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10 Attorneys for Thomas C. Hebrank,  
11 Permanent Receiver

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 WESTERN DIVISION – LOS ANGELES

15 SECURITIES AND EXCHANGE  
16 COMMISSION,

17 Plaintiff,

18 v.

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

26 Defendants.

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

**NOTICE OF MOTION AND  
MOTION FOR ORDER  
APPROVING SETTLEMENTS  
WITH CERTAIN NOTES  
RECEIVABLE ACCOUNT  
DEBTORS**

Date: June 3, 2013

Time: 10:00 a.m.

Ctrm: 8, 2<sup>nd</sup> Floor

Judge: Hon. Manuel L. Real

**TO ALL INTERESTED PARTIES:**

**Please Take Notice** that on June 3, 2013, at 10:00 a.m., in  
Courtroom 8 of the above-entitled Court located at 312 N. Spring Street,  
Los Angeles, California 90012, a hearing will be held on the Motion of  
Thomas C. Hebrank ("Receiver"), the court-appointed Permanent  
Receiver for Copeland Wealth Management, a Financial Advisory  
Corporation, Copeland Wealth Management, a Real Estate Corporation,  
and their subsidiaries and affiliates, for an Order Approving Settlements

1 With Certain Notes Receivable Account Debtors.

2 The Motion is based on the Memorandum of Points and Authorities  
 3 and the Declaration of Thomas C. Hebrank In Support Of Motion For  
 4 Order Approving Settlement, each filed concurrently herewith. The  
 5 Motion and supporting papers are available at the Receiver's website:  
 6 [www.ethreadvisors.com](http://www.ethreadvisors.com), may be reviewed at the Clerk's Office located  
 7 at 312 North Spring Street, Los Angeles, California 90012 during normal  
 8 business hours, or may be obtained by requesting a copy from the  
 9 Receiver's counsel, Mulvaney Barry Beatty Linn & Mayers LLP, attention  
 10 Toby S. Kovalivker, by calling (619) 238-1010.

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

16 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by  
 17 the above date, the Court may grant the requested relief without further  
 18 notice.

19 **Requested Relief:** The relief requested is discussed in greater  
 20 detail in the Memorandum of Points and Authorities. To summarize, the  
 21 Receiver requests an Order approving three separate settlements as  
 22 follows: (1) a settlement between the Receiver, on the one hand, and  
 23 Notes Receivable Account Debtors Gina Spraggins, an individual, and  
 24 Scott Spraggins, an individual (collectively the "Spraggins Debtors"), on  
 25 the other hand (the "Spraggins Settlement"), regarding a secured  
 26 obligation owed by the Spraggins Debtors to Copeland Fixed Income  
 27 Three, LP, a receivership entity; (2) a settlement between the Receiver,  
 28 on the one hand, and Notes Receivable Account Debtors SoCal

1 Restaurants, LLC, a California limited liability company, Leroy  
 2 Hansberger, an individual, Jeffrey Hansberger, an individual, and  
 3 Michael Hansberger, an individual (collectively the "SoCal Debtors"), on  
 4 the other hand (the "SoCal Settlement"), regarding an unsecured  
 5 obligation owed by the SoCal Debtors to Copeland Fixed Income Two,  
 6 LP, a receivership entity; and (3) a settlement between the Receiver, on  
 7 the one hand, and Notes Receivable Account Debtors Advance Desert  
 8 Sleep Center, LLC, a California limited liability company, Venkatasvara  
 9 Rao, an individual, and Bobby Bhasker-Rao, an individual (collectively  
 10 the "Advance Debtors"), on the other hand (the "Advance Settlement"),  
 11 regarding an unsecured obligation owed by the Advance Debtors to  
 12 Copeland Properties Fifteen, L.P., a receivership entity.

