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9 Attorneys for Permanent Receiver
10 Thomas C. Hebrank

11 UNITED STATES DISTRICT COURT

12 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 v.

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

24 Defendants.

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

**NOTICE OF MOTION AND
MOTION OF RECEIVER FOR
ISSUANCE OF ORDER
AUTHORIZING HIM TO
ABANDON REAL PROPERTY
FROM THE RECEIVERSHIP
ESTATE AS HAVING NO VALUE
FOR THE RECEIVERSHIP
ESTATE; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

DATE: October 1, 2012
TIME: 10:00 a.m.
DEPT. 8, 2nd Floor

Judge: Hon. Manuel L. Real

25 TO ALL INTERESTED PARTIES:

26 PLEASE TAKE NOTICE that on October 1, 2012, at 10:00 a.m. in
27 Courtroom 8 of the above entitled Court, located at 312 North Spring
28 Street, Los Angeles, California, Thomas C. Hebrank, court-appointed

1 permanent receiver ("Receiver"), will present his motion for issuance of
2 an order authorizing him to abandon real property from the receivership
3 estate as having no value for the receivership estate (the "Motion").

4 The Motion is based upon this Notice of Motion, the supporting
5 Memorandum of Points and Authorities, the declaration of Thomas C.
6 Hebrank, the Court's records and pleadings on file in this action, and all
7 other evidence, both oral and documentary, as may be presented at the
8 time of the hearing. The Motion and supporting papers are available at
9 the Receiver's website, www.ethreadvisors.com, or may be viewed at
10 the Clerk's Office of the Court during normal business hours.

11 Procedural Requirements: If you oppose the Motion, you are
12 required to file your written opposition, which complies with the rules of
13 the Court, in the Office of the Clerk, United States District Court, 312
14 North Spring Street, Los Angeles, California 90012, and serve the same
15 on the undersigned not later than 21 days prior to the hearing.

16 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION
17 within the time allowed, the Court may grant the Motion without further
18 notice.

19 Relief Requested: The relief requested is discussed in detail in the
20 following Memorandum of Points and Authorities. To summarize, the
21 Receiver seeks to abandon the real property owned by the receivership
22 entity Copeland Properties 15, L.P. ("CP15") and located at 35900 Bob
23 Hope Drive, Suite Nos. 115, 130 and 175, Rancho Mirage, California
24 92270.

25 PLEASE TAKE FURTHER NOTICE that a Proposed Order
26 Authorizing Thomas C. Hebrank, Court-Appointed Permanent Receiver,
27 to Abandon Real Property from the Receivership Estate as Having No
28 Value for the Receivership Estate has been lodged with the Court. A

1 true and correct copy of the proposed order is attached hereto as Exhibit
2 "A" and by this reference is made a part hereof.

3
4 DATED: August 31, 2012

MULVANEY BARRY BEATTY LINN &
MAYERS LLP

By: /s/ John H. Stephens

Everett G. Barry, Jr.

John H. Stephens

Patrick L. Prindle

Attorneys for Permanent Receiver

Thomas C. Hebrank

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Thomas C. Hebrank is the Court-appointed permanent receiver ("Receiver") in this action brought by the Securities and Exchange Commission ("SEC"). Among the defendants named by the SEC are Copeland Wealth Management, a Financial Advisory Corporation ("CWM Financial") and Copeland Wealth Management, a Real Estate Corporation ("CWM Realty") (together "Defendants"). The Court gave the Receiver full power over Defendants and their affiliates (the "Receivership Entities"). Thereafter, the Court determined that the Receivership Entities include among others, Copeland Properties 15, L.P. ("CP15"), a single-asset limited partnership. CP15 owns condominium business units located in Rancho Mirage, California (the "CP15 Property").

The Receiver has concluded that the CP15 Property has no equity because the \$2.4 million balance due on the loan made by George and Jane Fletcher, as trustees of the Fletcher Trust (the "Primary Lender"), far exceeds the estimated value of the property. There are additional subordinate liens against the property, as well. The Receiver, therefore, proposes the following order:

- The CP15 Property shall be declared abandoned and no longer part of the Receivership Estate.
- The Primary Lender shall take immediate possession of the CP15 Property pursuant to the assignment of rents clause in the deed of trust.

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- The Primary Lender shall have the right to bring a foreclosure action against CP15 as the maker of the Note, but shall not enforce any monetary judgment against CP15.
- The Receiver shall retain the remaining funds in CP15's accounts, including payments received for rent accrued through September 30, 2012.
- The Receiver shall have the right to pursue any tenants under leases at the CP15 Property for unpaid rent and other obligations due through September 30, 2012.

II.

PROCEDURAL HISTORY AND BACKGROUND

The Receiver was appointed pursuant to the Judgment of Permanent Injunction filed October 19, 2011 ("Judgment", Dkt. 3). (A true and correct copy of the Judgment is attached to the Declaration of Thomas C. Hebrank ("Hebrank Decl.") as Exhibit 1.) The Judgment gives the Receiver full powers of an equity receiver, and authorizes him to take custody, control and possession of real property owned by defendants CWM Financial and CWM Realty and their subsidiaries and affiliates.

The Court determined by its Order Approving Receiver's Response, dated March 12, 2012 ("Order", Dkt. 53), that CP15 is among Defendants' subsidiaries and affiliates subject to the Receivership. (A true and correct copy of the Order is attached to the Hebrank Decl. as Exhibit 2.) Pursuant to the Judgment and Order, the Receiver has full authority to take custody, control and possession of the Receivership Entities, and to engage real estate brokers in connection with his evaluation of the real properties owned by the Receivership Entities.

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1 **A. CP15 is a No-Equity Property**

2 CP15 acquired the CP15 Property by Grant Deed recorded
3 December 8, 2006. (A true and correct copy of the Grant Deed is
4 attached to the Hebrank Decl. as Exhibit 3.) The Receiver hired a real
5 estate broker to provide an opinion of value ("BOV") for the CP15
6 Property, which is located at 35900 Bob Hope Drive, Suite Nos. 115,
7 130, and 175, Rancho Mirage, California 92270. The BOV estimates the
8 value of the CP15 Property to be approximately \$1,416,000, and at best
9 \$2,125,000. (A true and correct copy of the BOV is attached to the
10 Hebrank Decl. as Exhibit 4.)

11 Liens against the CP15 Property exceed \$2,510,000. The Primary
12 Lender holds a promissory note by CP15 in the amount of \$2,400,000,
13 which is secured by a deed of trust. (True and correct copies of the Note
14 and Deed of Trust are attached to the Hebrank Decl. as Exhibits 5 and
15 6.) The note requires payment of interest only, but has a "balloon"
16 provision making the entire amount of the note and any unpaid interest
17 due and payable on November 1, 2012.

18 CP15 is the maker of two additional promissory notes in the
19 amounts of \$90,000 and \$20,000, secured by deeds of trust against the
20 CP15 Property, in favor of the Lynch Bypass Trust and the Lynch
21 Lifetime Trust (together the "Secondary Lender"). (True and correct
22 copies of the Promissory Notes and Deeds of Trust are attached to the
23 Hebrank Decl. as Exhibits 7 and 8.) The Secondary Lenders notes also
24 require payment of interest only, but have balloon provisions making the
25 entire amounts of those notes and unpaid interest due and payable on
26 December 22, 2012.

27 Receiver has determined that the CP15 Property is a no-equity
28 property, and that (1) it is heavily encumbered by liens that total

1 substantially more than the value of the property, and (2) it generates
2 insufficient rent to service existing secured debt and other operating
3 costs. Because the CP15 Property has no salable equity and only
4 serves as a drain on the Receivership Estate's resources, the Receiver
5 seeks an order declaring the CP15 Property to be abandoned from and
6 no longer a part of the estate.

7 **B. The Receivership Estate Should Retain Rights to Rent**
8 **Deficiencies**

9 The CP15 Property currently is occupied by two tenants, one of
10 which is Premier Desert Sleep Center, Inc. ("Desert Sleep"). (A true and
11 correct copy of the Multi-Tenant Office Lease is attached to the Hebrank
12 Decl. as Exhibit 9.) According to the lease, monthly base rent is
13 \$1,856.25, and the term "Rent" is defined to include "[a]ll monetary
14 obligations of Lessee to Lessor under the terms of this Lease." (Exh. 9,
15 ¶ 4.1.) Among Desert Sleep's other monetary obligations is the duty to
16 pay for tenant improvements in excess of the Lessor's allowance. (A
17 true and correct copy of the Work Letter is attached to the Hebrank Decl.
18 as Exhibit 10.) The monthly rent increase attributable to the tenant
19 improvements is \$1,758.19. (A true and correct copy of the Rent
20 Calculation Worksheet and Contractor's detail is attached to the Hebrank
21 Decl. as Exhibit 11.)

22 Desert Sleep has failed to make full payment of its rent obligations
23 since June 2011. There is now due and owing the amount of \$29,667.44.
24 (A true and correct of the Outstanding Balance calculation for Desert
25 Sleep is attached to the Hebrank Decl. as Exhibit 12.)

26 The Primary Lender and Receiver agree that the Receivership
27 Estate should be granted the right to pursue all rent arrearages until the
28 order granting abandonment is entered, and that the Primary Lender

1 should have the right to pursue any rent arrearages after the order is
2 entered.

3 III.

4 **ARGUMENT**

5 A. **The Judgment Authorizes The Receiver To Abandon**
6 **Worthless Or Non-Performing Property.**

7 The Receiver was appointed pursuant to the Judgment (Dkt. 3;
8 Page 44), which provides, in pertinent part:

9 ...Thomas C. Hebrank, is appointed as permanent receiver of
10 Defendants CWM and Copeland Realty and their subsidiaries
11 and affiliates, with full powers of an equity receiver, including,
12 but not limited to, full power over all funds, assets, collateral,
13 premises (whether owned, leased, occupied, or otherwise
14 controlled), choses in action, books records, papers and other
15 property belonging to, being managed by or in possession of
16 or control of Defendants CWM and Copeland Realty and their
17 subsidiaries and affiliates, and that such receiver is
immediately authorized, empowered and directed:

(d) to take such action as is necessary and appropriate to
preserve and take control of and to prevent the dissipation,
concealment, or disposition of any assets of or managed by
Defendants CWM and Copeland Realty and their subsidiaries
and affiliates.

18 The Receiver is expressly authorized to do what is necessary and
19 appropriate to preserve the Receivership Estate and prevent the
20 dissipation of assets. The CP-15 Property acts as a drain on the assets
21 of the Receivership Estate, and it is in the best interest of the estate that
22 the property be abandoned to preserve the estate and prevent further
23 dissipation of estate assets.

24 B. **The Receiver Lacks Adequate Funds to Pay Existing Debt and**
25 **Arrearages and to Maintain The CP15 Property.**

26 As discussed above, there is no equity in the subject property.
27 Liens against the property exceed \$2,510,000, but the property is only
28 worth between \$1,416,000 and \$2,125,000. The promissory notes owed

1 to both the Primary Lender and the Secondary Lender have balloon
2 clauses making the full amounts of the notes due and payable in
3 November 2012 and December 2012, respectively. Placing a new loan
4 on the CP15 Property will be difficult, if not impossible, for CP15.

5 Moreover, CP-15 will unable to meet its other financial obligations
6 and pay the property tax for 2012, and expects to default on that
7 obligation. Monthly debt service on the CP-15 Property, including
8 payment of subordinate debt, is \$14,687.50, and the average monthly
9 operating expenses are approximately \$5,065.00. The gross monthly
10 rental income is only \$15,613.81 because just one tenant is paying.
11 Consequently, the property does not generate sufficient income to
12 service debt and pay operating expenses, and should be abandoned as
13 a drain on the estate.

14 The California Courts have long held that a receiver is authorized
15 to abandon worthless property from the receivership estate. In *Helvey v.*
16 *U.S. Building and Loan Association* (1947) 81 Cal.App.2d 647, 651 the
17 Court observed, "Either a receiver or a trustee has the right to determine
18 whether the assets are so burdensome or of such little value as to render
19 the administration of the same unprofitable, and if he so determines, the
20 court may upon his petition authorize the abandonment of the worthless
21 property."

22 **C. Abandonment Of The Property Benefits The Estate**

23 Abandonment of the property also benefits the Receivership Estate
24 because the Primary Lender has agreed that the estate may pursue
25 collection of all rent arrearages. Currently, \$29,667.44 is owed by
26 Desert Sleep. Not only does abandonment stop the flow of red ink, but
27 collection of the arrearage owed by Desert Sleep will add nearly \$30,000
28 to the Receivership Estate.

IV.

CONCLUSION

Based upon the foregoing, and because abandonment will substantially benefit the Receivership Estate, it is respectfully requested that the Court grant this motion authorizing the Receiver to abandon the subject property.

