley Ranchos Water Co	Deposit to turn water on @ Wintun Rd	1110 - First California Bank	75.00	4,143.71
Check	12/1/2008	4803	Town of Apple Valley	15985 Wintun Rd.	1110 - First California Bank	80.40	4,224.11
Check	12/8/2008	4827	M & T	Estimate #11-19-2/Wintun Road	1110 - First California Bank	398.00	4,622.11
Check	12/15/2008	wire	Dr. Ihde		1110 - First California Bank	10,000.00	14,622.11
Check	12/24/2008	4839	Southwest Gas Corporation	Wintun Road	1110 - First California Bank	172.62	14,794.73
Check	12/24/2008	4840	So. Calif. Edison	Wintun Road	1110 - First California Bank	16.02	14,810.75
Check	1/2/2009		Southwest Gas Corporation	Wintun Road	1110 - First California Bank	-126.43	14,684.32
Deposit	1/2/2009		Mountain View Termite Control	Inv #12309	2016 - Accounts Payable	965.00	15,649.32
Bill	1/5/2009		So. Calif. Edison	Customer #2-31-043-5664	2016 - Accounts Payable	1.41	15,650.73

Copeland Wealth Management - A Real Estate Corporation
 Account QuickReport

All Transactions

5:31 PM
 12/06/13

Accrual Basis

Type	Date	Num	Name	Memo	Split	Amount	Balance	
Deposit	1/16/2009		Apple Valley Ranchos Water Co	Deposit to turn water on @ Wintun Rd	1110 · First California Bank	-47.54	15,603.19	
Deposit	4/13/2009		Town of Apple Valley	15985 Wintun Rd.	1110 · First California Bank	-40.20	15,562.99	
Total 1481 · Note Receivable - Janet Ihde - Other							15,562.99	15,562.99
Total 1481 · Note Receivable - Janet Ihde							15,562.99	15,562.99
Total 1450 · N/R - Private Investors							15,562.99	15,562.99
TOTAL							15,562.99	15,562.99

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EXHIBIT 8

**EXHIBIT
EX PARTE APPLICATION FOR ORDER FOR PARTIAL STAY PENDING APPEAL,
OR FOR ORDER TRANSFERRING FUNDS TO A DEPOSITORY ACCOUNT PENDING APPEAL**

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UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

- - -
HONORABLE MANUEL L. REAL
UNITED STATES DISTRICT JUDGE PRESIDING
- - -

SECURITIES AND EXCHANGE)
COMMISSION,) CERTIFIED COPY
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PLAINTIFFS,)
) CV 11-8607 R
VS.)
)
CHARLES P. COPELAND, et)
al.,)
)
DEFENDANTS.)
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REPORTER'S TRANSCRIPT OF PROCEEDINGS
MONDAY, OCTOBER 28, 2013
A.M. SESSION
LOS ANGELES, CALIFORNIA

SHERI S. KLEEGER, CSR 10340
FEDERAL OFFICIAL COURT REPORTER
312 NORTH SPRING STREET, ROOM 402
LOS ANGELES, CALIFORNIA 90012
PH: (213) 894-6604

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APPEARANCES OF COUNSEL:

ON BEHALF OF PLAINTIFF:

JOHN STEPHENS, ESQUIRE
GINA RODRIGUEZ, ATTORNEY AT LAW

ON BEHALF OF DEFENDANT:

FRANCIS QUINLAN, ESQUIRE
ROLLIE PETERSON, ESQUIRE
LAURA MARCHIONE, ESQUIRE
WILLIAM SIPPERT, ESQUIRE

1 LOS ANGELES, CALIFORNIA; MONDAY, OCTOBER 28, 2013

2 A.M. SESSION

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6 THE CLERK: Calling item number eight,
7 CV-11-8607, SEC versus Charles P. Copeland, et al.

8 Counsel, please state your appearances.

9 MR. STEPHENS: Good morning, Your Honor.

10 John Stephens, appearing on behalf of the
11 receiver as counsel for the receiver. I also have with
12 me today Gina Rodriguez, from the receiver's office.

13 MR. QUINLAN: Good morning, Your Honor.

14 Francis Quinlan, appearing for certain
15 limited partners whose last names are Reed, Lowe, Weed,
16 Houser, Ross, Tosher, Yore, and Dotan.

17 MR. PETERSON: Good morning, Your Honor.

18 Rollie Peterson, Peterson & Kell, on behalf
19 of Tri Tool, Inc.

20 Good morning, Your Honor.

21 MS. MARCHIONE: Laura Lynch Marchione of
22 Mundell, Odlum & Haws, appearing on behalf of the
23 objecting limited partner, Dr. Bricker.

24 THE COURT: All right. Counsel, I'm sorry.

25 MR. SIPPERT: William Sippert, Your Honor,

1 appearing on behalf of certain objecting limited
2 partners, ID, et al., Section 411.

3 THE COURT: Counsel have anything to add to
4 the documents which have been filed?

5 MR. STEPHENS: On behalf of the receiver,
6 no, Your Honor.

7 MR. QUINLAN: Your Honor, on behalf of
8 certain limited partners, if I may. I have gone through
9 all of the pleadings and looked at the receiver's
10 accounting, and I would like to advise the Court that it
11 appears that the clients my firm represents approximate
12 47 percent of CP 18's limited partnership interest. The
13 balance represented by the receiver is 46.3 percent, for
14 a total of 93 percent rounded number, representing the
15 CPA 18 interest.

16 Thank you, Your Honor.

17 THE COURT: Anything further?

18 MR. SIPPERT: Your Honor, just in response
19 there. I'm not sure on the math because I know there is
20 a very significant percentage which is represented by
21 our limited partners, but I would just say that I think
22 the documents speak to that.

23 THE COURT: All right. The district court's
24 power to supervise an equity receivership and to
25 determine the appropriate action to be taken in the

1 administration of the receivership is extremely broad.
2 *SEC versus Capital Consultants, LLC*, 397 Fed.3d 733,
3 Ninth Circuit, 2005.

4 The Court has brought equitable power in
5 approving a plan of distribution and an equitable
6 receivership. The primary job of the Court is to ensure
7 that the proposed plan of distribution is fair and
8 reasonable. *SEC versus Wealth Management, LLC*,
9 628 Fed.3d 323, Seventh Circuit, 2010.

10 Receivership courts have the power to use
11 summary procedure in allowing, disallowing, or
12 subordinating the claims of creditors. *United States*
13 *versus Arizona Fuels Corporation*, 739 Fed.2d 455,
14 Ninth Circuit, 1984.

15 The objecting parties have presented lengthy
16 briefing and substantial evidentiary materials in
17 connection with this motion and have, therefore, had an
18 adequate opportunity to be heard. Due process is,
19 therefore, satisfied.

20 Dr. Bricker and several other objectors
21 contend that CP 18 owes money to CP 3 and that this debt
22 is not acknowledged by the receiver. The receiver has
23 presented compelling evidence that in exchange for
24 a transfer from CP 3 to CP 18, the limited partners of
25 CP 3 received equity interest in CP 18, valued at

1 \$1,705,000. After this, \$423,544.11 was still owed to
2 CP 3 by CP 18.

3 CP 3 had an outstanding obligation to
4 another Copeland entity. CRI and CP 3 transferred its
5 debt obligation from CP 18 to CRI to offset that
6 obligation.

7 As a result of the \$1,705,000 in equity
8 distributions and the transfer of the \$420,544.11 debt
9 obligation, CP 18 did not and does not owe CP 3 any
10 money -- any more money.