13 Since his appointment as Receiver, the Receiver has actively and  
 14 diligently attempted to collect the amounts due under the above  
 15 referenced obligations ("Obligations") owed by the Spraggins Debtors,  
 16 SoCal Debtors and Advanced Debtors (collectively "Debtors"). The  
 17 Receiver's attempts in this regard have led to negotiations, and have  
 18 ultimately resulted in settlements of these Obligations ("Settlements").  
 19 The terms of the Settlements have been memorialized in writing, subject  
 20 to court approval, and the agreements are attached to the Receiver's  
 21 Declaration filed concurrently herewith as Exhibits A through C.

22 In general, the Settlements involve, *inter alia*, the acceptance of  
 23 monies paid by the Debtors to the Receiver in satisfaction of the  
 24 Obligations. The Spraggins Settlement involves a Forbearance  
 25 Agreement pursuant to the terms of which, *inter alia*, the Spraggins  
 26 agree to pay to the Receiver the total amount of \$117,844.78 over a  
 27 period of ninety (90) days, representing approximately ninety three  
 28 percent (93%) of the total obligation due. In exchange, the Receiver has

1 agreed to forbear from proceeding with the non-judicial foreclosure of the  
2 real property pledged as security for the obligation, and to cancel the  
3 foreclosure upon payment of the settlement amount in full.

4 The SoCal Settlement involves a Settlement Agreement pursuant  
5 to the terms of which, *inter alia*, the SoCal Debtors have agreed to  
6 immediately pay to the Receiver the total amount of Three Hundred Fifty  
7 Thousand Dollars (\$350,000.00), plus attorney's fees and costs not to  
8 exceed Five Thousand Dollars (\$5,000.00), representing approximately  
9 forty four percent (44%) of the total obligation due. In exchange, the  
10 Receiver has agreed to dismiss the state court lawsuit against the SoCal  
11 Debtors with prejudice.

12 The Advance Settlement involves a Settlement Agreement  
13 pursuant to the terms of which Venkatasvara Rao and Bobby Bhasker-  
14 Rao have each agreed to pay the amount of Twenty Thousand Dollars  
15 (\$20,000.00) to the Receiver, in installments over a period of  
16 approximately two (2) years, and have further agreed to confess to  
17 judgment in the increased amount of Twenty Five Thousand Dollars  
18 (\$25,000.00) each, less any payments made, to be entered upon the  
19 event of default in any installment payments. This represents payment of  
20 approximately forty percent (40%) of the total obligation due. In  
21 exchange, the Receiver has agreed to deem the obligation satisfied and  
22 hold off on further enforcement efforts, including litigation.

23 Although the amounts to be accepted by the Receiver pursuant to  
24 the Settlements are less than the amounts currently owed under the  
25 Obligations, the Receiver believes that the Settlements involve  
26 reasonable settlements under the circumstances of each matter, and  
27 that the amounts to be collected pursuant to the Settlements represent  
28 the best possible recovery under the circumstances of each individual



case.

This Motion is made following the conference of counsel pursuant to L.R. 7-3 in connection with the approval of the agreements which are the subject of this motion.

**NOTICE IS HEREBY GIVEN** that a proposed Order Approving Settlements With Certain Notes Receivable Account Debtors, a true and correct copy of which is attached hereto as **Exhibit "A"** and by this reference made a part hereof, has been lodged with the above-entitled Court.

WHEREFORE, the Receiver requests that the Court grant the relief requested herein and such other relief as may be appropriate under the circumstances.

Dated: May 3, 2013

MULVANEY BARRY BEATTY LINN &  
MAYERS LLP

By: /s/ Everett G. Barry, Jr.  
Attorneys for Thomas C. Hebrank, Receiver

HEBCO.100.462595.1

# Exhibit A

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION – LOS ANGELES

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-cv-08607-R-DTB

**[PROPOSED]**

**ORDER APPROVING  
SETTLEMENTS WITH CERTAIN  
NOTES RECEIVABLE ACCOUNT  
DEBTORS**

Date: April 1, 2013

Time: 10:00 a.m.