Dated: August 31, 2012

MULVANEY BARRY BEATTY LINN
& MAYERS, LLP

By: /s/ John H. Stephens
Everett G. Barry
John H. Stephens
Patrick L. Prindle
Attorneys For Permanent Receiver
THOMAS C. HEBRANK

HEBCO.125.327560.1

“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
AUTHORIZING RECEIVER TO
ABANDON REAL PROPERTY
FROM RECEIVERSHIP ESTATE**

DATE: October 1, 2012
TIME: 10:00 a.m.
DEPT. 8, 2nd Floor

Judge: Hon. Manuel L. Real

The Court having considered the Motion of Receiver for an Order
Authorizing Him to Abandon Real Property From the Receivership Estate
as Having No Value For the Receivership Estate (the "Motion") and the
supporting documentation by Mulvaney Barry Beatty Linn & Mayers, LLP,
counsel for Receiver, and any opposition thereto, and good cause
appearing therefor,

IT IS HEREBY ORDERED that the motion is granted as follows:

1. The real property owned by Copeland Properties 15, L.P.
("CP15"), located at 35900 Bob Hope Drive, Suites 115, 130 and 175,

1 Rancho Mirage, California 92270 (the "CP15 Property"), is declared to be
2 abandoned and no longer part of the Receivership Estate as described by
3 this Court in the Judgment of Permanent Injunction and Other Relief (Dkt.
4 3), and the Order Approving Receiver's Response (Dkt. 53);

5 2. George L. Fletcher and Janet G. Fletcher, trustees of the
6 Fletcher Trust, the lender and holder of the promissory note and first
7 deed of trust recorded against the CP15 Property (the "Primary Lender"),
8 shall have the right to immediate possession of the CP15 Property
9 pursuant to the Primary Lender's deed of trust;

10 3. The Primary Lender shall have the right, without further order
11 of the Court, to file and prosecute a foreclose action related to the CP15
12 Property, whether judicially or by power of sale, and to pursue ancillary
13 remedies related thereto, but the enforcement of any monetary judgment
14 entered against CP15 in such foreclosure action shall be stayed pending
15 further order of this Court;

16 4. The Receiver shall have the right to retain all funds on deposit
17 or otherwise held in bank, investment or other accounts of CP15,
18 including rent received by the Receiver on or before September 30, 2012,
19 for rent accrued on or before that date; and,

20 ////

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1 5. The Receiver shall have the right to bring legal actions or
2 other proceedings to collect unpaid rent and other obligations, from
3 existing or prior tenants and their guarantors, that are due and owing
4 through September 30, 2012, pursuant to leases for tenancies at the
5 CP15 Property.

6
7 **IT IS SO ORDERED.**

8
9
10 Dated: _____ Judge, United States District Court

11 Submitted by:

12 MULVANEY BARRY BEATTY LINN & MAYERS LLP

13
14 By: /s/ John H. Stephens
15 Attorneys for Receiver
16 Thomas C. Hebrank

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

9 Attorneys for Receiver
10 Thomas C. Hebrank

11 UNITED STATES DISTRICT COURT

12 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 v.

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

24 Defendants.

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

**DECLARATION OF THOMAS C.
HEBRANK IN SUPPORT OF
MOTION OF RECEIVER FOR
ORDER AUTHORIZING HIM TO
ABANDON REAL PROPERTY
FROM THE RECEIVERSHIP
ESTATE AS HAVING NO VALUE
FOR THE RECEIVERSHIP
ESTATE**

DATE: October 1, 2012

TIME: 10:00 a.m.

DEPT. 8, 2nd Floor

Judge: Hon. Manuel L. Real

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

26 1. I am the Court appointed permanent receiver for Copeland
27 Wealth Management, a Financial Advisory Corporation ("CWM
28 Financial"), Copeland Wealth Management, a Real Estate Corporation
"CWM Realty"), and their subsidiaries and affiliates (collectively, the
"Receivership Entities"). The following statement includes facts within
my personal knowledge, and if called as a witness I could and would

1 testify under oath and in a manner consistent with the statements
2 hereafter set forth.

3 2. Attached hereto as Exhibit "1" is a true and correct copy of
4 the Judgment Of Permanent Injunction And Other Relief (Dkt. 3) filed
5 herein on October 19, 2011, among other things, appointing me
6 Permanent Receiver.

7 3. Attached hereto as Exhibit "2" is a true and correct copy of
8 the Order Approving Receiver's Response To Order On Receiver's
9 Application And Report (Dkt. 53) filed on or about March 12, 2012. The
10 Order reiterates and confirms that Copeland Properties 15, L.P. is
11 included in the Receivership Estate.

12 4. Attached hereto as Exhibit "3" is a true and correct copy of
13 the Grant Deed recorded December 8, 2006, in the Official Records of
14 the County of Riverside, California, Document Number 2006-0904867
15 evidencing ownership of the subject property by Copeland Properties 15,
16 L.P., a California Limited Partnership.

17 5. Attached hereto as Exhibit "4" is a true and correct copy of a
18 letter dated April 11, 2012, from Tony Yousif, Sperry Van Ness
19 Commercial Real Estate Advisors stating the Broker Opinion of Value for
20 the CP-15 Property as between \$1,416,666 and \$2,125,000, which value
21 is below the approximate balance of the liens securing loans,
22 \$2,510,000.

23 6. Attached hereto as Exhibit "5" is a true and correct copy of an
24 installment note (interest only, 7% per annum), dated October 14, 2010,
25 payable to the Fletcher Trust in the amount of \$2,400,000.

26 7. Attached hereto as Exhibit "6" is a true and correct copy of a
27 Deed of Trust recorded on October 22, 2010, in the Official Records of
28 the County of Riverside, California, Document Number 2010-0506257,

1 which Deed of Trust secures the loan described in the installment note
2 attached as Exhibit "5".

3 8. Attached hereto as Exhibit "7" is a true and correct copy of a
4 Promissory Note (interest only, 7.5% per annum), payable to Lynch
5 Bypass Trust, in the amount of \$90,000, and a Deed of Trust With
6 Assignment of Rents securing that loan.

7 9. Attached hereto as Exhibit "8" is a true and correct copy of a
8 Promissory Note (interest only, 7.5% per annum) payable to Lynch
9 Lifetime Trust, in the amount of \$20,000, and a Deed of Trust With
10 Assignment of Rents securing that loan.

11 10. Attached hereto as Exhibit "9" is a true and correct copy of
12 the lease by and between Copeland Properties Fifteen, L.P. and Premier
13 Desert Sleep Center, Inc. relative to the lease of Suite 130, 35-900 Bob
14 Hope Dr., Rancho Mirage, California.

15 11. Attached hereto as Exhibit "10" is a true and correct copy of a
16 "Work Letter" dated December 29, 2010, relative to construction of
17 tenant improvements in Suite 130, 35-900 Bob Hope Dr., Rancho
18 Mirage, California.

19 12. Attached hereto as Exhibit "11" is a true and correct copy of a
20 Rent Calculation Worksheet, relative to Suite 130, 35-900 Bob Hope Dr.,
21 Rancho Mirage, California.

22 13. Attached hereto as Exhibit "12" is a true and correct copy of a
23 spread sheet depicting the outstanding rent balance owed by Premier
24 Desert Sleep Center, as of August 1, 2012.

25 14. The above described documents were either created by me
26 in my capacity as Receiver, are records of documents affecting an
27 interest in property and in the record of a public office, or are business
28 records made at or near the time by, or from information transmitted by a

1 person with knowledge, and kept in the course of a regularly conducted
2 business activity.

3 15. The above documents show that the CP15 Property has no
4 equity. In addition, the property does not generate sufficient income to
5 pay ongoing expenses. The monthly debt service, including payment of
6 subordinate debt, is \$14,687.50, and the average monthly operating
7 expenses are approximately \$5,065.00. The gross monthly rental
8 income is only \$15,613.81 because just one tenant is paying.

9 16. In order to preserve and prevent the dissipation of the assets
10 of the Receivership Estate, it is necessary to abandon the CP-15
11 Property. Abandonment will stop the loss resulting from the properties'
12 expenses that exceed its income. As the Primary Lender has agreed
13 that the Receivership estate may collect unpaid rent and arrearages, the
14 estate will be additionally benefited as this presents the potential
15 collection of nearly \$30,000 owed by Premier Desert Sleep Center, Inc.

16 I declare under penalty of perjury under the laws of the State of
17 California that the foregoing is true and correct, and that this Declaration
18 was executed in San Diego, California.

19 DATED: August 31, 2012

20
21 By: /s/ Thomas C. Hebrank
22 Thomas C. Hebrank, Permanent Receiver
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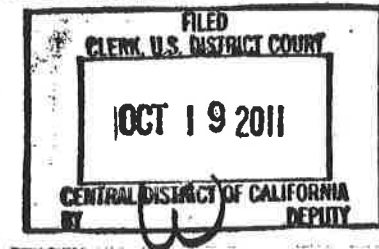
“EXHIBIT 1”

ORIGINAL

JS6

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

Case No. **CV-11-08607** R (DTBx)

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

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

Defendants.

Case No.

~~PROPOSED~~ JUDGMENT OF
PERMANENT INJUNCTION AND
OTHER RELIEF AS TO
DEFENDANTS CHARLES P.
COPELAND, COPELAND WEALTH
MANAGEMENT, A FINANCIAL
ADVISORY CORPORATION, AND
COPELAND WEALTH
MANAGEMENT, A REAL ESTATE
CORPORATION

Exhibit

1 Plaintiff Securities and Exchange Commission ("Commission") having filed
2 a Complaint and Defendants Charles P. Copeland ("Charles Copeland"), Copeland
3 Wealth Management, A Financial Advisory Corporation ("CWM") and Copeland
4 Wealth Management, a Real Estate Corporation ("Copeland Realty") (collectively,
5 "Defendants") having entered a general appearance; consented to the Court's
6 jurisdiction over Defendants and the subject matter of this action; consented to
7 entry of this Judgment without admitting or denying the allegations of the
8 Complaint (except as to jurisdiction); waived findings of fact and conclusions of
9 law; and waived any right to appeal from this Judgment:

10 I.

11 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
12 that Defendants Charles Copeland, CWM and Copeland Realty, and their agents,
13 servants, employees, attorneys, and all persons in active concert or participation
14 with them who receive actual notice of this Judgment by personal service or
15 otherwise are permanently restrained and enjoined from violating Section 17(a) of
16 the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. § 77q(a), in the offer
17 or sale of any security by the use of any means or instruments of transportation or
18 communication in interstate commerce or by use of the mails, directly or
19 indirectly:

- 20 (a) to employ any device, scheme, or artifice to defraud;
- 21 (b) to obtain money or property by means of any untrue statement of a
22 material fact or any omission of a material fact necessary in order to
23 make the statements made, in light of the circumstances under which
24 they were made, not misleading; or
- 25 (c) to engage in any transaction, practice, or course of business which
26 operates or would operate as a fraud or deceit upon the purchaser.

27 ///

28 ///

Exhibit 1

- 1 (a) to employ any device, scheme, or artifice to defraud any client or
2 prospective client; or
3 (b) to engage in any transaction, practice, or course of business which
4 operates as a fraud or deceit upon any client or prospective client.

5 IV.

6 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
7 that Defendants shall each pay disgorgement of ill-gotten gains, prejudgment
8 interest thereon, and a civil penalty pursuant to Section 20(d) of the Securities Act,
9 15 U.S.C. § 77t(d), Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3),
10 and Section 209(e)(1) of the Advisers Act, 15 U.S.C. § 80b-9(e)(1). The Court
11 shall determine the amounts of the disgorgement and civil penalties upon motion
12 of the Commission. Prejudgment interest shall be calculated from April 1, 2011,
13 based on the rate of interest used by the Internal Revenue Service for the
14 underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In
15 connection with the Commission's motion for disgorgement and/or civil penalties,
16 and at any hearing held on such a motion: (a) Defendants will be precluded from
17 arguing that they did not violate the federal securities laws as alleged in the
18 Complaint; (b) Defendants may not challenge the validity of the Consent or this
19 Judgment; (c) solely for the purposes of such motion, the allegations of the
20 Complaint shall be accepted as and deemed true by the Court; and (d) the Court
21 may determine the issues raised in the motion on the basis of affidavits,
22 declarations, excerpts of sworn deposition or investigative testimony, and
23 documentary evidence, without regard to the standards for summary judgment
24 contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection
25 with the Commission's motion for disgorgement and/or civil penalties, the parties
26 may take discovery, including discovery from appropriate non-parties.

27 ///

28 ///

Exhibit 1

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Thomas C. Hebrank, is appointed as permanent receiver of Defendants CWM and Copeland Realty and their subsidiaries and affiliates, with full powers of an equity receiver, including, but not limited to, full power over all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers and other property belonging to, being managed by or in the possession of or control of Defendants CWM and Copeland Realty and their subsidiaries and affiliates, and that such receiver is immediately authorized, empowered and directed:

- (a) to have access to and to collect and take custody, control, possession, and charge of all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers and other real or personal property, wherever located, of or managed by Defendants CWM and Copeland Realty and their subsidiaries and affiliates, with full power to sue, foreclose, marshal, collect, receive, and take into possession all such property;
- (b) to have control of, and to be added as the sole authorized signatory for, all accounts of the entities in receivership, and all accounts over which any of their employees or agents have signatory authority, at any bank, title company, escrow agent, financial institution or brokerage firm which has possession, custody or control of any assets or funds of Defendants CWM and Copeland Realty and their subsidiaries and affiliates, or which maintains any accounts over which Defendants CWM and Copeland Realty and their subsidiaries and affiliates, and/or any of their officers, employees or agents have signatory authority;

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Exhibit

- 1 (c) to conduct such investigation and discovery as may be necessary to
2 locate, account for and recover all of the assets of or managed by (and
3 to account for and pursue recovery of the losses of Defendants CWM
4 and Copeland Realty and their subsidiaries and affiliates), and to
5 engage and employ attorneys, accountants and other persons to assist
6 in such investigation and discovery;
- 7 (d) to take such action as is necessary and appropriate to preserve and
8 take control of and to prevent the dissipation, concealment, or
9 disposition of any assets of or managed by Defendants CWM and
10 Copeland Realty and their subsidiaries and affiliates;
- 11 (e) to make an accounting, as soon as practicable, to this Court and the
12 Commission of the assets and financial condition of Defendants
13 CWM and Copeland Realty and the assets under their management,
14 and to file the accounting with the Court and deliver copies thereof to
15 all parties;
- 16 (f) to make such payments and disbursements from the funds and assets
17 taken into custody, control and possession or thereafter received by
18 him or her, and to incur, or authorize the making of, such agreements
19 as may be necessary and advisable in discharging his or her duties as
20 permanent receiver;
- 21 (g) to employ attorneys, accountants and others to investigate and, where
22 appropriate, to institute, pursue, and prosecute all claims and causes of
23 action of whatever kind and nature which may now or hereafter exist
24 as a result of the activities of present or past employees or agents of
25 Defendants CWM and Copeland Realty and their subsidiaries and
26 affiliates;
- 27 (h) to have access to, monitor, and redirect all mail (including email and
28 facsimile) of Defendants CWM and Copeland Realty and their

1 subsidiaries and affiliates, in order to review such mail which he or
2 she deems relates to their business and the discharging of his or her
3 duties as permanent receiver;

4 (i) to operate and control the content of information posted on any
5 Internet web site maintained by Defendants CWM and Copeland
6 Realty and their subsidiaries and affiliates; and

7 (j) to exercise all of the lawful powers of Defendants CWM and
8 Copeland Realty and their subsidiaries and affiliates, and their
9 officers, directors, employees, representatives, or persons who
10 exercise similar powers and perform similar duties.