11 The objecting partners contend that no
12 management fee should be paid. CP 18 is obligated by
13 contract and its own partnership agreement to pay the
14 management fees and, therefore, the receiver is
15 authorized to make those payments.

16 On the subject of IRA, Janet Hyde cites
17 California Code of Civil Procedure 704.115(B), which
18 states that all amounts held, controlled, or in the
19 process of distribution by a private retirement plan for
20 the payment of the benefits as an annuity, pension
21 retirement allowance, disability payment, or death
22 benefit from a private retirement plan are exempt. The
23 funds at issue are not covered by the terms of the
24 statute because they are not held, controlled, or in
25 process of the distribution by a private retirement

1 plan, rather than being held by the receiver.

2 Furthermore, the statute is part of the
3 statutory scheme governing enforcement of judgments,
4 specifically exemptions from enforcement, the receiver
5 is not attempting to enforce a judgment, and the statute
6 has no applicability for that reason as well.

7 The receiver's proposal also does not
8 violate the Court's order against pooling the assets and
9 liabilities of the various receivership entities, as no
10 pooling is occurring. The receivership is withholding
11 payment from Hyde on the basis of her debt to other
12 receivership entities. The receiver would also be
13 violating his fiduciary duty if he paid Hyde at same
14 time that she owed money to a receivership entity.

15 As for the argument under California
16 Corporations Code 15905.07, the SAT statute does not, by
17 its terms, purport to provide the only situation where
18 such an offset can be made and, therefore, does not
19 foreclose the receiver's proposal here.

20 As for the Rosses, they do not have an
21 interest in CP 18; rather, they have a claim against CWM
22 and CP 12; and, thus, claims are secured by an interest
23 in CP 18. Because the Rosses' security interest is not
24 perfected, the receiver, as a lien creditor of CP 18,
25 has priority over their security interest pursuant to

1 California Commercial Code 9-317(A). Because the
2 receiver has claims against CWM and CP 12, his claim
3 for -- to CWM's interest in CP 18 is superior to that of
4 the Rosses. The receiver states that he will address
5 the claim of the Rosses in connection with his
6 distributions of CWM and CP 12. This is proper, as
7 those are entities that the Rosses have -- have a claim
8 against.

9 Tri Tool is trying to collect from the
10 assets of CP 18 by alleging that certain transfers to
11 CP 18 and CP 3 were fraudulent transfers under the
12 California version of the Uniform Fraudulent Transfer
13 Act. The only argument that the receiver makes in
14 opposition to Tri Tool's claim is that the statute of
15 limitation bars the claim. In doing so, the receiver
16 argues that his court -- that this Court previously
17 found that Tri Tool's fraudulent transfer claims are
18 time barred.

19 The Court did not make such a ruling in
20 addressing Tri Tool's motion to modify the receivership
21 stay. This Court previously ruled that the claims,
22 quote, may be time barred, close quote. Tri Tool
23 alleges actual intent, fraudulent transfer under
24 3430.04(A)(1) and constructive intent fraudulent
25 transfer under 3430.04(A)(2). A claim under

1 3430.04(A)(1) must be brought within four years of the
2 transfer or, if later, within one year after the
3 transfer could have been reasonably discovered.

4 A claim under 3439.04(A)(2) must be brought
5 within four years after the transfer was made.

6 California Civil Code Section 3430.09(A).

7 There are two transfers Tri Tool alleges are
8 fraudulent. In the first, CP 3 transferred the proceeds
9 of the PWB loan to CP 18 via CP 14 on February 28th,
10 2007.

11 In the second, CP 3 paid the seller of
12 a North Carolina property \$330,000 owed by the sellers
13 of CP 18. This is referred to as the Wendover note.
14 That payment occurred in April -- on April 27th, 2007.
15 The cutoff dates for the two transfers under both types
16 of alleged fraudulent transfers are February 28th, 2011,
17 and February -- and April 27th, 2011, respectively.

18 Because Tri Tool knew or should have known
19 about the transfers within the four-year period,
20 Tri Tool took Copeland's deposition on January 18th,
21 2010, and Copeland testified that CP 3 had distributed
22 all of its funds. Tri Tool, therefore, could have
23 reasonably discovered the identities of any transfers of
24 CP 3. It states that it later attempted to get that
25 information through written discovery, but it does not

1 explain why it did not simply ask follow-up questions of
2 Copeland at his deposition. It is reasonable to expect
3 it to ask such questions.

4 Tri Tool did not file a complaint alleging
5 fraudulent transfer allegations until April 4th of 2011.
6 Its claims relating to the PWA loan is, therefore, time
7 barred.

8 Its claim regarding the payoff of the
9 Wendover note is not time barred because the April 4th,
10 2011, complaint was filed before April 27th, 2011, and
11 named Doe defendants. As a result of this, Tri Tool
12 could amend its complaint to add CP 18, and the timing
13 would relate back to April 4th, 2011, for the purposes
14 of the statute of limitations. Cal Code of Civil
15 Procedures 474.

16 It does not matter for relation back
17 purposes that Tri Tool may have been negligent in
18 failing to ascertain the identity of CP 18. *Fuller*
19 *versus Tucker*, 84 Cal.App.4th 1163, 2000.

20 Tri Tool's claim, based upon the PWB loan,
21 is time barred. Its claim based upon the Wendover note
22 is not. Unlike all of the other issues raised in
23 connection with this motion, the parties' discussion of
24 the merits on this subject is underdeveloped. Tri Tool
25 shall file a brief in support of its claim based upon

1 the Wendover note by November 18th, 2013. The receiver
2 shall file an opposition by November 25th, 2013. And
3 Tri Tool shall file a reply by December 4th, 2013. No
4 other papers will be considered.

5 The Court will then adjudicate the merits of
6 that claim at a hearing on December 16th, 2013, at
7 10:00 a.m.

8 After the claim is adjudicated, the receiver
9 will be able to distribute the assets of CP 18 and
10 cancel the entity.

11 Counsel to prepare the order.

12 MR. STEPHENS: Thank you, Your Honor.

13 THE COURT: All right. We'll be in recess.

14 THE CLERK: All rise.

15 (Whereupon, at 11:08 a.m., the proceeding
16 concluded.)