Ctrm: 8, 2<sup>nd</sup> Floor

Judge: Hon. Manuel L. Real

The Court, having considered the Motion for Order Approving Settlements with Certain Notes Receivable Account Debtors and supporting documentation by Mulvaney Barry Beatty Linn & Mayers, LLP (“Mulvaney Barry”), counsel for Thomas C. Hebrank (“Receiver”), the court-appointed Permanent Receiver for Copeland Wealth Management, a Financial Advisory Corporation, Copeland Wealth Management, a Real Estate Corporation, and their subsidiaries and affiliates, and any opposition thereto, and good cause appearing

**EXHIBIT A**

therefor,

IT IS HEREBY ORDERED as follows:

1. The following settlements are hereby approved by the Court:
  - a. The settlement between the Receiver, on the one hand, and Notes Receiveable Account Debtors Gina Spraggins, an individual, and Scott Spraggins, an individual (collectively the "Spraggins Debtors"), on the other hand (the "Spraggins Settlement"), regarding a secured obligation owed by the Spraggins Debtors to Copeland Fixed Income Three, L.P., a Receivership Entity;
  - b. The settlement between the Receiver, on the one hand, and Notes Receiveable Account Debtors SoCal Restaurants, LLC, a California limited liability company, Leroy Hansberger, an individual, Jeffrey Hansberger, an individual, and Michael Hansberger, an individual (collectively the "SoCal Debtors"), on the other hand (the "SoCal Settlement"), regarding an unsecured obligation owed by the SoCal Debtors to Copeland Fixed Income Two, L.P., a Receivership Entity; and
  - c. The settlement between the Receiver, on the one hand, and Notes Receiveable Account Debtors Advance Desert Sleep Center, LLC, a California limited liability company, Venkatasvara Rao, an individual, and Bobby Bhasker-Rao, an individual (collectively the "Advance Debtors"), on the other hand (the "Advance Settlement"), regarding an unsecured obligation owed by the Advance Debtors to Copeland Properties Fifteen, L.P., a Receivership Entity.

///

2. The following agreements evidencing the above settlements are hereby approved by the Court:

- a. The Forbearance Agreement attached as **Exhibit "A"** to the Declaration of the Receiver in Support of Motion for Order Approving Settlements With Certain Notes Receiveable Account Debtors;
- b. The Settlement Agreement and Mutual Release attached as **Exhibit "B"** to the Declaration of the Receiver in Support of Motion for Order Approving Settlements With Certain Notes Receiveable Account Debtors; and
- c. The Settlement Agreement and Mutual Release attached as **Exhibit "C"** to the Declaration of the Receiver in Support of Motion for Order Approving Settlements With Certain Notes Receiveable Account Debtors.

**IT IS SO ORDERED.**

**Dated:** \_\_\_\_\_ **Judge, United States District Court**

Submitted by:

MULVANEY BARRY BEATTY LINN & MAYERS LLP

By: /s/ Everett G. Barry, Jr.  
Attorneys for Thomas C. Hebrank, Permanent Receiver

HEBCO.100.482183.1

**EXHIBIT A**

1 Everett G. Barry, Jr. (SBN 053119)  
2 John H. Stephens (SBN 82971)  
3 Patrick L. Prindle (SBN 87516)  
4 MULVANEY BARRY BEATTY LINN  
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10 Attorneys for Thomas C. Hebrank,  
11 Permanent Receiver

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 WESTERN DIVISION – LOS ANGELES

15 SECURITIES AND EXCHANGE  
16 COMMISSION,

17 Plaintiff,

18 v.

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

26 Defendants.

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

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR ORDER  
APPROVING SETTLEMENTS  
WITH CERTAIN NOTES  
RECEIVABLE ACCOUNT  
DEBTORS**

Date: June 3, 2013

Time: 10:00 a.m.