11 **VI.**

12 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
13 that Defendants CWM and Copeland Realty and their agents, servants, employees,
14 attorneys, and all persons in active concert or participation with them who receive
15 actual notice of this Judgment by personal service or otherwise, and any other
16 persons who are in custody, possession or control of any assets, collateral, books,
17 records, papers or other property of or managed by any of the entities in
18 receivership in this action, shall forthwith give access to and control of such
19 property to the permanent receiver.

20 **VII.**

21 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
22 that neither Defendants CWM or Copeland Realty nor any agent, servant,
23 employee, or attorney of Defendants CWM or Copeland Realty shall take any
24 action or purport to take any action, in the name of or on behalf of Defendants
25 CWM or Copeland Realty without the written consent of the permanent receiver or
26 order of this Court.

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Exhibit 1

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, except by leave of this Court, during the pendency of this receivership, all clients, investors, trust beneficiaries, note holders, creditors, claimants, lessors, and all other persons or entities seeking relief of any kind, in law or in equity, from Defendants CWM and Copeland Realty or their subsidiaries or affiliates, and all persons acting on behalf of any such investor, trust beneficiary, note holder, creditor, claimant, lessor, consultant group, or other person, including sheriffs, marshals, servants, agents, employees, and attorneys, are hereby restrained and enjoined from, directly or indirectly, with respect to these persons and entities:

- (a) commencing, prosecuting, continuing or enforcing any suit or proceeding (other than actions by the Commission) against any of them;
- (b) using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any property or property interests owned by or in the possession of Defendants CWM and Copeland Realty; and
- (c) doing any act or thing whatsoever to interfere with taking control, possession or management by the permanent receiver appointed hereunder of the property and assets owned, controlled or managed by or in the possession of Defendants CWM and Copeland Realty, or in any way to interfere with or harass the permanent receiver or his or her attorneys, accountants, employees, or agents or to interfere in any manner with the discharge of the permanent receiver's duties and responsibilities hereunder.

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Exhibit

IX.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Charles Copeland, CWM and Copeland Realty and their officers, agents, servants, employees, attorneys, subsidiaries and affiliates, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise, shall cooperate with and assist the permanent receiver and shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the permanent receiver or his or her attorneys, accountants, employees, or agents, in the conduct of the permanent receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the permanent receiver of the funds, assets, collateral, premises, and choses in action described above.

X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, except as otherwise ordered by this Court, Defendants Charles Copeland, CWM and Copeland Realty, and their officers, agents, servants, employees, attorneys, subsidiaries and affiliates, including the other entities in receivership, and those persons in active concert or participation with any of them, who receive actual notice of this Judgment, by personal service or otherwise, and each of them, be and hereby are restrained and enjoined from, directly or indirectly: destroying, mutilating, concealing, transferring, altering, or otherwise disposing of, in any manner, any documents, which includes all books, records, computer programs, computer files, computer printouts, contracts, correspondence, memoranda, brochures, or any other documents of any kind in their possession, custody or control, however created, produced, or stored (manually, mechanically, electronically, or otherwise), pertaining in any manner to Defendants CWM and Copeland Realty, and their subsidiaries and affiliates. Nothing in this paragraph shall prevent the permanent receiver from disposing of documents in compliance

1 with applicable law upon the termination of the receivership by the Court at the
2 conclusion of this case.

3 **XI.**

4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that no bond
5 shall be required in connection with the appointment of the permanent receiver.
6 Except for an act of gross negligence, the permanent receiver shall not be liable for
7 any loss or damage incurred by Defendants CWM, Copeland Realty, or their
8 officers, agents, servants, employees and attorneys or any other person, by reason
9 of any act performed or omitted to be performed by the permanent receiver in
10 connection with the discharge of his or her duties and responsibilities.

11 **XII.**

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
13 representatives of the Commission and any other government agency, are
14 authorized to have continuing access to inspect or copy any or all of the corporate
15 books and records and other documents of Defendants CWM and Copeland Realty
16 and the other entities in receivership, and continuing access to inspect their funds,
17 property, assets and collateral, wherever located.

18 **XIII.**

19 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the
20 Consent of Defendants Charles Copeland, CWM and Copeland Realty are
21 incorporated herein with the same force and effect as if fully set forth herein, and
22 that Defendants shall comply with all of the undertakings and agreements set forth
23 therein.

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XIV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment.

Dated: Oct. 19, 2011


UNITED STATES DISTRICT JUDGE

“EXHIBIT 2”

1 THOMAS C. HEBRANK
2 Permanent Receiver
3 501 W. Broadway, Suite 800
4 San Diego, California 92101
5 Phone: (619) 400-4922
6 Fax: (619) 400-4923
7 E-Mail: thebrank@ethreadvisors.com
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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION - LOS ANGELES**
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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. 11-08607-R-DTB

**ORDER APPROVING RECEIVER'S
RESPONSE TO ORDER ON
RECEIVER'S APPLICATION AND
REPORT**

Date: March 5, 2012
Ctmm: 8, 2nd Floor
Judge: Hon. Manuel L. Real

1 The Court having considered the Receiver's Response to Order on Receiver's
2 Application and Report, and good cause appearing therefor, hereby orders as
3 follows:

4 1. The Report is approved;

5 2. The following limited partnerships are included in the receivership,
6 pursuant to the Judgment entered on October 25, 2011, as affiliates of CWM and
7 Copeland Realty:

8 Copeland Private Equity One, L.P.

9 Copeland Private Equity Two, L.P.

10 Copeland Fixed Income One, L.P.

11 Copeland Fixed Income Two, L.P.

12 Copeland Fixed Income Three, L.P.

13 Copeland Properties One, L.P.

14 Copeland Properties Two, L.P.

15 Copeland Properties Three, L.P.

16 Copeland Properties Four, L.P.

17 Copeland Properties Five, L.P.

18 Copeland Properties Six, L.P.

19 Copeland Properties Seven, L.P.

20 Copeland Properties Eight, L.P.

21 Copeland Properties Nine, L.P.

22 Copeland Properties Ten, L.P.

23 Copeland Properties Eleven, L.P.

24 Copeland Properties Twelve, L.P.

25 Copeland Properties 13, L.P.

26 Copeland Properties 14, L.P.

27 Copeland Properties 15, L.P.

28

1 Copeland Properties 16, L.P.

2 Copeland Properties 17, L.P.

3 Copeland Properties 18, L.P.

4 3. The Receiver is authorized to engage leasing agents, and to execute,
5 modify and terminate leases in connection with his management of the real
6 properties owned by the Receivership Entities, and to pay such agent leasing
7 commissions without further Court order;

8 4. The Receiver is authorized to engage appraisers in connection with his
9 evaluation of the real properties owned by the Receivership Entities, and to pay such
10 appraisers to provide appraisals of the real properties owned by the Receivership
11 Entities without further Court order;

12 5. The Receiver is authorized to engage real estate brokers to market the
13 real properties owned by the Receivership Entities. When the Receiver agrees on
14 the terms of a sale with a buyer, the Receiver will file a motion for approval of the
15 sale with the Court. No commissions shall be paid to such brokers without further
16 Court order;

17 6. The Receiver's is authorized to conduct a forensic accounting review
18 pursuant to Part V.E. of the Judgment;

19 7. The Receiver is authorized, with the assistance of counsel, to
20 investigate and pursue collection of loans and other causes of action against third
21 parties who borrowed funds or otherwise owe money to the Receivership Entities;

22 8. The Receiver's recommendations contained in Part X of the Report are
23 approved and accepted.

24 Dated: March 12, 2012


25 Hon. Manuel L. Real
26 Judge, United States District Court
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1 Submitted by:
2 THOMAS C. HEBRANK
3 PERMANENT RECEIVER

4 By: /s/ Thomas C. Hebrank

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[PROPOSED] ORDER APPROVING
RECEIVER'S RESPONSE TO APPLICATION
AND REPORT

“EXHIBIT 3”

DOC # 2006-0904867
12/08/2006 08:00A Fee: 49.00
Page 1 of 5 Doc T Tax Paid
Recorded in Official Records
County of Riverside
Larry W. Ward
Assessor, County Clerk & Recorder



RECORDING REQUESTED BY:
Stewart Title ~~Guaranty~~ of California
WHEN RECORDED MAIL TO
AND MAIL TAX STATEMENTS TO:
Copeland Properties 15, L.P.
25809 Business Center Drive, Ste F
Redlands, CA 92374

ORDER NO. 511-411681
ESCROW NO. 30137662PM
APN. 618-561-004 - 3, 002-1 & 008-7

S	R	U	PAGE	SIZE	DA	MISC	LONG	RFD	COPY
1			5						
M	A	L	465	426	PCOR	NCOR	SMF	NCHG	EXAM
									040

TRA 017267

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S): IS TO BE PAID BY
DOCUMENTARY TRANSFER TAX is: Per separate statement ATTACHED

- ☐ Monument Preservation Fee is:
☒ computed on full value of property conveyed, or
☐ computed on full value less value of liens or encumbrances remaining at time of sale.
☐ Unincorporated area: ☒ City of Rancho Mirage, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
Rancho Mirage Professional Plaza, LLC, a California limited liability company

hereby **GRANT(S)** to
Copeland Properties 15, L.P., a California limited partnership

the following described real property in the City of Rancho Mirage, County of Riverside, State of California:

PARCEL 1: UNITS 115, 130 AND 175 IN BUILDING 1 OF THE CONDOMINIUM PLAN FOR PARCEL MAP NO. 30677,
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR COMPLETE LEGAL DESCRIPTION.

DATE: December 4, 2006

Rancho Mirage Professional Plaza, LLC
A California limited liability company

By: 

Jeffrey G. Jones, Manager

STATE OF TEXAS

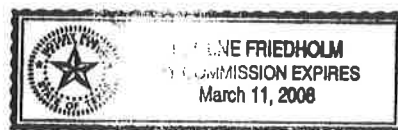
COUNTY OF DALLAS

On 12-6-06 before me, Lugene Friedholm

Notary Public, personally appeared Jeffrey G. Jones personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s), whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature Lugene Friedholm



(Seal) 3

Exhibit 3

EXHIBIT "A"

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of Riverside, City of RANCHO MIRAGE, described as follows:

PARCEL 1:

UNITS 115, 130 AND 175 IN BUILDING 1 OF THE CONDOMINIUM PLAN FOR PARCEL MAP NO. 30677, AS SHOWN BY CONDOMINIUM PLAN RECORDED JULY 15, 2004 AS INSTRUMENT NO. 04-550900 IN BOOK C-137 PAGE(S) 85-93, INCLUSIVE, OF CONDOMINIUM PLANS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, AS AMENDED BY AMENDMENT TO CONDOMINIUM PLANS FOR RANCHO MIRAGE PROFESSIONAL PLAZA, RECORDED JANUARY 21, 2005 AS INSTRUMENT NO. 05-059343 IN BOOK C-145 PAGES 1 THROUGH 7, INCLUSIVE, OF CONDOMINIUM PLANS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, AND AS AMENDED BY SECOND AMENDMENT TO CONDOMINIUM PLANS FOR RANCHO MIRAGE PROFESSIONAL PLAZA, RECORDED APRIL 13, 2005 AS INSTRUMENT NO. 2005-0290327, IN BOOK C-147 PAGES 156 THROUGH 165, INCLUSIVE, OF CONDOMINIUM PLANS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, AS AMENDED BY THIRD AMENDMENT TO CONDOMINIUM PLANS FOR RANCHO MIRAGE PROFESSIONAL PLAZA, RECORDED OCTOBER 3, 2005 AS INSTRUMENT NO. 05-819502 IN BOOK C-155 PAGES 44 THROUGH 51, INCLUSIVE, OF CONDOMINIUM PLANS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, AND AS AMENDED BY FOURTH AMENDMENT TO CONDOMINIUM PLANS FOR RANCHO MIRAGE PROFESSIONAL PLAZA, RECORDED AUGUST 31, 2006 AS INSTRUMENT NO. 06-646148 IN BOOK C-173 PAGES 52 THROUGH 59, OF CONDOMINIUM PLANS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 2:

AN UNDIVIDED 23.16% INTEREST IN AND TO PARCEL 1 OF PARCEL MAP NO. 30677, AS SHOWN BY MAP ON FILE IN BOOK 208 PAGE(S) 82 AND 83, OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

EXCEPTING THEREFROM ANY PORTION THEREOF WITHIN THE BOUNDARIES OF UNIT(S) 100, 110, 112 AND 200 OF BUILDING 1 AND UNITS 100, 110, 120 AND 200 OF BUILDING 2, AS SHOWN IN THE CONDOMINIUM PLAN REFERENCED ABOVE, AND WITHIN THE BOUNDARIES OF UNITS 100, 105, 110, 130, 135, 170, 175, 200, 205, 210, 230, 235, 270 AND 275 OF BUILDING 1 AS SHOWN ON THE AMENDMENT TO CONDOMINIUM PLANS FOR RANCHO MIRAGE PROFESSIONAL PLAZA REFERENCED ABOVE, AND WITHIN THE BOUNDARIES OF UNITS 100, 105, 110, 130, 140, 170, 172, 175, 200, 202, 205, 210, 215, 230, 235, 270, 275, AND 280 AS SHOWN ON THE SECOND AMENDMENT TO CONDOMINIUM PLANS FOR RANCHO MIRAGE PROFESSIONAL PLAZA REFERENCED ABOVE, AND WITHIN THE BOUNDARIES OF UNITS 100, 105, 110, 130, 140, 170, 172, 175, 202, 205, 210, 215, 230, 235, 270, 275 AND 280 AS SHOWN ON THE THIRD AMENDMENT TO CONDOMINIUM PLANS FOR RANCHO MIRAGE

PROFESSIONAL PLAZA REFERENCED ABOVE, AND WITHIN THE BOUNDARIES OF UNITS 100, 105, 110, 115, 130, 140, 170, 172, 175, 200, 202, 205, 210, 215, 230, 235, 270 AND 275, AS SHOWN ON THE FOURTH AMENDMENT TO CONDOMINIUM PLANS FOR RANCHO MIRAGE PROFESSIONAL PLAZA REFERENCED ABOVE.