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CERTIFICATE OF REPORTER

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

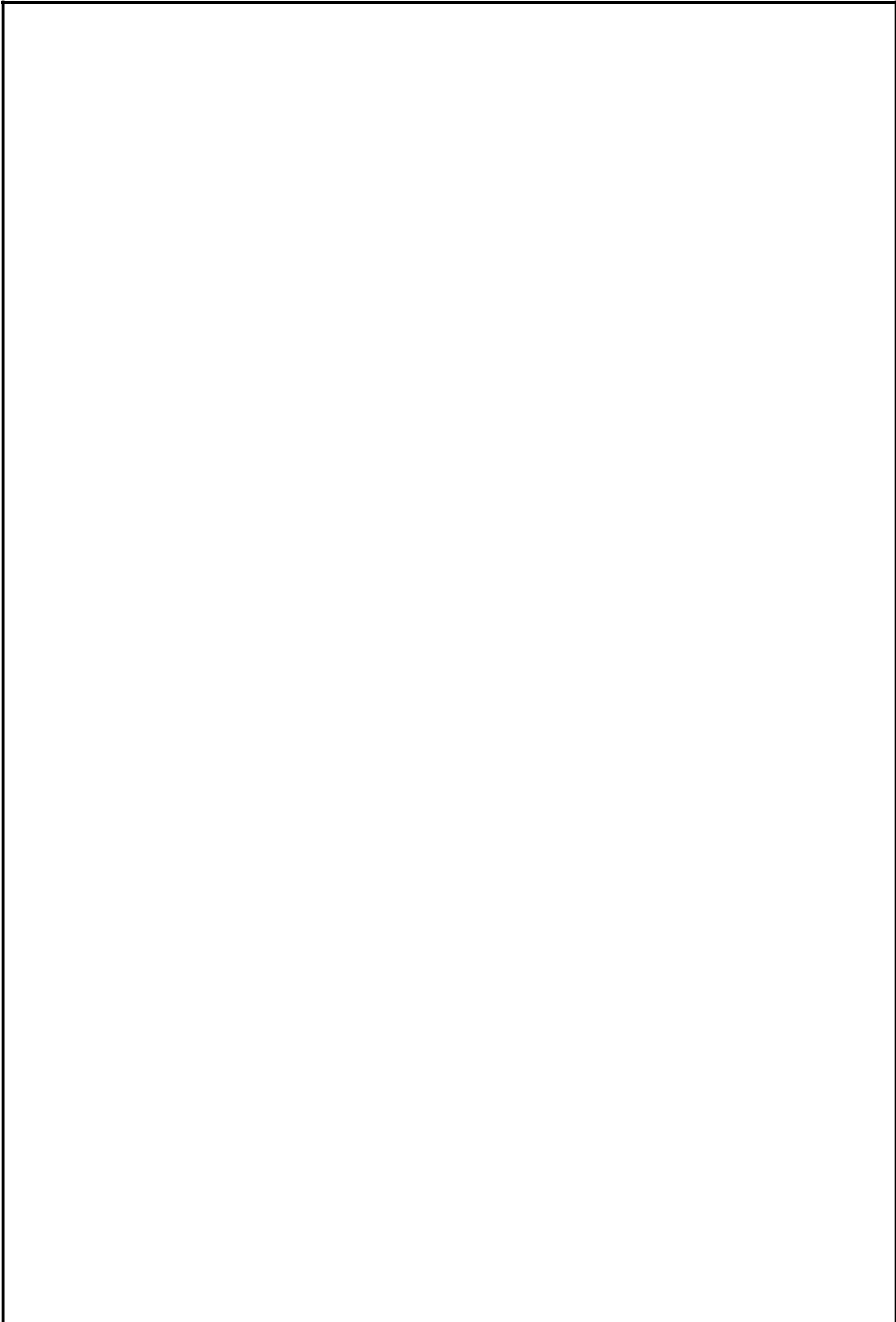
I, SHERI KLEEGER, OFFICIAL FEDERAL COURT REPORTER,
REGISTERED PROFESSIONAL REPORTER, IN AND FOR THE UNITED
STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION
753, TITLE 28, UNITED STATES CODE, THE FOREGOING IS A
TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY
REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER
AND THAT THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE
WITH THE REGULATIONS OF THE JUDICIAL CONFERENCE OF THE
UNITED STATES.

DATE: OCTOBER 30, 2013

/s/ _____

SHERI KLEEGER, CSR 10340, RPR
FEDERAL OFFICIAL COURT REPORTER

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10 Revocable Trust, Joseph and Beth Dotan, Dotan Family Trust

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12 UNITED STATES DISTRICT COURT
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14 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
15

16 SECURITIES AND EXCHANGE
17 COMMISSION,

18 Plaintiff,

19 v.

20 CHARLES P. COPELAND,
21 COPELAND WEALTH
22 MANAGEMENT, A FINANCIAL
23 ADVISORY CORPORATION, AND
24 COPELAND WEALTH
25 MANAGEMENT, A REAL ESTATE
26 CORPORATION

27 Defendants.

Case No.: 2:11-cv-08607-R-DTB

**DECLARATION OF JANET KAY
IHDE IN SUPPORT OF
EX PARTE APPLICATION FOR
ORDER TRANSFERRING FUNDS
TO A DEPOSITORY ACCOUNT
PENDING APPEAL**

Ctrm: 8, 2nd Floor

Judge: Hon. Manuel L. Real

28 I, JANET KAY IHDE, declare as follows:

1. I am over the age of eighteen (18) years old.

2. I have personal knowledge of the matters set forth herein, except as to

those matters stated upon information and belief, and as to those matters, I believe
them to be true. If called upon as a witness, I could and would competently testify
thereto.

1 3. I am the President of Janet K. Ihde, M.D., Inc. (“Ihde P.C.”), which was
2 incorporated on 6/10/1999.

3 4. I individually have never entered into any form of lease agreement with
4 Copeland Properties Twelve, L.P. (“CP12”).

5 5. The only Lease Agreement between CP12 and Ihde P.C. is the “Standard
6 Multi-Tenant Office Lease – Net” for “approximately 4,727 rentable square feet” for
7 Suite 225 at 35-800 Bob Hope Drive, Rancho Mirage, California (“Lease”), which I
8 signed on behalf of Ihde P.C., as its President, a copy of which is attached hereto as
9 Exhibit 1 and incorporated herein by this reference.

10 6. The Lease was subsequently amended by the First Amendment to
11 Standard Multi-Tenant Office Lease – Net (“1st Lease Amendment”), which I signed
12 on behalf of Ihde P.C., as its President, a copy of which is attached hereto as Exhibit 2
13 and incorporated herein by this reference.

14 7. Paragraph 2 of the 1st Lease Amendment provided that the
15 Commencement Date was December 31, 2007. Paragraph 3 of the 1st Lease
16 Amendment provided that the Lessor CP12 would contribute toward Lessee Ihde
17 P.C.’s improvement costs [tenant improvements] \$60 per square foot. Paragraph 4 of
18 the 1st Lease Amendment provided that Lessee would reimburse Lessor the difference
19 between the Lessee Construction Allowance (the \$60 per square foot) and the total
20 tenant improvement construction costs, with such payment to be paid on or before the
21 Commencement Date, December 31, 2007.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and if called upon to testify in this matter, I could and would testify as set forth above.

This Declaration is made this 11th day of December, 2013, in Palm Springs, California.

/s/ Janet Kay Ihde
JANET KAY IHDE

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EXHIBIT 1



AIR COMMERCIAL REAL ESTATE ASSOCIATION
STANDARD MULTI-TENANT OFFICE LEASE - NET

1. Basic Provisions ("Basic Provisions").

1.1 Parties: This Lease ("Lease"), dated for reference purposes only... is made by and between COPELAND PROPERTIES TWELVE, LP... and JANET K. IHDE, MD, INC.

1.2(a) Premises: That certain portion of the Project (as defined below), known as Suite Number(s) 225 floor(s), consisting of approximately 4,727 rentable square feet and approximately 4,185 useable square feet as shown on Exhibit A, attached hereto ("Premises").

1.2(b) Parking: unreserved and four (4) reserved vehicle parking spaces at a monthly cost of \$ 0.00 per unreserved space and \$ 0.00 per reserved space.

1.3 Term: Ten (10) years and months ("Original Term") commencing ("Commencement Date") and ending ("Expiration Date").

1.4 Early Possession: ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 Base Rent: \$ 11,108.45 per month ("Base Rent"), payable on the 1st day of each month commencing (See also Paragraph 4)

[X] If This box is checked, there are provisions for this Lease for the Base Rent to be adjusted. Annual increase of three percent (3%) per year.

1.6 Lessee's Share of Operating Expenses: Nine and forty-seven one hundredths percent (9.47%) ("Lessee's Share"). Lessee's Share has been calculated by dividing the approximate rentable square footage of the Premises by the total approximate square footage of the rentable space contained in the Project...