PARCEL 3:

ALL THOSE CERTAIN RIGHTS AND EASEMENTS IN FAVOR OF THE HEREIN DESCRIBED PROPERTY AS SET OUT IN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR RANCHO MIRAGE PROFESSIONAL PLAZA, RECORDED JULY 16, 2004 AS INSTRUMENT NO. 04-555875 AND RE-RECORDED AUGUST 19, 2004 AS INSTRUMENT NO. 04-654642 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, UPON AND SUBJECT TO THE TERMS AND PROVISIONS THEREIN CONTAINED, AS AMENDED BY AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED JANUARY 21, 2005 AS INSTRUMENT NO. 05-059344 OF OFFICIAL RECORDS, AND AS AMENDED BY SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, RECORDED APRIL 13, 2005 AS INSTRUMENT NO. 2005-0290328 OF OFFICIAL RECORDS, AND AS AMENDED BY THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED OCTOBER 3, 2005 AS INSTRUMENT NO. 05-819503 OF OFFICIAL RECORDS, AND AS AMENDED BY, FOURTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED MARCH 23, 2006 AS INSTRUMENT NO. 2006-205426, OF OFFICIAL RECORDS, AND AS AMENDED BY FIFTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, RECORDED AUGUST 31, 2006 AS INSTRUMENT NO. 06-646149 OF OFFICIAL RECORDS, AND AS AMENDED BY SIXTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, RECORDED OCTOBER 31, 2006 AS INSTRUMENT NO. 06-799349 OF OFFICIAL RECORDS;

EXCEPTING FROM PARCELS 1 AND 2 ABOVE ALL COAL, OIL, GAS AND OTHER MINERAL DEPOSITS TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE SAME;

ALSO EXCEPTING THEREFROM ALL URANIUM, THORIUM AND ANY OTHER MATERIAL WHICH IS OR MAY BE DETERMINED TO BE PECULIARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIALS, WHETHER OR NOT OF COMMERCIAL VALUE, TOGETHER WITH THE RIGHT OF THE UNITED STATES OF AMERICA THROUGH ITS AUTHORIZED AGENTS OR REPRESENTATIVES AT ANY TIME TO ENTER UPON THE LAND AND PROSPECT FOR, MINE AND REMOVE SAME, AS RESERVED IN PATENT FROM THE UNITED STATES OF AMERICA RECORDED OCTOBER 14, 1953 IN BOOK 1516 PAGE 194 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA

ALSO EXCEPTING FROM PARCELS 1 AND 2 ABOVE ALL COAL, OIL, GAS

AND OTHER MINERAL DEPOSITS IN THE LAND SO PATENTED, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE SAME ACCORDING TO THE PROVISIONS OF SAID ACT OF JUNE 1, 1938, AS RESERVED BY THE UNITED STATES OF AMERICA IN A PATENT RECORDED JANUARY 31, 1958 IN BOOK 2215 PAGE 565 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

End of Legal Description

PENALTY OF PERJURY FOR NOTARY SEAL
GOVERNMENT CODE 27361.7

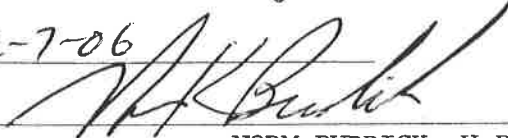
I certify under the penalty of perjury that the Notary Seal on the document
to which this statement is attached reads as follows:

NAME OF NOTARY Lugene Friedholm

DATE COMMISSION EXPIRES March 11, 2008

PLACE OF EXECUTION State of Texas
County of Dallas

DATE: 12-7-06

(Signature) 

NORM BURDICK, V.P.

STEWART TITLE OF CALIFORNIA, INC., Inland Empire Division, a Ca. corp.
(Firm name-if any)

“EXHIBIT 4”

April 11, 2012

Mr. Thomas C. Hebrank, CPA, CIRA
E3 Advisors
501 W. Broadway, Suite 800
San Diego, CA 92101

RE: Rancho Mirage Professional Plaza – 35900 Bob Hope Drive, Rancho Mirage, CA 92270

Dear Mr. Hebrank:

Thank you for working with Sperry Van Ness Commercial Real Estate Advisors regarding your property and requesting from us a Broker Opinion of Value.

The Opinion of Value is based on knowledge of the area and market and review of certain property information provided to us by you. In addition, the opinion expresses and the report represents our professional opinion as a real estate agent and advisor.

This opinion of value is based on local market data, current market conditions, and calculations.

The subject property is a class A office condominium building that consists of 49,000 square feet situated on 3.30 acres of land. The building was built in 2005 and has plenty of parking with a 5.1 to 1,000 SF ratio with 50% of the spaces being covered. There are two elevators, common area and co-ed bathrooms. The construction is concrete and steel with beautiful Mediterranean architecture. The building is located mid-valley with easy access to all areas of the valley.

The purpose of this report is to value the five (5) condominiums that Copeland 15 owns. The current owner is managing suite, 115, 130, 135, 155 and 175. The total space for these five suites is approximately 11,555 square feet. 3 of the 5 suites are currently leased, which totals 8,478 SF, leaving 3,077 SF vacant.

Rent Roll 2011

Suite #	Lease Start	Lease End	Rentable SF	Monthly Rent	Rent PSF
115	06/01/09	05/31/14	2,331	\$7,770.65	\$3.33
130	05/01/11	04/30/16	1,485	\$1,856.25	\$1.25
135	Vacant	Vacant	1,288	----	
155	Vacant	Vacant	1,789	----	
175	02/01/09	01/31/19	4,662	\$12,365.96	\$2.65
			11,555	\$21,992.86	

The total monthly income is \$21,992.86, annually \$263,914.32. When taking expenses and vacancy into account we then come to a total of approximately \$160,000 - \$170,000. We then would apply a 12% cap to this number (due to the fact that suites 115 and 175's rent are grossly over market and will be adjusted to the market rent of \$1.25 PSF.)

Sperry Van Ness Commercial Real Estate Advisors

124 W. Main Street, Suite 120, El Cajon, CA 92020

Office: (619) 590-2370 WWW.SVNPromus.Com Fax: (619) 599-8012

Sperry Van Ness is a registered trademark of Sperry Van Ness International Corporation.
Some locations independently owned and operated.

Exhibit

4

On the whole, prices for properties and lease rates for office in Rancho Mirage have decreased since 2005. We are under the impression that the property was purchased with completely full occupancy. Current lease rates are now approximating \$1.25 per foot gross, per month for this type of property. Current cap rates approximately 10%. But because this property has rents that are grossly over the market rate, an investor would most likely not invest more than a 12% cap. We also have to note that the subject property is a broken office condominium; in which several owners share common space, HOA and other expenses. Control of the entire office building would ensure a lower cap rate, as we do not have that here.

It would be extremely difficult to find a buyer for this type of asset; as they would need to purchase the 5 suites with hopes that one day they can sell them each to owner users, who generally pay the highest price due to SBA lending.

As for comparable sales it is very difficult for this property specifically. There are office properties that have sold but most are not in this area or are in a different class. There has been one individual office sales in the past year, this is a free standing building located on 71956 Magnesia Falls Drive, Rancho Mirage CA 92270. This building is a 4,500 SF office building situated on 0.52 acres and was sold to an owner user for \$400,000 (\$89 PSF). Of course this is not a direct comparable because it is not a condo office and also was built in 1970; although it is also a class A building.

We received information that contradict each other; financials that show one number and rent rolls that show another. Many assumptions were made when completing this evaluation but there is one thing we are certain of.

With a mortgage balance of approximately \$2,700,000 in 2010, the assumed property proceeds will most likely not exceed the mortgage amount and cost of sale. It is difficult to know what someone would pay for this property in the current market but we are fairly certain that the amount it will trade at will NOT cover the current mortgage. We believe that if we had an NOI of approximately \$170,000 calculated at a 12% cap – you are left with a value of \$1,416,666. Even if someone were willing to buy the condos at an 8% cap, (\$2,125,000) we still fall short of the mortgage balance.

Thank you again for the opportunity and we look forward to working with you.

Sincerely,

Sperry Van Ness Commercial Real Estate Advisors
Tony Yousif
License # 01773885
tony.yousif@svn.com

THE INFORMATION HEREIN IS BASED ON ASSUMPTIONS AND ESTIMATES ONLY. PLEASE NOTE THIS BROKER'S OPINION OF VALUE HAS NOT FOLLOWED UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP), AND CANNOT BE CONSIDERED AS AN APPRAISAL. THIS IS SOLELY ONE BROKER'S OPINION OF VALUE BASED ON INFORMATION AVAILABLE TO US AT THE TIME OF THE REPORT

Exhibit 4

Sperry Van Ness Commercial Real Estate Advisors
124 W. Main Street, Suite 120, El Cajon, CA 92020
Office: (619) 590-2370 WWW.SVNPromus.Com Fax: (619) 599-8012

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Some locations independently owned and operated



Parking



Front of Building



Front of Building



Lobby Entrance



Common Area

“EXHIBIT 5”

**INSTALLMENT NOTE
INSTALLMENT (INTEREST ONLY)**

Eorow No. 9911951-KF

\$2,400,000.00

San Bernardino, California

October 14, 2010

In installments as herein stated, for value received, I promise to pay to

2010

George L. Fletcher and Janet G. Fletcher, Trustees of the Fletcher Trust dated February 28, ~~1970~~ or order,

at a place designated by the beneficiary, the sum of TWO MILLION FOUR HUNDRED THOUSAND AND 00/100 DOLLARS,

with interest from October 22, 2010 on the unpaid principal, at the rate of 7.00 percent per annum. Interest payable in Monthly Installments,

OR MORE on the 1st (First) day of each and every month, beginning on December 1st, 2010, and continuing until November 1st, 2012, at which time the remaining unpaid principal balance and any interest accrued thereon shall become immediately due and payable.

Anything herein to the contrary notwithstanding, in the event of a voluntary sale, transfer or conveyance of all or any portion of the property described herein, any indebtedness or obligation hereunder, shall at the option of the holder hereof, immediately become due and payable.

In the event that any payment, or any portion thereof, due hereunder is not received by the Payee within 10 days after the due date thereof, the undersigned agrees to pay to Payee, in addition to the regular monthly payment, a late charge of \$500.00.

Each payment shall be credited on interest then due, and the remainder on principal; and interest shall thereupon cease upon the principal so credited. Should default be made in payment of any installment when due the whole sum of principal and interest shall become due at the option of the holder of this note. Principal and interest payable in lawful money of the United States. If action be instituted on this note I promise to pay such sum as the Court may fix as attorney's fees. This note is secured by a Deed of Trust to Fidelity National Title Insurance Company, a California Corporation, herein called Trustee.

Copeland Properties 15, L.P., a California Limited Partnership

By: 

PLEASE SEE ATTACHED PAGE FOR ADDITIONAL SIGNATURE LINES (ADDITIONAL GUARANTORS)

FD-230 (Rev. 12-20-95)

INSTALLMENT NOTE-INTEREST INCLUDED

DO NOT DESTROY THIS NOTE: When paid, this note and the Deed of Trust must be surrendered to Trustee for cancellation, before reconveyance will be made.

Exhibit 5

Additional Guarantor(s):

Stewart Wright
Stewart Wright

Emily Wright
Emily Wright

Daniel Schactel
Daniel Schactel

Trustee

S. Schactel
S. Schactel

Samuel Gregory
Samuel Gregory

Janette Gregory
Janette Gregory

FD-230 (Rev. 12-20-95)

INSTALLMENT NOTE-INTEREST INCLUDED

DO NOT DESTROY THIS NOTE: When paid, this note and the Deed of Trust must be surrendered to Trustee for cancellation, before reconveyance will be made.

Exhibit 5

“EXHIBIT 6”

RECORDING REQUESTED BY:
Fidelity National Title Company - San
Bernardino
Esrow No. 9911951-KF
Title Order No. 33398934

When Recorded Mail Document To:
Fletcher Trust dated February 26, 2010
1910 Country Club Lane
Redlands, CA 92373

APN: 685-121-026-3

DOC # 2010-0506257

10/22/2010 08:00A Fee:54.00

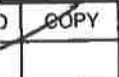
Page 1 of 8

Recorded in Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



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T:						CTY	UNI	139	

SHORT FORM DEED OF TRUST

AND ASSIGNMENTS OF RENTS

THIS DEED OF TRUST, made October 14, 2010

Copeland Properties 15, L.P., a California Limited Partnership

25809 Business Center Drive, Suite F
Redlands, CA 92374

, between
, herein called TRUSTOR, whose address is

Fidelity National Title Insurance Company, a California Corporation, herein called TRUSTEE, and
George L. Fletcher and Janet G. Fletcher, Trustees of the Fletcher Trust dated February 26, 2010
, herein called BENEFICIARY.

WITNESSETH: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH
POWER OF SALE, that property in Riverside County, California, described as:

SEE EXHIBIT ONE ATTACHED HERETO AND MADE A PART HEREOF

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority
given to and conferred upon Beneficiary by paragraph (10) of the provisions incorporated herein by reference to
collect and apply such rents, issues and profits.