1.7 Base Rent and Other Monies Paid Upon Execution: (a) Base Rent: \$ 11,108.45 per month for the period (b) Operating Expenses: \$ for the period (c) Security Deposit: \$ 11,108.45 ("Security Deposit"). (d) Parking: \$ N/A for the period (e) Other: \$ N/A for (f) Total Due Upon Execution of Lease: \$

1.8 Agreed Use: Women's Health (See also Paragraph 6)

1.9 Insuring Party. Lessor is the "Insuring Party". (See also Paragraph 8)

1.10 Real Estate Brokers: (See also Paragraph 15)

(a) Representation: The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes): [] N/A represents Lessor exclusively ("Lessor's Broker"); [] N/A represents Lessee exclusively ("Lessee's Broker"); [] N/A represents both Lessor and Lessee ("Dual Agency").

(b) Payment to Brokers: Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee as the total Base Rent for the brokerage services rendered by the Brokers).

1.11 Guarantor. The obligations of the Lessee under this Lease shall be guaranteed by Janet K. Ihde, M.D., individually ("Guarantor"). (See also Paragraph 37)

1.12 Business Hours for the Building: 6:00 a.m. to 7:00 p.m., Mondays through Sundays (except Building Holidays, as applicable). "Building Holidays" shall mean the dates of observation of New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

1.13 Lessor Supplied Services. Notwithstanding the provisions of Paragraph 11.1, Lessor is NOT obligated to provide the following: [X] Janitorial services [] Electricity [] Other (specify):

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Handwritten initials and the word INITIALS

1.14 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

- an Addendum consisting of Paragraphs _____ through _____,
- a plot plan depicting the Premises, attached hereto as Exhibit A;
- a current set of the Rules and Regulations;
- a janitorial schedule;
- a plot plan depicting Parking spaces, attached hereto as Exhibit B;
- an Agreement for Construction of Improvements, attached hereto as Exhibit C;
- other (specify): _____

2. **Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating Rent, is an approximation which the Parties agree is reasonable and any payments based thereon are not subject to revision whether or not the actual size is more or less. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee in a clean condition on the Commencement Date or the Early Possession Date, whichever first occurs (" **Start Date**"), and warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems (" **HVAC**"), and all other items which the Lessor is obligated to construct pursuant to the Work Letter attached hereto, if any, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements comprising the Premises and the Common Areas comply with the building codes that were in effect at the time that each such improvement, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances (" **Applicable Requirements**") in effect on the Start Date. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the zoning and other Applicable Requirements are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises (" **Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date that on which the Base Rent is due, an amount equal to 144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) Lessee has been advised by Lessor and/or Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements), and their suitability for Lessee's intended use, (b) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, and (c) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 **Vehicle Parking.** So long as Lessee is not in default, and subject to the Rules and Regulations attached hereto, and as established by Lessor from time to time, Lessee shall be entitled to rent and use the number of parking spaces specified in Paragraph 1.2(b) at the rental rate applicable from time to time for monthly parking as set by Lessor and/or its licensee.

(a) If Lessee commits, permits or allows any of the prohibited activities described in the Lease or the rules then in effect, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

(b) The monthly rent per parking space specified in Paragraph 1.2(b) is subject to change upon 30 days prior written notice to Lessee. The rent for the parking is payable one month in advance prior to the first day of each calendar month.

(c) One reserved parking space shall be provided at no charge for each 1,000 square feet of useable space.

2.7 **Common Areas - Definition.** The term "**Common Areas**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Premises that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including, but not limited to, common entrances, lobbies, corridors, stairwells, public restrooms, elevators, parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to adopt, modify, amend and enforce reasonable rules and regulations ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the


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preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. The Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 **Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:
 (a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;
 (b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;
 (c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;
 (d) To add additional buildings and improvements to the Common Areas;
 (e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and
 (f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. **Term.**

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.
 3.2 **Early Possession.** If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of the Operating Expenses) shall be in effect during such period. Any such early possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent.**

4.1 **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("**Rent**").

4.2 **Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share of all Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) "**Operating Expenses**" include all costs incurred by Lessor relating to the ownership and operation of the Project, calculated as if the Project was at least 95% occupied, including, but not limited to, the following:

(i) The operation, repair, and maintenance in neat, clean, safe, good order and condition, of the following:
 (aa) The Common Areas, including their surfaces, coverings, coverings, decorative items, carpets, drapes and window coverings, and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;

(bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, communication systems and other equipment used in common by, or for the benefit of, lessees or occupants of the Project, including elevators and escalators, tenant directories, fire detection systems including sprinkler system maintenance and repair.

(ii) Pest control services, and the costs of any environmental inspections;
 (iii) Any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "Operating Expense";

(iv) The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 and any deductible portion of an insured loss concerning the Building or the Common Areas;

(v) The amount of the Real Property Taxes payable by Lessor pursuant to paragraph 10;

(vi) The cost of water, sewer, gas, electricity, and other publicly mandated services not separately metered;

(vii) Labor, salaries, and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Project and accounting and management fees attributable to the operation of the Project;

(viii) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month;

(ix) Replacement of equipment or improvements that have a useful life for accounting purposes of 5 years or less.
 (b) Any item of Operating Expense that is specifically attributable to the Premises, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Premises, Building, or other building. However, any such item that is not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses incurred during the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) Operating Expenses shall not include the costs of replacement for equipment or capital components such as the roof, foundations, exterior walls or a Common Area capital improvement, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more unless it is of the type described in paragraph 4.2(a) (viii), in which case their cost shall be included as above provided.

(f) Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or by insurance proceeds.

4.3 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor, for Rents which will be due in the future, and/ or to


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reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use.**

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements of the Building, will not adversely affect the mechanical, electrical, HVAC, and other systems of the Building, and/or will not affect the exterior appearance of the Building. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use. During the Term of this Lease or any extension thereof, Lessee shall not own or operate an imaging center within the Premises or the Building at any time without the express written permission of Landlord.

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term "**Hazardous Substance**" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use such as ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall be limited to the cost of investigation, removal, remediation, restoration and/or abatement of rent.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved)


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any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor.

7. **Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.**

7.1 **Lessee's Obligations.** Notwithstanding Lessor's obligation to keep the Premises in good condition and repair, Lessee shall be responsible for payment of the cost thereof to Lessor as additional rent for that portion of the cost of any maintenance and repair of the Premises, or any equipment (wherever located) that serves only Lessee or the Premises, to the extent such cost is attributable to causes beyond normal wear and tear. Lessee shall be responsible for the cost of painting, repairing or replacing wall coverings, and to repair or replace any improvements within the Premises. Lessor may, at its option, upon reasonable notice, elect to have Lessee perform any particular such maintenance or repairs the cost of which is otherwise Lessee's responsibility hereunder. Except as otherwise provided for herein, Lessee shall be responsible for maintenance of the plumbing, electrical conduit and portion of the air conditioning system located within Lessee's Premises, but only to the extent such items have been installed by Lessee.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, fire alarm and/or smoke detection systems, fire hydrants, and the Common Areas. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air lines, vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, and plumbing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof, ceilings, floors or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed \$2000. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorney's fees and costs.

7.4 **Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Project) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. **Insurance; Indemnity.**

8.1 **Insurance Premiums.** The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 are included as Operating Expenses (see paragraph 4.2 (a)(iv)). Said costs shall include increases in the premiums resulting from additional coverage related to requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. Said costs shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

8.2 **Liability Insurance.**


(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.