For the Purpose of Securing: 1. Performance of each agreement of Trustor incorporated by reference or contained
herein. 2. Payment of the indebtedness evidenced by one promissory note of even date herewith, and any extension
or renewal thereof, in the principal sum of \$2,400,000.00 executed by Trustor in favor of Beneficiary or order.
3. Payment of such further sums as the then record owner of said property hereafter may borrow from Beneficiary,
when evidenced by another note (or notes) reciting it is so secured.

INITIALS *JE*

APN: 685-121-026-3

To Protect the Security of this Deed of Trust, Trustor Agrees: By the execution and delivery of this Deed of Trust and the note secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded in Santa Barbara County and Sonoma County October 18, 1961, and in all other counties October 23, 1961, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, viz:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	435	684	Kings	792	833	Placer	895	301	Sierra	29	335
Alpine	1	250	Lake	362	39	Plumas	151	5	Siskiyou	468	181
Amador	104	348	Lassen	171	471	Riverside	3005	523	Solano	1105	182
Butte	1145	1	Los Angeles	T2055	899	Sacramento	4331	62	Sonoma	1851	689
Calaveras	145	152	Madera	810	170	San Benito	271	383	Stanislaus	1715	456
Colusa	296	617	Marin	1508	339	San Bernardino	5567	61	Sutter	572	297
Contra Costa	3978	47	Mariposa	77	292	San Francisco	A332	905	Tehama	401	289
Del Norte	78	414	Mendocino	579	530	San Joaquin	2470	311	Trinity	93	366
El Dorado	568	456	Merced	1547	538	San Luis Obispo	1151	12	Tulare	2294	275
Fresno	4626	572	Modoc	184	851	San Mateo	4078	420	Tuolumne	135	47
Glenn	422	184	Mono	52	429	Santa Barbara	1878	860	Ventura	2082	386
Humboldt	657	527	Monterey	2194	538	Santa Clara	5336	341	Yolo	653	245
Imperial	1091	501	Napa	639	86	Santa Cruz	1431	494	Yuba	334	486
Inyo	147	598	Nevada	305	320	Shasta	684	528			
Kern	3427	60	Orange	5889	611	San Diego	Series 2 Book 1961, Page 183887				

which provisions, identical in all counties, (printed on the attached unrecorded pages) are hereby adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that Trustor will observe and perform said provisions; and that the references to property, obligations and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth.

State of California)
County of San Bernardino)
On October 19, 2010 before me,
Susan N. Pederson, Notary Public
(here insert name and title of the officer), personally
appeared Donald E. Copeland

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

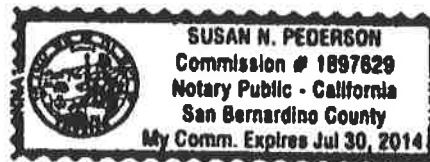
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Susan N. Pederson (Seal)

Copeland Properties 15, L.P., a California Limited Partnership

By: Donald E. Copeland
DONALD E. COPELAND



DO NOT RECORD

The following is a copy of provisions (1) to (14), inclusive, of the fictitious deed of trust, recorded in each county in California, as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all incumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any incumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

(6) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such full reconveyance, Trustee may destroy said note and this Deed (unless directed in such request to retain them).

(10) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(11) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

INITIALS 

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash of lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the proceeding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(12) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and pages where this Deed is recorded and the name and address of the new Trustee.

(13) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

INITIALS PC

REQUEST FOR FULL RECONVEYANCE

Fidelity National Title Insurance Company, a California Corporation, TRUSTEE:

The undersigned is the legal owner and holder of all indebtedness secured by the within Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness, secured by said Deed of Trust, delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated _____

By: _____

By: _____

Please mail Reconveyance to:

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both original documents must be delivered to the Trustee for cancellation before reconveyance will be made.

State of California)
County of _____)

On _____ before me, _____, Notary Public
(here insert name and title of the officer), personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

RECORDING REQUESTED BY:

Fidelity National Title Company - San
Bernardino
Escrow No. 9911951-KF
Title Order No. 33398934

When Recorded Mail Document To:

Fletcher Trust dated February 26, 2010
1910 Country Club Lane
Redlands, CA 92373

APN: 685-121-026-3

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SHORT FORM DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST, made October 14, 2010

, between

Copeland Properties 15, L.P., a California Limited Partnership

, herein called TRUSTOR, whose address is

25809 Business Center Drive, Suite F
Redlands, CA 92374

Fidelity National Title Insurance Company, a California Corporation, herein called TRUSTEE, and
George L. Fletcher and Janet G. Fletcher, Trustees of the Fletcher Trust dated February 26, 2010

, herein called BENEFICIARY,

WITNESSETH: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH
POWER OF SALE, that property in Riverside County, California, described as:

SEE EXHIBIT ONE ATTACHED HERETO AND MADE A PART HEREOF

I hereby certify under penalty of perjury that
the foregoing is true and correct.
Executed this 21ST day of OCT 20 10
at San Bernardino, California

B. Smith

Signature

Brian Smith-Title Officer Fidelity National Title

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority
given to and conferred upon Beneficiary by paragraph (10) of the provisions incorporated herein by reference to
collect and apply such rents, issues and profits.

For the Purpose of Securing: 1. Performance of each agreement of Trustor incorporated by reference or contained
herein. 2. Payment of the indebtedness evidenced by one promissory note of even date herewith, and any extension
or renewal thereof, in the principal sum of \$2,400,000.00 executed by Trustor in favor of Beneficiary or order.
3. Payment of such further sums as the then record owner of said property hereafter may borrow from Beneficiary,
when evidenced by another note (or notes) reciting it is so secured.

APN: 685-121-026-3

To Protect the Security of this Deed of Trust, Trustor Agrees: By the execution and delivery of this Deed of Trust and the note secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded in Santa Barbara County and Sonoma County October 18, 1961, and in all other counties October 23, 1961, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, viz:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	435	684	Kings	792	833	Placer	895	301	Sierra	29	335
Alpine	1	250	Lake	362	39	Plumas	151	5	Siskiyou	468	181
Amador	104	348	Lassen	171	471	Riverside	3005	523	Solano	1105	182
Butte	1145	1	Los Angeles	T2055	899	Sacramento	4331	62	Sonoma	1851	689
Calaveras	145	152	Madera	810	170	San Benito	271	383	Stanislaus	1715	456
Colusa	296	617	Marin	1508	339	San Bernardino	5567	61	Sutter	572	297
Contra Costa	3978	47	Mariposa	77	292	San Francisco	A332	905	Tehama	401	289
Del Norte	78	414	Mendocino	579	530	San Joaquin	2470	311	Trinity	93	366
El Dorado	568	456	Merced	1547	538	San Luis Obispo	1151	12	Tulare	2294	275
Fresno	4626	572	Modoc	184	851	San Mateo	4078	420	Tuolumne	135	47
Glenn	422	184	Mono	52	429	Santa Barbara	1878	860	Ventura	2062	386
Humboldt	657	527	Monterey	2194	538	Santa Clara	5336	341	Yolo	653	245
Imperial	1091	501	Napa	639	86	Santa Cruz	1431	494	Yuba	334	486
Inyo	147	598	Nevada	305	320	Shasta	684	528			
Kern	3427	60	Orange	5889	611	San Diego	Series 2 Book 1961, Page 183887				

which provisions, identical in all counties, (printed on the attached unrecorded pages) are hereby adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that Trustor will observe and perform said provisions; and that the references to property, obligations and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth.

State of California)
County of _____)

Copeland Properties 15, L.P., a California Limited Partnership

On _____ before me,
_____, Notary Public
(here insert name and title of the officer), personally
appeared _____

By: _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

DO NOT RECORD

The following is a copy of provisions (1) to (14), inclusive, of the fictitious deed of trust, recorded in each county in California, as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all incumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any incumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

(6) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such full reconveyance, Trustee may destroy said note and this Deed (unless directed in such request to retain them).

(10) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such, rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(11) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

INITIALS _____

DO NOT RECORD

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash of lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the proceeding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(12) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and pages where this Deed is recorded and the name and address of the new Trustee.

(13) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

INITIALS _____

REQUEST FOR FULL RECONVEYANCE

Fidelity National Title Insurance Company, a California Corporation, TRUSTEE:

The undersigned is the legal owner and holder of all indebtedness secured by the within Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness, secured by said Deed of Trust, delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated _____

By: _____

By: _____

Please mail Reconveyance to:

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both original documents must be delivered to the Trustee for cancellation before reconveyance will be made.

State of California)
County of _____)

On _____ before me, _____, Notary Public
(here insert name and title of the officer), personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

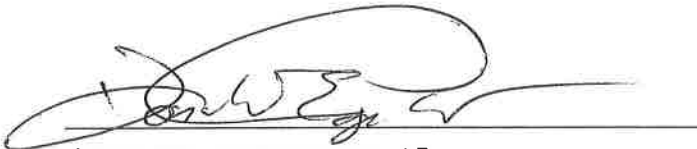
“EXHIBIT 7”

PROMISSORY NOTE

For value received, I, the undersigned, promise to pay to the order of
Lynch Bypass Trust the principal sum of
\$ 90,000.00 on December 22, 20 12 (maturity date) with interest at
the rate of 7.5 percent per year, interest payable
monthly (interest only), beginning January 22, 20 11, and continuing until
maturity date at which time all unpaid sums of principal and interest shall be due and
payable.

Should default be made in payment of the principal or interest, the whole sum of
principal and interest shall, at the option of the holder of this note, become immediately
due.

This Note is subject to Section 2966 of the California Civil Code, which provides that the
holder of this Note shall give written notice to the trustor, or his successor in interest, of
prescribed information at least 90 and not more than 150 days before any balloon
payment is due.



COPELAND PROPERTIES 15

(delete acceleration and balloon notice provisions if not applicable.)

Exhibit 7

When recorded mail to:

CWM Real Estate
25809 Business Center Drive, Suite F
Redlands, CA 92374
C/O Donald Copeland



Title No.
Escrow No.

S	R	U	PAGE	SIZE	DA	MISC	LONG	RFD	COPY
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DEED OF TRUST WITH ASSIGNMENT OF RENTS

This DEED OF TRUST, made this 22nd day of December, 2010 between
Copeland Properties Fifteen L.P., a California Limited Partnership



herein called TRUSTOR

whose address is 25809 Business Center Drive, Suite F, Redlands, CA 92374

FIDELITY NATIONAL TITLE COMPANY, a California corporation, herein called TRUSTEE, and
Lynch Bypass Trust

herein called BENEFICIARY

Trustor irrevocably grants, transfers and assigns to Trustee in Trust, with Power of Sale that property in the
County of Riverside, State of California, described as follows:

See attached Legal Description

A.P.N.

Together with the rents, issues and profits thereof, subject, however, to the right, power and authority
hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

FOR THE PURPOSE OF SECURING (1) payment of the sum of (\$) 90,000.00
Dollars with interest thereon according to the terms of a promissory note or notes of even date herewith
made by TRUSTOR, payable to order of BENEFICIARY, and extensions or renewals thereof; (2) the
performance of each agreement of TRUSTOR incorporated by reference or contained herein or reciting it is
so secured; (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor,
or his or her successors or assigns, when evidenced by a promissory note or notes reciting that they are
secured by this Deed of Trust.

A. To protect the security of this Deed of Trust, and with respect to the property above described,
Trustor agrees:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of the law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

(4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his or her reasonable fees.

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby, any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

(1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him or her in the same manner and with the same effect as above provided for disposition or proceeds of fire or other insurance.

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his or her right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability or any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That upon written request of beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."



7

(5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his or her own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(6) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns: The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or the neuter, and the singular number includes the plural.

(9) The Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obliged to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge thereof does not exceed the maximum allowed by laws.



The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him or her at his or her address hereinbefore set forth.



Trustor signature
Copeland Properties 15, L.P. a California
Limited Partnership
Trustor signature

Trustor signature

Trustor signature

State of California

County of San Bernardino

On December 22, 2010 before me, Susan N. Pederson, Notary Public (here insert name and title of the officer), personally appeared Donald E. Copeland, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



“EXHIBIT 8”

PROMISSORY NOTE

For value received, I, the undersigned, promise to pay to the order of
Lynch Lifetime Trust the principal sum of
\$ 20,000.00 on December 22, 20 12 (maturity date) with interest at
the rate of 7.5 percent per year, interest payable
monthly (interest only), beginning January 22, 20 11, and continuing until
maturity date at which time all unpaid sums of principal and interest shall be due and
payable.

Should default be made in payment of the principal or interest, the whole sum of
principal and interest shall, at the option of the holder of this note, become immediately
due.

This Note is subject to Section 2966 of the California Civil Code, which provides that the
holder of this Note shall give written notice to the trustor, or his successor in interest, of
prescribed information at least 90 and not more than 150 days before any balloon
payment is due.


COPELAND PROPERTIES 15

(delete acceleration and balloon notice provisions if not applicable.)

When recorded mail to:

CWM Real Estate
25809 Business Center Drive, Suite F
Redlands, CA 92374
C/O Donald Copeland



Title No.
Escrow No.

S	R	U	PAGE	SIZE	DA	MISC	LONG	RFD	COPY
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DEED OF TRUST WITH ASSIGNMENT OF RENTS

This DEED OF TRUST, made this 22nd day of December, 2010 between
Copeland Properties Fifteen L.P., a California Limited Partnership



herein called TRUSTOR

whose address is 25809 Business Center Drive, Suite F, Redlands, CA 92374

FIDELITY NATIONAL TITLE COMPANY, a California corporation, herein called TRUSTEE, and
Lynch Lifetime Trust

herein called BENEFICIARY

Trustor irrevocably grants, transfers and assigns to Trustee in Trust, with Power of Sale that property in the
County of Riverside, State of California, described as follows:

See attached Legal Description

A.P.N.

Together with the rents, issues and profits thereof, subject, however, to the right, power and authority
hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

FOR THE PURPOSE OF SECURING (1) payment of the sum of (\$) 20,000.00

Dollars with interest thereon according to the terms of a promissory note or notes of even date herewith
made by TRUSTOR, payable to order of BENEFICIARY, and extensions or renewals thereof; (2) the
performance of each agreement of TRUSTOR incorporated by reference or contained herein or reciting it is
so secured; (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor,
or his or her successors or assigns, when evidenced by a promissory note or notes reciting that they are
secured by this Deed of Trust.

A. To protect the security of this Deed of Trust, and with respect to the property above described,
Trustor agrees:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of the law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

(4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his or her reasonable fees.

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby, any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

(1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him or her in the same manner and with the same effect as above provided for disposition or proceeds of fire or other insurance.

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his or her right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability or any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That upon written request of beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."



(5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his or her own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(6) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor of successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.


(8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or the neuter, and the singular number includes the plural.

(9) The Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obliged to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge thereof does not exceed the maximum allowed by laws.



The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him or her at his or her address hereinbefore set forth.


Trustor signature
Copeland Properties 15, L.P., a
California Limited Partnership
Trustor signature

Trustor signature

Trustor signature

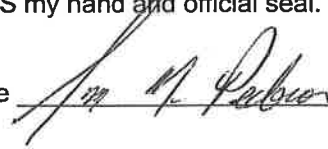
State of California

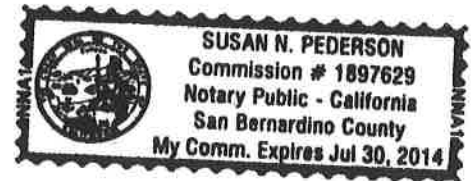
County of San Bernardino

On December 22, 2010 before me, Susan N. Pederson, Notary Public, (here insert name and title of the officer), personally appeared Donald E. Copeland, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of Riverside, City of RANCHO MIRAGE, described as follows:

PARCEL 1:

UNITS 115, 130 AND 175 IN BUILDING 1 OF THE CONDOMINIUM PLAN FOR PARCEL MAP NO. 30677, AS SHOWN BY CONDOMINIUM PLAN RECORDED JULY 15, 2004 AS INSTRUMENT NO. 04-550900 IN BOOK C-137 PAGE(S) 85-93, INCLUSIVE, OF CONDOMINIUM PLANS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, AS AMENDED BY AMENDMENT TO CONDOMINIUM PLANS FOR RANCHO MIRAGE PROFESSIONAL PLAZA, RECORDED JANUARY 21, 2005 AS INSTRUMENT NO. 05-059343 IN BOOK C-145 PAGES 1 THROUGH 7, INCLUSIVE, OF CONDOMINIUM PLANS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, AND AS AMENDED BY SECOND AMENDMENT TO CONDOMINIUM PLANS FOR RANCHO MIRAGE PROFESSIONAL PLAZA, RECORDED APRIL 13, 2005 AS INSTRUMENT NO. 2005-0290327, IN BOOK C-147 PAGES 156 THROUGH 165, INCLUSIVE, OF CONDOMINIUM PLANS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, AS AMENDED BY THIRD AMENDMENT TO CONDOMINIUM PLANS FOR RANCHO MIRAGE PROFESSIONAL PLAZA, RECORDED OCTOBER 3, 2005 AS INSTRUMENT NO. 05-819502 IN BOOK C-155 PAGES 44 THROUGH 51, INCLUSIVE, OF CONDOMINIUM PLANS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, AND AS AMENDED BY FOURTH AMENDMENT TO CONDOMINIUM PLANS FOR RANCHO MIRAGE PROFESSIONAL PLAZA, RECORDED AUGUST 31, 2006 AS INSTRUMENT NO. 06-646148 IN BOOK C-173 PAGES 52 THROUGH 59, OF CONDOMINIUM PLANS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 2:

AN UNDIVIDED 23.16% INTEREST IN AND TO PARCEL 1 OF PARCEL MAP NO. 30677, AS SHOWN BY MAP ON FILE IN BOOK 208 PAGE(S) 82 AND 83, OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

EXCEPTING THEREFROM ANY PORTION THEREOF WITHIN THE BOUNDARIES OF UNIT(S) 100, 110, 112 AND 200 OF BUILDING 1 AND UNITS 100, 110, 120 AND 200 OF BUILDING 2, AS SHOWN IN THE CONDOMINIUM PLAN REFERENCED ABOVE, AND WITHIN THE BOUNDARIES OF UNITS 100, 105, 110, 130, 135, 170, 175, 200, 205, 210, 230, 235, 270 AND 275 OF BUILDING 1 AS SHOWN ON THE AMENDMENT TO CONDOMINIUM PLANS FOR RANCHO MIRAGE PROFESSIONAL PLAZA REFERENCED ABOVE, AND WITHIN THE BOUNDARIES OF UNITS 100, 105, 110, 130, 140, 170, 172, 175, 200, 202, 205, 210, 215, 230, 235, 270, 275, AND 280 AS SHOWN ON THE SECOND AMENDMENT TO CONDOMINIUM PLANS FOR RANCHO MIRAGE PROFESSIONAL PLAZA REFERENCED ABOVE, AND WITHIN THE BOUNDARIES OF UNITS 100, 105, 110, 130, 140, 170, 172, 175, 202, 205, 210, 215, 230, 235, 270, 275 AND 280 AS SHOWN ON THE THIRD AMENDMENT TO CONDOMINIUM PLANS FOR RANCHO MIRAGE

Continued on next page



“EXHIBIT 9”

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 December 29, 2010
is made by and between Copeland Properties Fifteen, L.P.

_____ ("Lessor")
and Premier Desert Sleep Center, Inc.

("Lessee"), (collectively the "Parties", or individually a "Party").

1.2(a) **Premises:** That certain portion of the Project (as defined below), known as Suite Number(s) 130
on 1st floor(s), consisting of approximately 1,485 rentable square feet and approximately 1,275
 useable square feet ("**Premises**"). The Premises are located at: 35-900 Bob Hope Drive
 in the City of Rancho Mirage, County of Riverside,
 State of CA, with zip code 92270. In addition to Lessee's rights to use and occupy the
 Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter
 specified, but shall not have any rights to the roof, the exterior walls, the area above the dropped ceilings, or the utility raceways of the building
 containing the Premises ("**Building**") or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which
 they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "**Project**." The Project consists of
 approximately 11,555 rentable square feet. (See also Paragraph 2)

1.2(b) **Parking:** _____ unreserved and 1 reserved vehicle parking spaces at a monthly cost of \$0 per unreserved space and \$0 per reserved space. (See Paragraph 2.6)

1.3 Term: 5 years and 4 months ("Original Term") commencing January 1, 2011 ("Commencement Date") and ending April 30, 2016 ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing January 1, 2011 ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$1,856.25 per month ("Base Rent"), payable on the 1st day of each month commencing May 1, 2011 or upon delivery of completed suite with recorded notice of completion whichever occurs first. (See also Paragraph 4)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 51

Annual increase of 5% over previous base rent amount to start in year three (3) of the original lease term effective on the 25th rent payment based on the actual rent commencement date.

1.6 Lessee's Share of Operating Expenses: Twelve and 85/100 percent 12.85% (----%) ("Lessee's Share"). In the event that that size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 Base Rent and Other Monies Paid Upon Execution:

(a) **Base Rent:** \$1,856.25 for the period per month

(b) **Operating Expenses:** \$1,038.81 for the period per month

(c) **Security Deposit:** \$2,895.06 ("Security Deposit"). (See also Paragraph 5)

(d) **Parking:** \$0.00 for the period N/A

(e) Other: \$N/A for N/A

(f) Total Due Upon Execution of this Lease: \$5,938.62 has been received by Lessor

1.8 **Agreed Use:** Sleep Center or similar use.

(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):

☐ _____ represents Lessor exclusively ("**Lessor's Broker**");

☐ _____ represents Lessee exclusively ("**Lessee's Broker**"); or

☒ CWM Real Estate 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 for the brokerage services rendered by the Brokers the fee agreed to in the attached separate written agreement or if no such agreement is attached, the sum of _____ or 5 _____ % of the total Base Rent payable for the Original Term, the sum of _____ or _____ of the total Base Rent payable during any period of time that the Lessee occupies the Premises subsequent to the Original Term, and/or the sum of _____ or _____ % of the purchase price in the event that the Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises.

1.11 **Guarantor.** The obligations of the Lessee under this Lease shall be guaranteed by Venkatasvara Rao and Dr. _____

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Bobby Bhasker Rao

("Guarantor"). (See also Paragraph 37)

1.12 **Business Hours for the Building:** 6:00 a.m. to 8:00 p.m., Mondays through Fridays (except Building Holidays) and 24 Hrs M-F a.m. to 24 Hrs M-F p.m. on Saturdays (except Building Holidays). "Building Holidays" shall mean the dates of observance of New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and the day after Thanksgiving.

1.13 **Lessor Supplied Services.** Notwithstanding the provisions of Paragraph 11.1, Lessor is NOT obligated to provide the following within the Premises:

- ☒ Janitorial services
- ☐ Electricity
- ☐ Other (specify):

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

- ☒ an Addendum consisting of Paragraphs 50 through 52
- ☒ a plot plan depicting the Premises;
- ☐ a current set of the Rules and Regulations;
- ☒ a Work Letter;
- ☐ a janitorial schedule;
- ☐ 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. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **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 or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th 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) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and 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, (c) 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, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) 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.

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

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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 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. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. 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 or change the Expiration Date. 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, decorative items, carpets, drapes and window coverings, and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, 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.

(cc) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of trash disposal, janitorial and security services, pest control services, and the costs of any environmental inspections;

(iii) The cost of 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 to replace equipment or capital components such as the roof, foundations, or exterior walls, the cost to replace a Common Area capital improvement, such as the parking lot paving, elevators or fences, and/or the cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3. Provided however, that if such equipment or capital component has a useful life for accounting purposes of 5 years or more 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) The cost to replace equipment or improvements that have a useful life for accounting purposes of 5 years or less.

(x) Reserves set aside for maintenance, repair, and/or replacement of Common Area improvements and equipment.

(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



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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 Operating Expenses for 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 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 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 already due Lessor, for Rents which will be due in the future, and/or to 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.

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' 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 include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(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.


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(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) of 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 with 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.

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 Alterations or 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 attorneys' 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.


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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. 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.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, 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 not by Lessor. 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 \$5,000 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; Worker's Compensation 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) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements.

(d) **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 maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, 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 with copies of the required endorsements 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' 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.**



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(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, in, on, or under the Premises which requires 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 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

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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 Premises and 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.

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 require 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 nonfixed 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, ie. 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 atorn 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. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or 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 or financial statements, (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.

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



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(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.** If a separate brokerage fee agreement is attached then 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 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 attached to such brokerage fee agreement.

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 within 10 days after written notice from Lessor 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 guarantees 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.


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(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 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) Lessor and Lessee 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; NonDisturbance.**

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 recordation 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 **NonDisturbance.** 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 "NonDisturbance 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


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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. Lessor may not place any sign on the exterior of the Building that covers any of the windows of the Premises. 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 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 or reduce the term of or renew this Lease or to extend or reduce the term of 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, the right of first offer 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.



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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. **Arbitration of Disputes.** An Addendum requiring 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:

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: CWM Real Estate Office Redlands, CA Executed at: CWM Real Estate Office Redlands, CA
On: January, 2011 On: January, 2011

By LESSOR:

Copeland Properties Fifteen, L.P.

By: 
Name Printed: Donald E. Copeland
Title: Managing Partner

By: _____
Name Printed: _____
Title: _____
Address: 25809 Business Center Drive
Suite F
Redlands, CA 92374
Telephone: (909) 799-8565
Facsimile: (909) 799-8566
Email: dave@copelandwealth.com
Email: _____
Federal ID No. 20-5056604

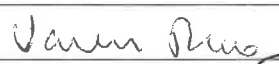
LESSOR'S BROKER:

CWM Real Estate

Attn: Donald E. Copeland
Title: CEO
Address: 25809 Business Center Dr.
Suite F
Redlands, CA 92374
Telephone: (909) 799-8565
Facsimile: (909) 799-8566
Email: don@copelandwealth.com
Federal ID No. 20-0288729
Broker/Agent DRE License #: _____

By LESSEE:

Premier Desert Sleep Center, Inc.

By: 
Name Printed: Venkatasvara Rao
Title: _____

By: _____
Name Printed: _____
Title: _____
Address: 1690 Barton Road
Suite 107
Redlands, CA 92373
Telephone: (909) 954-7753
Facsimile: (909) 335-5446
Email: _____
Email: _____
Federal ID No. _____

LESSEE'S BROKER:

CWM Real Estate

Attn: David Rapp
Title: Broker
Address: 35-800 Bob Hope Dr
Suite 210
Rancho Mirage, CA 92270
Telephone: (760) 699-8190
Facsimile: (760) 699-8603
Email: dave@copelandwealth.com
Federal ID No. 20-0288729
Broker/Agent DRE License #: 01715126


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Exhibit 9


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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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Exhibit 9


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FORM MTON-7-03/10E



RIGHT OF FIRST REFUSAL TO PURCHASE STANDARD LEASE ADDENDUM

Dated December 29, 2010

By and Between (Lessor) Copeland Properties Fifteen, L.P.

(Lessee) Premier Desert Sleep Center, Inc.

Address of Premises: 35-900 Bob Hope Dr., Suite 130
Rancho Mirage, CA 92270

Paragraph 50

(a) Lessor shall not, at any time prior to the expiration of the term of this Lease, or any extension thereof, sell the Premises, or any interest therein, without first giving written notice thereof to Lessee, which notice is hereinafter referred to as "Notice of Sale".

(b) The Notice of Sale shall include the exact and complete terms of the proposed sale and shall have attached thereto a copy of the bona fide offer and counteroffer, if any, duly executed by both Lessor and the prospective purchaser.