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(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of,


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the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Building and/or Project. The amount of such insurance shall be equal to the full insurable replacement cost of the Building and/or Project, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee under Paragraph 8.4. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$1,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

8.4 Lessee's Property; Business Interruption Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 Insurance Policies. Insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least A-, VI, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 Indemnity. Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 Exemption of Lessor and its Agents from Liability. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 Failure to Provide Insurance. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. Damage or Destruction.

9.1 Definitions.

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises which requires repair, remediation, or restoration.

9.2 Partial Damage Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or


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destruction the total cost to repair of which is \$5,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 Termination; Advance Payments. Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. Real Property Taxes.

10.1 Definitions. As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 Payment of Taxes. Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 Additional Improvements. Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 Joint Assessment. If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 Personal Property Taxes. Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities and Services.

11.1 Services Provided by Lessor. Lessor shall provide heating, ventilation, air conditioning, reasonable amounts of electricity for normal lighting and office machines, water for reasonable and normal drinking and lavatory use in connection with an office, and replacement light bulbs and/or fluorescent tubes and ballasts for standard overhead fixtures. Lessor shall also provide janitorial services to the Common Areas 5 times per week, excluding Building Holidays, or pursuant to the attached janitorial schedule, if any. Lessor shall not, however, be required to provide janitorial services to kitchens or storage areas included within the Premises.

11.2 Services Exclusive to Lessee. Lessee shall pay for all water, gas, heat, light, power, telephone and other utilities and services specially or exclusively supplied and/or metered exclusively to the Premises or to Lessee, together with any taxes thereon. If a service is deleted by Paragraph 1.13 and such service is not separately metered to the Premises, Lessee shall pay at Lessor's option, either Lessee's Share or a reasonable proportion to be determined by Lessor of all charges for such jointly metered service. Lessee shall be responsible for providing janitorial services within the Premises.

11.3 Hours of Service. Said services and utilities shall be provided during times set forth in Paragraph 1.12. Utilities and services required at other times shall be subject to advance request and reimbursement by Lessee to Lessor of the cost thereof.

11.4 Excess Usage by Lessee. Lessee shall not make connection to the utilities except by or through existing outlets and shall not install or use machinery or equipment in or about the Premises that uses excess water, lighting or power, or suffer or permit any act that causes extra burden upon the utilities or services, including but not limited to security and trash services, over standard office usage for the Project. Lessor shall


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Lessee to reimburse Lessor for any excess expenses or costs that may arise out of a breach of this subparagraph by Lessee. Lessor may, in its sole discretion, install at Lessee's expense supplemental equipment and/or separate metering applicable to Lessee's excess usage or loading.

11.5 **Interruptions.** There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief. (f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, i.e. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 **Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. **Default; Breach; Remedies.**

13.1 **Default; Breach.** A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee.

(c) The commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate, (v) a requested subordination, (vi) evidence concerning any guarantee and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.


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(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of


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creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor.

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided, however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the rentable floor area of the Premises, or more than 25% of Lessee's Reserved Parking Spaces, if any, are taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokerage Fees.

15.1 Additional Commission. In addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the


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consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule of the Brokers in effect at the time of the execution of this Lease.

15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. **Estoppel Certificates.**

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall look to the Project, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. **Notices.**

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. **Disclosures Regarding the Nature of a Real Estate Agency Relationship.**

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) **Lessor's Agent.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: *To the Lessor:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. *To the Lessee and the Lessor:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. *To the Lessee:* A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. *To the Lessee and the Lessor:* a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information


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obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Buyer and Seller agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right to Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recording thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).


32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect to Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee. In addition, Lessor shall have the right to retain keys to the Premises and to unlock all doors in or upon the Premises other than to files, vaults and safes, and in the case of emergency to enter the Premises by any reasonably appropriate means, and any such entry shall not be deemed a forcible or unlawful entry or detainer of the Premises or an eviction. Lessee waives any charges for damages or injuries or interference with Lessee's property or business in connection therewith.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder


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and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

37.2 **Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options.** If Lessee is granted an Option, as defined below, then the following provisions shall apply.

39.1 **Definition. "Option"** shall mean: (a) the right to extend the term of or renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. In the event, however, that Lessor should elect to provide security services, then the cost thereof shall be an Operating Expense.

41. **Reservations.**

(a) Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessor may also: change the name, address or title of the Building or Project upon at least 90 days prior written notice; provide and install, at Lessee's expense, Building standard graphics on the door of the Premises and such portions of the Common Areas as Lessor shall reasonably deem appropriate; grant to any lessee the exclusive right to conduct any business as long as such exclusive right does not conflict with any rights expressly given herein; and to place such signs, notices or displays as Lessor reasonably deems necessary or advisable upon the roof, exterior of the Building or the Project or on pole signs in the Common Areas. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights. The obstruction of Lessee's view, air, or light by any structure erected in the vicinity of the Building, whether by Lessor or third parties, shall in no way affect this Lease or impose any liability upon Lessor.

(b) Lessor also reserves the right to move Lessee to other space of comparable size in the Building or Project. Lessor must provide at least 45 days prior written notice of such move, and the new space must contain improvements of comparable quality to those contained within the Premises. Lessor shall pay the reasonable out of pocket costs that Lessee incurs with regard to such relocation, including the expenses of moving and necessary stationary revision costs. In no event, however, shall Lessor be required to pay an amount in excess of two months Base Rent. Lessee may not be relocated more than once during the term of this Lease.

(c) Lessee shall not: (i) use a representation (photographic or otherwise) of the Building or Project or their name(s) in connection with Lessee's business; or (ii) suffer or permit anyone, except in emergency, to go upon the roof of the Building.

42. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" with 6 months shall be deemed to have waived its right to protest such payment.

43. **Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. **Offer.** Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. **Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.**

48. **Mediation and Arbitration of Disputes.** An Addendum requiring the Mediation and/or the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease is is not attached to this Lease.

49. **Americans with Disabilities Act.** Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

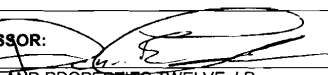

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1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING AND SIZE OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE. **WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.**

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: _____
On: _____

By LESSOR: 
COPELAND PROPERTIES TWELVE, LP

By: _____
Name Printed: _____
Title: _____

By: _____
Name Printed: _____
Title: _____

Address: 25809 Business Center Drive, Suite B
Redlands, California 92374

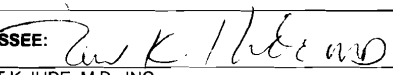
Telephone: (____) _____
Facsimile: (____) _____
Federal ID No. _____

LESSOR'S BROKER:

Attn: _____
Title: _____
Address: _____

Telephone: (____) _____
Facsimile: (____) _____
Federal ID No. _____

Executed at: _____
On: _____

By LESSEE: 
JANET K. IHDE, M.D., INC.

By: _____
Name Printed: _____
Title: _____

By: _____
Name Printed: _____
Title: _____

Address: _____

Telephone: (____) _____
Facsimile: (____) _____
Federal ID No. _____

LESSEE'S BROKER:

Attn: _____
Title: _____
Address: _____

Telephone: (____) _____
Facsimile: (____) _____
Federal ID No. _____

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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#8197

EXHIBIT "A"

TO

STANDARD MULTI-TENANT OFFICE LEASE - NET

"PREMISES"

[To be inserted]


INITIALS

Page 18 of 21


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EXHIBIT "B"
8198
TO

STANDARD MULTI-TENANT OFFICE LEASE - NET

"PARKING SPACES"

[To be inserted]


INITIALS

Page 19 of 21


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#8199
EXHIBIT "C"
TO

STANDARD MULTI-TENANT OFFICE LEASE - NET

AGREEMENT FOR CONSTRUCTION OF IMPROVEMENTS

THIS AGREEMENT supplements the Lease ("Lease") dated August ____, 2007, executed concurrently herewith between Copeland Properties Twelve, L.P., a California limited partnership ("Lessor") and Janet K. Idhe, MD, Inc., a California corporation ("Lessee"), and relates specifically to the construction of improvements in those Premises (as defined in the Lease) more particularly described in Exhibit "A".

1. Lessor shall provide to Lessee or Lessee's Architect, Lessee's Improvement Specifications ("Specifications") which Specifications shall govern all Lessee's improvements. Lessee or Lessee's Architect shall devote such time in consultation with Lessor as may be necessary to enable Lessee to obtain promptly Lessor's written approval of the layout and plans for Lessee's Premises as furnished by Lessee or Lessee's Architect (hereinafter referred to as "Plans"), showing among other things the location or partitions, doors, light fixtures, electrical outlets, telephone outlets, as well as wall finishes and floor coverings. In addition, construction drawings for special installations shall be furnished by Lessee to Lessor for incorporation into general Building plans. In addition, Lessee shall be responsible for the function and maintenance of any special improvements to the Building.

2. Lessor shall contribute toward Lessee's improvement cost up to Forty and No/100ths Dollars (\$40.00) per square foot; otherwise, all improvements to the Premises shall be pre-paid by Lessee, and shall conform to a high quality of design approved by Lessor prior to commencement of work.

3. Within one (1) week after request from Lessee for approval of the Plans, Lessor shall notify Lessee in writing of Lessor's approval or disapproval of said Plans. If Lessor disapproves said Plans, Lessor shall state with reasonable particularity the reasons for said disapproval. Lessee shall, by signing or initialing the approved Lessee Plans, covenant to complete the Premises in accordance with the approved Plans only. Lessee will provide to Lessor the construction schedule and construction budget for all Lessee's improvements based upon the Plans. If Lessee shall request any change, addition or alteration in approved drawings, Lessor shall, within one (1) week after request for approval, give Lessee written approval or disapproval of said change, addition or alteration. If Lessor disapproves said change, addition or alteration, Lessor shall state with reasonable particularity the reasons for said disapproval.

4. Construction Management. Lessor, or its Affiliate or agent, shall supervise the Work, make disbursements required to be made to the contractor, and act as liaison between the Owner, contractor and Lessee and coordinate the relationship between the Work, the Building and the Building's Systems. In consideration for Lessor's construction supervision services, Lessee shall pay to Lessor a construction supervision fee equal to four percent (4%) of the Total Construction Costs and an additional seven-and-one-half percent (7.5%) on the cost of each change order that adds to the TI budget. For initial construction, Lessor's designated agent is America Development.

5. All improvements are to be installed by Lessor or Lessor's contractors and all such work shall be done in compliance with the following:

A. No such work shall proceed without Lessor's prior written approval of (i) Lessor's contractor; (ii) Lessor's construction schedule and construction budget; (iii) a certificate of insurance from an approved company


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furnished to Lessor by Lessor's contractor, in an amount not less than \$500,000 per sperson/\$1,000,000 per occurrence for public liability, automobile liability and \$500,000 for property damage liability, endorsed to show Lessor as additional insured; (iv) detailed plans and specifications, construction schedule and construction budget for such work which shall be subject to Lessor's written approval , as set for above; and (v) a performance and completion bond, as required pursuant to Section 8 of the Lease;

B. All such work shall be done in conformity wit a valid Building Permit when required, a copy of which shall be furnished to Lessor before the work is commenced and any work not acceptable to the applicable governmental authorities or not reasonably satisfactory to Lessor, shall be promptly replaced at Lessee's expense. Notwithstanding any failure by Lessor to object to any such work, Lessor shall have no responsibility therefor.

C. All work by Lessee or Lessee's contractors shall be scheduled through Lessor;

D. Lessee shall reimburse Lessor for any extra expense incurred by Lessor by reason of faulty work done by Lessee or Lessee's contractors, or by reason of delays caused by schedule work, or be reason of inadequate clean-up or damage to Building or site by Lessee or Lessee's contractors;

E. All data processing or other special electrical Equipment shall be installed only upon consultation with Lessor or Lessor's electrical contractor.

F. Building standard temperature controlled water for air conditioning with return stubbed and capped to the Premises upon consultation with Lessor or Lessor's electrical contractor.

6. Lessor has previously supplied and installed the following items all of which are acceptable to Lessee and do not require additional work by Lessor.

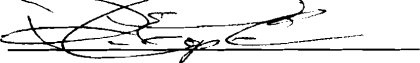
A. Conduit from the building equipment room to the Premises;

B. Sewer and water stubbed and capped to the Premises.

The parties hereto have executed this Exhibit C to Lease simultaneously with the execution of the Lease.

By LESSOR:

COPELAND PROPERTIES TWELVE, LP



Donald E. Copeland
Name Printed:

Title:

By LESSEE:

JANET K. IHDE, MD, INC.



Janet K. Ihde
Name Printed:

Title:


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EXHIBIT 2

FIRST AMENDMENT TO STANDARD MULTI-TENANT OFFICE LEASE – NET

FIRST AMENDMENT TO STANDARD MULTI-TENANT OFFICE LEASE – NET (this “Amendment”) is dated as of December __, 2007, between Copeland Properties Twelve, LP (“Lessor”), and Janet K. Ihde, MD, Inc. (“Lessee”).

WITNESSETH:

WHEREAS, Lessor and Lessee are parties to that certain Standard Multi-Tenant Office Lease – NET (the “Lease”), whereby Lessor leased to Lessee, and Lessee leased from Lessor, certain premises (as more particularly described in the Lease) located in the City of Rancho Mirage, Riverside County, California; and

WHEREAS, the parties wish to modify and amend the Lease upon such terms and conditions as are contained in this Amendment; and

NOW, THEREFORE, for and in consideration of mutual agreements and other good and valuable consideration, Lessor and Lessee agree as follows:

1. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Lease.
2. Lease and Commencement Dates. For future reference purposes, under Section 1.1 of the Lease, the Lease shall be dated September 9, 2007. For purposes of Section 1.3, the Commencement Date shall be December 31, 2007.
3. Lessee Construction Allowance. Under Section 2 of Exhibit C to the Lease, Lessor’s contribution toward Lessee’s improvement costs shall increase from Forty and No/100 Dollars (\$40.00) per sq. ft. to Sixty and No/100 Dollars (\$60.00) per sq. ft.
4. Payment of Construction Overage. Pursuant to Section 2 of Exhibit C to the Lease, Lessee shall reimburse Lessor an amount equal to the difference between the amount allowed under the Lessee Construction Allowance and the total construction costs. Such payment shall hereby be amended to be paid on or before the Commencement Date.
5. Lessee’s Share of Operating Expenses. For purposes of Section 1.6 of the Lease, Lessee’s share of Operating Expenses shall increase from Nine and 47/100ths percent (9.47%) to Nine and 55/100ths percent (9.55%).
6. Ratification of Lease: Lessor and Lessee confirm that the Lease, and all its terms and conditions, as amended hereby, are in full force and effect.
7. Amendments: Except as specifically amended by this Amendment, the Lease shall continue in full force and effect. In the event of any conflict between the provisions of the Lease and the provisions of this Amendment, the provisions of this Amendment shall prevail.
8. Counterparts: This Amendment may be executed in counterparts, each of which shall be deemed to be an original, but together shall be deemed but one original.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives as of the date and year first above written.