(c) For a period of 12 calendar days after receipt by Lessee of the Notice of Sale, Lessee shall have the right to give written notice to Lessor of Lessee's exercise of Lessee's right to purchase the Premises, the interest therein proposed to be sold, or the property of which the Premises are a part, on the same terms, price and conditions as set forth in the Notice of Sale. In the event that Lessor does not receive written notice of Lessee's exercise of the right herein granted within said 12 day period, there shall be a conclusive presumption that Lessee has elected NOT to exercise Lessee's right hereunder, and Lessor may complete the sale to the prospective purchaser, on the same terms set forth in the Notice of Sale.

(d) In the event that Lessee declines to exercise its right of first refusal after receipt of the Notice of Sale, and, thereafter, Lessor and the prospective purchaser modify by more than 5%, (i) the sales price, or (ii) the amount of down payment, or if there is a material change in any seller financing offered, or in the event that the sale is not consummated within 180 days of the date of the Notice of Sale, then Lessee's right of first refusal shall reapply to said transaction.

(e) In the event that Lessee declines to exercise its right of first refusal after receipt of the Notice of Sale, and, thereafter, the proposed transfer or sale is not consummated, the Lessee's right of first refusal shall apply to any subsequent transaction. If, however, said transfer or sale is, in fact, completed, then said right shall be extinguished and shall not apply to any subsequent transactions.


(f) Notwithstanding the above, this right of first refusal is intended to apply only to voluntary transfers involving third party transferees. This right of first refusal shall not, therefore, apply: where the Premises are taken by eminent domain or sold under threat of condemnation, to intra-family or intra-ownership transfers, to transfers by Lessor to a trust created by Lessor, or, if Lessor is a trust, to transfers to a trust beneficiary.

(g) NOTE: This right of first refusal cannot be exercised: (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 Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the right of first refusal.

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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FORM FR-4-8/06E



RENT ADJUSTMENT(S) STANDARD LEASE ADDENDUM

Dated December 29, 2011

By and Between (Lessor) Copeland Properties Fifteen, L.P.

(Lessee) Premier Desert Sleep Center, Inc.

Address of Premises: 35-900 Bob Hope Dr., Suite 130
Rancho Mirage, CA 92270

Paragraph 51

A. RENT ADJUSTMENTS:

The monthly rent for each month of the adjustment period(s) specified below shall be increased using the method(s) indicated below:

(Check Method(s) to be Used and Fill in Appropriately)

☐ **I. Cost of Living Adjustment(s) (COLA)**

a. On (Fill in COLA Dates): _____

the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one): ☐ CPI W (Urban Wage Earners and Clerical Workers) or ☐ CPI U (All Urban Consumers), for (Fill in Urban Area): _____

_____, All Items

(1982-1984 = 100), herein referred to as "CPI".

b. The monthly rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): the ☐ first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or ☐ (Fill in Other "Base Month"): _____. The sum so calculated shall constitute the new monthly rent hereunder, but in no event, shall any such new monthly rent be less than the rent payable for the month immediately preceding the rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

☐ **II. Market Rental Value Adjustment(s) (MRV)**

a. On (Fill in MRV Adjustment Date(s)): _____

the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an ☐ appraiser or ☐ broker ("Consultant" - check one) of their choice to act as an arbitrator. The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by

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one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, i.e., the one that is NOT the closest to the actual MRV.

2) Notwithstanding the foregoing, the new MRV shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

- 1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and
- 2) the first month of each Market Rental Value term shall become the new 'Base Month' for the purpose of calculating any further Adjustments.

☒ III. Fixed Rental Adjustment(s) (FRA)

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):

May 1, 2013
May 1, 2014
May 1, 2015

The New Base Rent shall be:

\$1,949.06 per Month (5% Incr)
\$2,046.52 per Month (5% Incr)
\$2,148.84 per Month (5% Incr)

B. NOTICE:

Unless specified otherwise herein, notice of any such adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. BROKER'S FEE:

The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease.

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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OPTION(S) TO EXTEND STANDARD LEASE ADDENDUM

Dated December 29, 2010

By and Between (Lessor) Copeland Properties Fifteen, L.P.

By and Between (Lessee) Desert Premier Sleep Center, Inc.

Address of Premises: 35-900 Bob Hope Dr., Suite 130
Rancho Mirage, CA 92270

Paragraph 52

A. OPTION(S) TO EXTEND:

Lessor hereby grants to Lessee the option to extend the term of this Lease for one (1) additional sixty (60) month period(s) commencing when the prior term expires upon each and all of the following terms and conditions:

(i) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least 6 but not more than 9 months prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options (if there are more than one) may only be exercised consecutively.

(ii) The provisions of paragraph 39, including those relating to Lessee's Default set forth in paragraph 39.4 of this Lease, are conditions of this Option.

(iii) Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease except where specifically modified by this option shall apply.

(iv) This Option 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 without the intention of thereafter assigning or subletting.

(v) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) indicated below:
(Check Method(s) to be Used and Fill in Appropriately)

☐ **I. Cost of Living Adjustment(s) (COLA)**

a. On (Fill in COLA Dates): _____

the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one): ☐ CPI W (Urban Wage Earners and Clerical Workers) or ☐ CPI U (All Urban Consumers), for (Fill in Urban Area): _____

All Items (1982-1984 = 100), herein referred to as "CPI".

b. The monthly rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): ☐ the first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or ☐ (Fill in Other "Base Month"):

The sum so calculated shall constitute the new monthly rent hereunder, but in no event, shall any such new monthly rent be less than the rent payable for the month immediately preceding the rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

☒ **II. Market Rental Value Adjustment(s) (MRV)**

a. On (Fill in MRV Adjustment Date(s)) May 1, 2016

the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached, within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in


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writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an ☐ appraiser or ☒ broker ("**Consultant**" - check one) of their choice to act as an arbitrator. The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, ie, the one that is NOT the closest to the actual MRV.

2) Notwithstanding the foregoing, the new MRV shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and
2) the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

☒ **III. Fixed Rental Adjustment(s) (FRA)**

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):

May 1, 2017
May 1, 2018
May 1, 2019
May 1, 2020

The New Base Rent shall be:

3% increase over previous base
3% increase over previous base
3% increase over previous base
3% increase over previous base

B. NOTICE:

Unless specified otherwise herein, notice of any rental adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. BROKER'S FEE:

~~The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease.~~

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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AIR COMMERCIAL REAL ESTATE ASSOCIATION GUARANTY OF LEASE

WHEREAS, Copeland Properties Fifteen, L.P., hereinafter
"Lessor", and Advance Desert Sleep Center, LLC, hereinafter
"Lessee", are about to execute a document entitled "Lease" dated May 1, 2011
known as Suite 130 at 35-900 Bob Hope Dr., Rancho Mirage, CA
wherein Lessor will lease the premises to Lessee, and
WHEREAS, Mr. Venkatasvara Rao and Dr. Bobby Bhasker Rao
hereinafter "Guarantors" have a financial interest in Lessee, and
WHEREAS, Lessor would not execute the Lease if Guarantors did not execute and deliver to Lessor this Guaranty of Lease.

NOW THEREFORE, in consideration of the execution of said Lease by Lessor and as a material inducement to Lessor to execute said Lease, Guarantors hereby jointly, severally, unconditionally and irrevocably guarantee the prompt payment by Lessee of all rents and all other sums payable by Lessee under said Lease and the faithful and prompt performance by Lessee of each and every one of the terms, conditions and covenants of said Lease to be kept and performed by Lessee.

It is specifically agreed by Lessor and Guarantors that: (i) the terms of the foregoing Lease may be modified by agreement between Lessor and Lessee, or by a course of conduct, and (ii) said Lease may be assigned by Lessor or any assignee of Lessor without consent or notice to Guarantors and that this Guaranty shall guarantee the performance of said Lease as so modified.

This Guaranty shall not be released, modified or affected by the failure or delay on the part of Lessor to enforce any of the rights or remedies of the Lessor under said Lease.

No notice of default by Lessee under the Lease need be given by Lessor to Guarantors, it being specifically agreed that the guarantee of the undersigned is a continuing guarantee under which Lessor may proceed immediately against Lessee and/or against Guarantors following any breach or default by Lessee or for the enforcement of any rights which Lessor may have as against Lessee under the terms of the Lease or at law or in equity.

Lessor shall have the right to proceed against Guarantors following any breach or default by Lessee under the Lease without first proceeding against Lessee and without previous notice to or demand upon either Lessee or Guarantors.

Guarantors hereby waive (a) notice of acceptance of this Guaranty, (b) demand of payment, presentation and protest, (c) all right to assert or plead any statute of limitations relating to this Guaranty or the Lease, (d) any right to require the Lessor to proceed against the Lessee or any other Guarantor or any other person or entity liable to Lessor, (e) any right to require Lessor to apply to any default any security deposit or other security it may hold under the Lease, (f) any right to require Lessor to proceed under any other remedy Lessor may have before proceeding against Guarantors, (g) any right of subrogation that Guarantors may have against Lessee.

Guarantors do hereby subordinate all existing or future indebtedness of Lessee to Guarantors to the obligations owed to Lessor under the Lease and this Guaranty.

If a Guarantor is married, such Guarantor expressly agrees that recourse may be had against his or her separate property for all of the obligations hereunder.

The obligations of Lessee under the Lease to execute and deliver estoppel statements and financial statements, as therein provided, shall be deemed to also require the Guarantors to do and provide the same to Lessor. The failure of the Guarantors to provide the same to Lessor shall constitute a default under the Lease.

The term "Lessor" refers to and means the Lessor named in the Lease and also Lessor's successors and assigns. So long as Lessor's interest in the Lease, the leased premises or the rents, issues and profits therefrom, are subject to any mortgage or deed of trust or assignment for security, no acquisition by Guarantors of the Lessor's interest shall affect the continuing obligation of Guarantors under this Guaranty which shall nevertheless continue in full force and effect for the benefit of the mortgagee, beneficiary, trustee or assignee under such mortgage, deed of trust or assignment and their successors and assigns.

The term "Lessee" refers to and means the Lessee named in the Lease and also Lessee's successors and assigns.

Any recovery by Lessor from any other guarantor or insurer shall first be credited to the portion of Lessee's indebtedness to Lessor which exceeds the maximum liability of Guarantors under this Guaranty.

No provision of this Guaranty or right of the Lessor can be waived, nor can the Guarantors be released from their obligations except in writing signed by the Lessor.

Any litigation concerning this Guaranty shall be initiated in a state court of competent jurisdiction in the county in which the leased premises are located and the Guarantors consent to the jurisdiction of such court. This Guaranty shall be governed by the laws of the State in which the leased premises are located and for the purposes of any rules regarding conflicts of law the parties shall be treated as if they were all residents or domiciles of such State.

In the event any action be brought by said Lessor against Guarantors hereunder to enforce the obligation of Guarantors hereunder, the unsuccessful party in such action shall pay to the prevailing party therein a reasonable attorney's fee. The attorney's fee award shall not be computed in accordance with any court fee schedule, but shall be such as to full reimburse all attorney's fees reasonably incurred.

If any Guarantor is a corporation, partnership, or limited liability company, each individual executing this Guaranty on said entity's behalf represents and warrants that he or she is duly authorized to execute this Guaranty on behalf of such entity.

If this Form has been filled in, it has been prepared for submission to your attorney for his approval. No representation or recommendation is made by the AIR Commercial Real Estate Association, the real estate broker or its agents or employees as to the legal sufficiency, legal effect, or tax consequences of this Form or the transaction relating thereto.

Executed at Offices of CWM Real Estate
On May 1, 2011
Address: 35-800 Bob Hope Drive, # 210
Rancho Mirage, CA 92270

Venkatasvara Rao
Bobby Bhasker Rao
"GUARANTORS"

Exhibit 9

“EXHIBIT 10”



WORK LETTER

Dated December 29, 2010

By and Between (Lessor) Copeland Properties Fifteen, L.P.

(Lessee) Premier Desert Sleep Center, Inc.