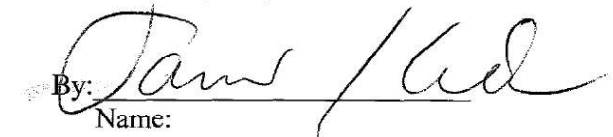
LESSOR:

Copeland Properties Twelve, LP

By: 
Name: *Don Copeland*
Title: *General Partner*

LESSEE:

Janet K. Ihde, MD, Inc.

By: 
Name:
Title:

1 Robert H. Ziprick, SBN 069571
2 William F. Ziprick, SBN 096270
3 **ZIPRICK & CRAMER, LLP**
4 707 Brookside Avenue
Redlands, California 92373
Telephone (909) 798-5005 / Facsimile (909) 793-8944

5 Attorneys for Janet Ihde, Charles Schwab FBO Janet Ihde IRA,
6 Sandra Hayes, Melvyn and Ruth Ross, Melvyn and Ruth Ross
7 Revocable Trust, Joseph and Beth Dotan, Dotan Family Trust
(collectively the "Objecting LPs")

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 v.

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

21 Defendants.
22

)
) **DECLARATION OF**
) **NOTIFICATION OF PARTIES OF**
) **EX PARTE APPLICATION FOR**
) **ORDER TRANSFERRING FUNDS**
) **TO A DEPOSITORY ACCOUNT**
) **PENDING APPEAL**

) Ctrm: 8, 2nd Floor
) Judge: Hon. Manuel L. Real

23 I, WILLIAM F. ZIPRICK, declare as follows:

- 24 1. I am over the age of eighteen (18) years and am not a party to the above-
25 entitled action.
26 2. I have personal knowledge of the matters set forth herein, except as to
27 those matters stated upon information and belief, and as to those matters, I believe
28

1 them to be true. If called upon as a witness, I could and would competently testify
2 thereto.

3 3. I am an attorney representing certain Limited Partners of Copeland
4 Properties 18, LP (“CP18”): Charles Schwab FBO Janet Ihde IRA, Dotan Family
5 Trust, Sandra Hayes, and Melvyn and Ruth Ross Revocable Trust (“Objecting LPs”),
6 and others.

7 4. On the morning of December 10, 2013, starting around 8:45 a.m., I began
8 orally notifying counsel for the Receiver, Thomas Hebrank, and counsel for the other
9 parties who had appeared in front of the Court in regards to the Receiver’s Motion for
10 Order (1) Approving the Receiver’s Distribution of Assets to the Investors of
11 Copeland Properties 18, L.P.; and (2) Authorizing Termination and Cancellation of
12 Copeland Properties 18, L.P. as an Entity (“Motion”, Dkt. #319), either in support or
13 opposition to the Motion. I advised counsel that our office intended to file on behalf
14 of Objecting LPs an Ex Parte Application for an order transferring the Disputed CP18
15 Funds to a depository account pending Objecting LPs’ appeal of the Courts Order
16 entered November 6, 2013 (“Order”, Dkt. #385). The “Disputed CP18 Funds” are
17 the various funds from the Receiver’s Proposed CP18 Distributions Schedule which
18 proposed distributions Objecting LPs have opposed in various Court filings. The
19 substance of the Ex Parte Application is based upon the irreparable injury that will
20 occur to the Objecting LPs by the Disputed CP18 Funds being transferred to Copeland
21 Realty, and then being quickly dissipated through the payment of various
22 administrative fees and filed claims. To prevent such injury, Objecting LPs are
23 requesting the Court to place such funds in a depository account pending completion
24 of the ultimate Appeal of Objecting LPs to the Ninth Circuit Court of Appeals. I
25 informed them that the Ex Parte Application and all supporting documents would be
26 filed with the Court on Wednesday, December 11, 2013.

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EXHIBIT 1

**EXHIBIT
EX PARTE APPLICATION FOR ORDER FOR PARTIAL STAY PENDING APPEAL,
OR FOR ORDER TRANSFERRING FUNDS TO A DEPOSITORY ACCOUNT PENDING APPEAL**

William Ziprick, Ziprick Cramer LLP

From: William Ziprick, Ziprick & Cramer LLP [wziprick@ziprickcramer.com]
Sent: Wednesday, December 11, 2013 9:12 PM
To: 'Francis E. Quinlan (Frank.Quinlan@ndlf.com)'; 'John H. Stephens'; 'rpeterson@peterson-kell.com'; 'mbrubacher@mohlaw.com'
Cc: 'Everett Barry, Jr.'; 'Toby Kovalivker'; 'john.bowerbank@ndlf.com'; 'rziprick@ziprickcramer.com'; 'Lorelei Kay'
Subject: SEC v. Copeland - EX PARTE APPLICATION FOR ORDER TRANSFERRING FUNDS TO A DEPOSITORY ACCOUNT PENDING APPEAL
Importance: High

Counsel,

As per my earlier phone notification to you, I am providing you with written notice that we are filing shortly with the Federal District Court, an EX PARTE APPLICATION FOR ORDER TRANSFERRING FUNDS TO A DEPOSITORY ACCOUNT PENDING APPEAL, regarding certain distributions from Copeland Properties 18, L.P.

According to the Rules in Judge Real's Department, you have twenty-four (24) hours from your receipt of the Ex Parte Application to file your response. It is my understanding that if the Court wishes to hold a hearing, the court clerk will contact all counsel with the date and time of the hearing.

William F. Ziprick, Esq.
Ziprick & Cramer, LLP

Cell Phone 509-951-7230
Direct Phone 509-468-1848
Fax Number 509-232-3356

707 Brookside Avenue
Redlands, CA 92373

Email: wziprick@ziprickcramer.com

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1 Robert H. Ziprick, SBN 069571
2 William F. Ziprick, SBN 096270
3 **ZIPRICK & CRAMER, LLP**
4 707 Brookside Avenue
5 Redlands, California 92373
6 Telephone (909) 798-5005 / Facsimile (909) 793-8944

7
8
9 Attorneys for Janet Ihde, Charles Schwab FBO Janet Ihde IRA,
10 Sandra Hayes, Melvyn and Ruth Ross, Melvyn and Ruth Ross
11 Revocable Trust, Joseph and Beth Dotan, Dotan Family Trust

12
13 UNITED STATES DISTRICT COURT
14
15 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

16 SECURITIES AND EXCHANGE
17 COMMISSION,

18 Plaintiff,

19 v.

20 CHARLES P. COPELAND,
21 COPELAND WEALTH
22 MANAGEMENT, A FINANCIAL
23 ADVISORY CORPORATION, AND
24 COPELAND WEALTH
25 MANAGEMENT, A REAL ESTATE
26 CORPORATION,

27 Defendants.

Case No.: 2:11-cv-08607-R-DTB

**NOTICE OF LODGMENT OF
[PROPOSED] ORDER
APPROVING EX PARTE
APPLICATION FOR ORDER
TRANSFERRING FUNDS TO A
DEPOSITORY ACCOUNT
PENDING APPEAL**

Ctrm: 8, 2nd Floor

Judge: Hon. Manuel L. Real

28
Ziprick & Cramer, LLP (hereafter “Ziprick & Cramer”), counsel for Janet Ihde,
Charles Schwab FBO Janet Ihde IRA, Sandra Hayes, Melvyn and Ruth Ross, Melvyn
and Ruth Ross Revocable Trust, Joseph and Beth Dotan, Dotan Family Trust
(collectively the “Objecting LPs”), hereby lodges Exhibit “A” – [Proposed] Order

1 Approving Ex Parte Application For Order Transferring Funds To A Depository
2 Account Pending Appeal.

3
4 Dated: December 11, 2013.

ZIPRICK & CRAMER, LLP

5
6 /s/ William F. Ziprick

7 William F. Ziprick

8 Robert H. Ziprick

9 Jonathan R. Ziprick

10 Attorneys for Objecting LPs:
11 Janet Ihde, Charles Schwab FBO
12 Janet Ihde IRA, Sandra Hayes,
13 Melvyn and Ruth Ross, Melvyn
14 and Ruth Ross Revocable Trust,
15 Joseph and Beth Dotan, Dotan
16 Family Trust

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EXHIBIT “A”

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

CHARLES P. COPELAND,
COPELAND WEALTH
MANAGEMENT, A FINANCIAL
ADVISORY CORPORATION, AND
COPELAND WEALTH
MANAGEMENT, A REAL ESTATE
CORPORATION,

Defendants.

Case No.: 2:11-cv-08607-R-DTB

**[PROPOSED]
ORDER APPROVING EX PARTE
APPLICATION FOR ORDER
TRANSFERRING FUNDS TO A
DEPOSITORY ACCOUNT
PENDING APPEAL**

Ctrm: 8, 2nd Floor
Judge: Hon. Manuel L. Real

The Court, having considered the *Ex Parte* Application for Order Transferring Funds to a Depository Account Pending Appeal, and all other documents filed in conjunction therewith, filed by Ziprick & Cramer, LLP, counsel for Janet Ihde, Charles Schwab FBO Janet Ihde IRA, Sandra Hayes, Melvyn and Ruth Ross, Melvyn and Ruth Ross Revocable Trust, Joseph and Beth Dotan, Dotan Family Trust (collectively, “Objecting LPs”), and any opposition thereto, and good cause appearing therefor,

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IT IS HEREBY ORDERED as follows:

1. Receiver, Thomas Hebrank, shall transfer and deposit into the Court, from the distributable funds of Copeland Properties 18, L.P. (“CP18”), the following specific amounts from Receiver’s Proposed Distribution Schedule (Exhibit A to the Declaration of Receiver, Dkt. #319-2):

Under “DISBURSEMENTS” – “Other Liabilities”	
2030 – Note Payable – CRI	\$200,524.68
2035 – N/P – Accrued Management Fees	\$165,466.80
Under “DISBURSEMENTS” – “Equity”	
Janet Ihde IRA	\$156,261.02
CWM Real Estate	\$137,372.59
Total Amount to be deposited into the Court, The “Disputed CP18 Funds”	\$659,625.09

2. The Disputed CP18 Funds shall be deposited into the Court, and deposited by the Court Clerk into an interest bearing account at _____ (Financial Institution), to be held in said depository account, pending final disposition of the Objecting LPs’ Appeal(s), and until such further order of this Court, or upon order of the Ninth Circuit Court of Appeals.

3. That the Court, having determined to not grant Objecting LPs’ prayer to transfer the Disputed CP18 Funds to a depository account pursuant to #1 and #2 above, orders that \$123,071.17 of the withhold of CP18 distributions from Janet Ihde IRA shall be transferred by the Receiver to Copeland Property Twelve, L.P., and not to Copeland Realty.

4. That The Receiver shall comply with this Court’s previous Order entered November 6, 2013 (Dkt. #385), as follows: “The Receiver shall consider the Rosses’ claims in connection with distributions by CWM Realty and CP12”, with
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1 appropriate inclusion of the Rosses' claim in any Copeland Realty Proposed
2 Distribution by the Receiver.

3 **IT IS SO ORDERED.**

4
5 Dated: _____, 2013.

6 Judge, United States District Court

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8 Submitted by:

9 ZIPRICK & CRAMER, LLP

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11 By: /s/ William F. Ziprick

12 William F. Ziprick
13 Attorneys for Janet Ihde, Charles Schwab FBO Janet Ihde IRA,
14 Sandra Hayes, Melvyn and Ruth Ross, Melvyn and Ruth Ross
15 Revocable Trust, Joseph and Beth Dotan, Dotan Family Trust
16 (collectively the "Objecting LPs")
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1 Robert H. Ziprick (SBN 069571)
2 William F. Ziprick (SBN 096270)
3 Jonathan R. Ziprick (SBN 283843)
4 **ZIPRICK & CRAMER, LLP**
5 707 Brookside Avenue
6 Redlands, CA 92373-5101
7 Telephone: (909) 798-5005
8 Facsimile: (909) 793-8944

9 Attorneys for Janet Ihde, Charles Schwab FBO Janet Ihde IRA, Sandra Hayes, Melvyn
10 and Ruth Ross, Melvyn and Ruth Ross Revocable Trust, Joseph and Beth Dotan, Dotan
11 Family Trust

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

14 SECURITIES AND EXCHANGE
15 COMMISSION,

16 Plaintiff,

17 v.

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

24 Defendants.

Case No.: 2:11-cv-08607-R-DTB

CERTIFICATE OF SERVICE RE:

Ctrm: 8, 2nd Floor

Judge: Hon. Manuel L. Real

25 I, Lorelei Kay, declare that I am a citizen of the United State and a resident of the
26 County of San Bernardino; I am over the age of eighteen (18) years, and not a party to
27 or interested in this action. I am an employee of Ziprick& Cramer, LLP, and my
28 business address is 707 Brookside Ave., Redlands, CA.

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1 On December 11, 2013, I served the following documents:

- 2 1. **Ex Parte Application For Order Transferring Funds To A Depository**
3 **Account Pending Appeal**
- 4 2. **Memorandum Of Points And Authorities In Support Of Ex Parte**
5 **Application For Order Transferring Funds To A Depository Account**
6 **Pending Appeal**
- 7 3. **Declaration Of Janet Kay Ihde In Support Of Ex Parte Application**
8 **For Order Transferring Funds To A Depository Account Pending**
9 **Appeal**
- 10 4. **Declaration Of William F. Ziprick In Support Of Ex Parte Application**
11 **For Order Transferring Funds To A Depository Account Pending**
12 **Appeal**
- 13 5. **Declaration Of Notification Of Parties Of Ex Parte Application For**
14 **Order Transferring Funds To A Depository Account Pending Appeal**
- 15 6. **Notice Of Lodgment Of [Proposed] Order Approving Ex Parte**
16 **Application For Order Transferring Funds To A Depository Account**
17 **Pending Appeal**

18 I hereby certify that on December 11, 2013, I electronically filed the foregoing
19 documents with the United States District Court for the Central District of California,
20 Western Division by using the CM/ECF system. I certify that the following parties or
21 their counsel of record are registered as ECF Filers and that they will be served by the
22 CM/ECF system:

23 Alfonso L Poire apoire@gawvanmale.com

24 David M Rosen Rosend@sec.gov

25 David R Moore davidr@mooreskiljan.com

26 Douglas D Guy dguy@gogglaw.com

27 Edward G Fates tfates@allenmatkins.com, bcrfilings@allenmatkins.com,
28 jbatiste@allenmatkins.com

Everett G Barry ebarry@mulvaneybarry.com, gcurtis@mulvaneybarry.com

Francis Emmet Quinlan , Jr Frank.Quinlan@ndlf.com, sue.love@ndlf.com

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- 26 William P Tooke wtooke@mechlaw.com
- 27 ///
- 28 ///

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed on December 11, 2013, at Redlands, California.

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/s/ Lorelei Kay
Lorelei Kay