Address of Premises: 35-900 Bob Hope Dr., Suite 130
Rancho Mirage, CA 92270

1. **The Improvements.** The Premises shall be modified with the following improvements or work: Lessor to build suite out to Lessee approved specifications in a workman like manner to the approved architectural plans.
(the "Improvements"). The Improvements shall be of the quality which is standard for the Building, which quality shall be determined by Lessor ("Standard Improvement(s)").
2. **Preliminary Plans.** Within 10 days after the Parties have mutually executed and delivered this Lease, Lessor shall prepare preliminary plans and specifications for the completion of the Improvements ("Preliminary Plans"). The Preliminary Plans shall itemize the work to be done by each Party, including, an estimate of the cost any work required of Lessor which is not a Standard Improvement. Lessee shall approve the Preliminary Plans and the preliminary cost estimate or specify with particularity Lessee's objection thereto within 5 days following delivery thereof by Lessor. Lessee's failure to timely approve or disapprove the Preliminary Plans and the preliminary cost estimate shall constitute Lessee's approval thereof. If Lessee shall disapprove all or any part of the Preliminary Plans, and the Preliminary Plans cannot in good faith be modified within 10 days after such disapproval to be acceptable to both Lessor and Lessee, then this Lease shall terminate upon notice thereof by one Party to the other, Lessor shall refund to Lessee any Security Deposit or prepaid rent by Lessee, less the cost of the Preliminary Plans, legal fees and other costs incurred by Lessor in connection with this Lease, and neither Party shall thereafter have any obligation, liability or responsibility to the other Party for any reason whatsoever having to do with this Lease. The Preliminary Plans, when approved by Lessee, shall supersede any prior agreement of the Parties concerning the Improvements.
3. **Final Plans.** After the Parties have, or are deemed to have, mutually approved the Preliminary Plans, Lessor shall prepare final plans and specifications for the completion of the Improvements ("Final Plans"), including an estimate of the cost the Improvements in excess of Lessor's Standard Improvements. Lessee shall approve the Final Plans and the final cost estimate or specify with particularity Lessee's objection thereto within 5 days following delivery thereof by Lessor. Lessee's failure to timely approve or disapprove the Final Plans and the final cost estimate shall constitute Lessee's approval thereof. If Lessee shall disapprove all or any part of the Final Plans, and the Final Plans cannot in good faith be modified within 10 days after such disapproval to be acceptable to both Lessor and Lessee, then this Lease shall terminate upon notice thereof by one Party to the other, Lessor shall refund to Lessee any Security Deposit or prepaid rent by Lessee, less the cost of the Preliminary Plans, Final Plans, legal fees and other costs incurred by Lessor in connection with this Lease, and neither Party shall thereafter have any obligation, liability or responsibility to the other Party for any reason whatsoever having to do with this Lease. The Final Plans, when approved by Lessee, shall supersede the Preliminary Plans and any prior agreement of the Parties concerning the Improvements.
4. **Construction.** ~~If Lessor's estimated cost constructing the Improvements exceeds Lessor's estimated cost of the Standard Improvements, before Lessor is obligated to start construction of the Improvements or perform any acts in furtherance thereof, Lessee shall pay to Lessor in cash a sum equal to such excess. If the Final Plans are approved or deemed approved by Lessor and Lessee, and Lessee pays Lessor for such excess, then Lessor shall construct the Improvements. Lessee shall, within 5 days of demand by Lessor, pay for all non-Standard Improvements.~~ Prior to construction of improvements, Lessor is to obtain an estimated cost of construction and present it to Lessee for approval. Lessor is to contribute \$30.00 per rentable Square Foot (\$44,550.00) towards the final cost of construction (to include all permits, plans, insurance, material, labor and management costs incurred by Lessor.) The remaining balance of the cost is to be amortized over the original term of the lease to be recovered monthly on a per SF basis added to the base rent amount defined in the Lease. The amortized additional construction cost will include an 8% interest rate on final construction cost less \$44,550.00.
5. **Completion.** The term "Completion", as used in this Work Letter, is hereby defined to mean the date the building department of the municipality having jurisdiction of the Premises shall have made a final inspection of the Improvements and authorized a final release of restrictions on the use of public utilities in connection therewith and the Premises are in a broom-clean condition. If the Improvements, or any portion thereof, have not reached Completion by the Commencement Date, this Lease shall not be invalid, Lessor shall not be subject to any liability therefore in any respect whatsoever, and as Lessee's sole and exclusive, Lessor shall use commercially reasonable efforts to complete the same. Lessee shall use Lessee's best, good faith, efforts and all due diligence to cooperate with the Lessor to complete all phases of the construction of the Improvements, and, in that regard, shall meet with Lessor on a scheduled basis to be determined by Lessor.


INITIALS

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INITIALS

6. **Delay.** If Lessor shall be directly or indirectly delayed at any time in the progress of the planning or construction of the Improvements by strikes, lockouts, fire, delay in transportation, unavoidable casualties, rain or weather conditions, governmental procedures or delay, or by any other cause beyond Lessor's control ("force majeure"), or by Lessee's Breach or Default, by any acts or omissions of Lessee, Lessee's agents, employees, contractors, including extra work, changes in construction ordered by Lessee ("Lessee Delay"), then the Commencement Date established in the Lease shall be extended by the period of such force majeure delay and Lessee Delay; provided, however, Lessor may elect to designate the Commencement Date as the date Completion of the Improvements would have occurred if such Lessee Delays had not occurred. Lessee shall from time to time, upon Lessor's request, meet with Lessor or Lessor's representatives and provide sufficient information for the preparation of the Preliminary Plans or the Final Plans, or otherwise for the timely and property construction of the Improvements.

7. **Extra Work.** Notwithstanding anything to the contrary in the Lease or this Work Letter, if at any time before the actual Completion of the Improvements, any governmental body, authority or instrumentality does or may require any work to be performed outside of the Premises, such as the Building Common Areas, fire life safety or any other systems, then Lessor shall have the right to terminate this Lease upon notice thereof to Lessee, Lessor shall refund to Lessee any Security Deposit or prepaid rent by Lessee, and neither Party shall thereafter have any obligation, liability or responsibility to the other Party for any reason whatsoever having to do with this Lease.

8. **Term.** Any time after Completion of the Improvements, upon request by Lessor, the Parties shall execute an amendment to the Lease confirming the date of Completion of the Improvements, the date that Lessor delivered possession of the Premises to Lessee, the Commencement Date and Expiration Date of this Lease.

9. **Work Done by Lessee.** Any work done by Lessee shall be performed in a good and workmanlike manner and in full compliance with paragraph 7.3 of this Lease. If required by Lessor, all work by Lessee shall be done only with union labor and only by contractors approved by Lessor, it being understood that all plumbing, mechanical, electrical wiring and ceiling work are to be done only by contractors designated by Lessor.

10. **Early Entry.** If Lessor notifies Lessee of the estimated Completion, Lessee may, starting as of 10 days before said date, enter the Premises to commence construction of any improvements Lessee is to construct and to equip and fixturize the Premises, as long as such entry does not interfere with Lessor's work. Any entry by Lessee into the Premises under this paragraph shall be under all of the terms and provisions of the Lease to which this Work Letter is attached.

11. **Acceptance of Premises.** Lessee shall, within 10 days following the date that Lessor delivered possession of the Premises to Lessee, notify Lessor in writing of any items of the Improvements that Lessee deems incomplete or incorrect in order for the Completion of the Improvements in the Premises to occur and the Premises to be acceptable to Lessee. Lessee shall be deemed to have accepted the Premises and approved construction of the Improvements if and to the extent Lessee does not deliver such a list to Lessor within said time period.

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.


INITIALS


INITIALS

“EXHIBIT 11”

**Desert Premier Sleep Center
Suite 130
Rent Calculation Worksheet**

**FILL IN ALL AMOUNTS IN THE ASSUMPTIONS TO CALCULATE
PROPOSED RENT.**

ASSUMPTIONS:

Useable Square Feet	1,275
Common Area Factor	1.1654
Original <u>Monthly</u> Rent Rate (PSF)	\$1.25
Lease Term (in <u>Months</u>)	60
Base Tenant Improvement (PSF)	\$30.00
Actual Tenant Improvement (PSF)	\$88.39
Desired Mark-Up on TI Above Base (%)	0.00%
<u>Annual</u> Interest Rate (%)	8.00%

SUITE:

130

TENANT:

Desert Premier Sleep Center

Total Rentable Square Feet	1,485	
Actual Tenant Improvement	\$ 131,261.33	
Less Base Tenant Improvement	<u>(\$44,550.00)</u>	
Total Increase in Tenant Improvement	\$ 86,711.33	
Proposed Monthly Rent Increase	\$1,758.19	
	<u>TOTAL</u>	<u>PSF</u>
Original Monthly Rent	\$ 1,856.25	\$1.2500
Add Construction Allowance Increase	\$ 1,758.19	\$1.1840
Total Monthly Rent	\$ 3,614.44	\$2.4340
Proposed Annual Rent (+ NNN)	\$ 43,373.32	\$29.2076

Exhibit 11

Desert Premier Sleep Center, Inc.
35-800 Bob Hope Dr., Suite 130
Rancho Mirage, CA 92270

USF 1,275
RSF 1,485

Contractor:
Mirage Developers, Inc.
121 S. Palm Canyon, Suite 209
Palm Springs, CA 92262
(760) 864-9448
(760) 272-8300

Description	Proposed Cost		Total Actual Cost	% Over / (Under)	Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv #																Inv 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“EXHIBIT 12”

Copeland Properties Fifteen LP
Advanced Desert Sleep - Outstanding Balance

Type	Date	Num	Amount	Balance
Advance Desert Sleep Center, LLC				
Stmt Charge	06/01/2011		928.13	928.13
Stmt Charge	06/01/2011		519.41	1,447.54
Stmt Charge	06/01/2011		886.18	2,333.72
Payment	06/22/2011	0991	-1,484.66	849.06
Stmt Charge	07/01/2011		1,856.25	2,705.31
Stmt Charge	07/01/2011		1,722.35	4,427.66
Stmt Charge	07/01/2011		1,038.81	5,466.47
Payment	07/07/2011	0992	-5,446.67	19.80
Stmt Charge	08/01/2011		96.43	116.23
Stmt Charge	08/01/2011		1,856.25	1,972.48
Stmt Charge	08/01/2011		1,722.35	3,694.83
Stmt Charge	08/01/2011		1,038.81	4,733.64
Payment	08/22/2011	1007	-4,733.64	0.00
Stmt Charge	09/01/2011		1,856.25	1,856.25
Stmt Charge	09/01/2011		1,758.19	3,614.44
Stmt Charge	09/01/2011		1,038.81	4,653.25
Stmt Charge	09/01/2011		125.44	4,778.69
Payment	09/02/2011	1013	-2,797.00	1,981.69
Stmt Charge	10/01/2011		1,856.25	3,837.94
Stmt Charge	10/01/2011		1,758.19	5,596.13
Stmt Charge	10/01/2011		1,038.81	6,634.94
Stmt Charge	11/01/2011		1,856.25	8,491.19
Stmt Charge	11/01/2011		1,758.19	10,249.38
Stmt Charge	11/01/2011		1,038.81	11,288.19
Payment	11/02/2011	1080	-2,500.00	8,788.19
Stmt Charge	12/01/2011		1,856.25	10,644.44
Stmt Charge	12/01/2011		1,758.19	12,402.63
Stmt Charge	12/01/2011		1,038.81	13,441.44
Stmt Charge	01/01/2012		1,856.25	15,297.69
Stmt Charge	01/01/2012		1,038.81	16,336.50
Stmt Charge	01/01/2012		1,758.19	18,094.69
Payment	01/18/2012		-4,500.00	13,594.69
Stmt Charge	02/01/2012		1,856.25	15,450.94
Stmt Charge	02/01/2012		1,758.19	17,209.13
Stmt Charge	02/01/2012		1,038.81	18,247.94
Stmt Charge	03/01/2012		1,856.25	20,104.19
Stmt Charge	03/01/2012		1,038.81	21,143.00
Stmt Charge	03/01/2012		1,758.19	22,901.19
Payment	03/22/2012	1026	-2,500.00	20,401.19
Stmt Charge	04/01/2012		1,856.25	22,257.44
Stmt Charge	04/01/2012		1,758.19	24,015.63
Stmt Charge	04/01/2012		1,038.81	25,054.44
Stmt Charge	05/01/2012		1,856.25	26,910.69
Stmt Charge	05/01/2012		1,758.19	28,668.88

Copeland Properties Fifteen LP
Advanced Desert Sleep - Outstanding Balance

Type	Date	Num	Amount	Balance
Stmt Charge	05/01/2012		1,038.81	29,707.69
Payment	05/14/2012	1014	-5,000.00	24,707.69
Stmt Charge	06/01/2012		1,856.25	26,563.94
Stmt Charge	06/01/2012		1,758.19	28,322.13
Stmt Charge	06/01/2012		1,038.81	29,360.94
Payment	06/07/2012	9105	-5,000.00	24,360.94
Stmt Charge	07/01/2012		1,856.25	26,217.19
Stmt Charge	07/01/2012		1,758.19	27,975.38
Stmt Charge	07/01/2012		1,038.81	29,014.19
Payment	07/13/2012	9141	-4,000.00	25,014.19
Stmt Charge	08/01/2012		1,856.25	26,870.44
Stmt Charge	08/01/2012		1,758.19	28,628.63
Stmt Charge	08/01/2012		1,038.81	29,667.44
Total Advance Desert Sleep Center, LLC			29,667.44	29,667.44
TOTAL			29,667.44	29,667.44

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

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

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 v.

15 CHARLES P. COPELAND, ET
16 AL.,

17 Defendants.

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

CERTIFICATION OF SERVICE

DATE: October 1, 2012

TIME: 10:00 a.m.

Crtrm 8, 2nd Floor

Judge: Hon. Manuel L. Real

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

23 On August 31, 2012, I served the following documents:

24 **1. NOTICE OF MOTION AND MOTION OF RECEIVER FOR**
25 **ISSUANCE OF ORDER AUTHORIZING HIM TO ABANDON**
26 **REAL PROPERTY FROM THE RECEIVERSHIP ESTATE**
27 **AS HAVING NO VALUE FOR THE RECEIVERSHIP**
28 **ESTATE;**

MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION;

2. DECLARATION OF THOMAS C. HEBRANK IN SUPPORT
OF MOTION

1 **3. NOTICE OF LODGMENT OF ORDER.**

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

11 **SEE ATTACHED SERVICE LIST**

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

- 18 • Spencer E. Bendell
19 bendellssec.gov
20 LAROFilingasec.gov
21 marcelomasec.gov
- 22 • Peter Alan Davidson
23 pdavidsonecjlaw.com
24 lpkrul@ecjlaw.com
- 25 • Edward G. Fates
26 tfatesallenmatkins.com
27 bcrfilincs@allenmatkins.com
- 28 • Michael S. Leib
 mleibmaddinhauser.com
 bwislinskiamaddinhauser.com
- John M. McCoy , III
 mccovjsec.gov
- Francis Emmet Quinlan, Jr.
 Frank.Quinlan@ndlf.com
 sue.love@ndlf.com
- David M. Rosen
 Rosend@sec.gov

- William P. Tooke
wtooke@mechlaw.com

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

Executed on August 31, 2012, at San Diego, California.


Cynthia A. Jennings

United States District Court, Central District of California, Western Division – Los Angeles
Securities and Exchange Commission v. Charles P. Copeland, et al.
Case No. 2:11-cv-08607-R-DTB

SERVICE/MAILING LIST

Updated: August 31, 2012

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Mark & Barbara Carpenter 35571 Sleepy Hollow Road Yucaipa, CA 92399	Peterson Revocable Living Trust 24418 Lawton Avenue Loma Linda, CA 92354	Pinkner Family Trust 279 Green Mountain Palm Desert, CA 92211
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TD Ameritrade FBO Charles Grey IRA 63 Turnbury Lane Irvine, CA 92620	Zilch Family Trust 667 Gull Drive Bodega Bay, CA 94923	Thomas Phillips 1582 Huckleberry Lane San Luis Obispo, CA 93401
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