Ctrm: 8, 2<sup>nd</sup> Floor

Judge: Hon. Manuel L. Real

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.  
INTRODUCTION**

27 Thomas C. Hebrank (“Receiver”), the court-appointed Permanent  
28 Receiver for Copeland Wealth Management, a Financial Advisory  
Corporation, Copeland Wealth Management, a Real Estate Corporation,  
and their subsidiaries and affiliates (“Receivership Entities”) including,  
but not limited to, Copeland Fixed Income Two, LP (“CFI2”), Copeland



Fixed Income Three, LP (“CFI3”), and Copeland Properties Fifteen, LP (“CP15”), hereby submits the following Memorandum of Points and Authorities in support of the Motion for an Order approving the settlements proposed to be entered into by and between the Receiver and certain notes receivable account debtors as explained in greater detail below.

## II.

### **PROCEDURAL BACKGROUND**

On October 18, 2011, the Securities and Exchange Commission (“SEC”) filed its Complaint for Violations of The Federal Securities Law, and the Proposed Judgment of Permanent Injunction and Other Relief as to Defendants. Docket Nos. 1 and 2. On October 25, 2011, the Court entered the Judgment of Permanent Injunction and Other Relief, appointing Thomas C. Hebrank to be the permanent receiver for all assets of the Receivership Entities, placing their assets into the Receiver’s possession and control and granting him the full powers of an equity receiver, including the power to make such agreements as may be necessary and advisable in discharging his duties. (“10/25/11 Order”). Docket No. 3.

On or about March 12, 2012, the Court issued an additional order clarifying the scope of the subject receivership, which provided as follows: (1) all of the assets of CFI2, CFI3, and CP15, including choses in action, are included in the receivership; (2) the Receiver has the authority to pursue causes of action against third parties who owe money to the Receivership Entities, including CFI2, CFI3, and CP15; and (3) the Receiver has the authority to terminate leases in connection with his management of properties owned by the Receivership Entities, including the property owned by CP15. Docket No. 53.

1 III.

2 **STATEMENT OF FACTS**

3 The Receiver requests an Order approving three separate  
 4 settlements as follows: (1) a settlement between the Receiver, on the  
 5 one hand, and Notes Receivable Account Debtors Gina Spraggins, an  
 6 individual, and Scott Spraggins, an individual (collectively the “Spraggins  
 7 Debtors”), on the other hand (the “Spraggins Settlement”), regarding a  
 8 secured obligation owed by the Spraggins Debtors to CFI3; (2) a  
 9 settlement between the Receiver, on the one hand, and Notes  
 10 Receivable Account Debtors SoCal Restaurants, LLC, a California  
 11 limited liability company, Leroy Hansberger, an individual, Jeffrey  
 12 Hansberger, an individual, and Michael Hansberger, an individual  
 13 (collectively the “SoCal Debtors”), on the other hand (the “SoCal  
 14 Settlement”), regarding an unsecured obligation owed by the SoCal  
 15 Debtors to CFI2; and (3) a settlement between the Receiver, on the one  
 16 hand, and Notes Receivable Account Debtors Advance Desert Sleep  
 17 Center, LLC, a California limited liability company, Venkatasvara Rao, an  
 18 individual, and Bobby Bhasker-Rao, an individual (collectively the  
 19 “Advance Debtors”), on the other hand (the “Advance Settlement”),  
 20 regarding an unsecured obligation owed by the Advance Debtors to  
 21 CP15. (Declaration of Thomas C. Hebrank (“Hebrank Declaration”), ¶ 3).  
 22 More specific facts relating to each of the Settlements are set forth in  
 23 turn below.

24 **A. Spraggins Settlement**

25 On or about September 25, 2008, the Spraggins Debtors executed  
 26 and delivered to CFI3 a “Note Secured by Deed of Trust” dated  
 27 September 25, 2008 (“9/25/08 Note”) in the original principal amount of  
 28 Seventy Thousand Dollars (\$70,000.00) (“9/25/08 Loan”). (Hebrank

1 Declaration ¶ 4.) As security for payment of the 9/25/08 Loan, the  
 2 Spraggins Debtors executed, and delivered to CFI3 a Deed of Trust,  
 3 dated September 25, 2008 ("9/25/08 Deed of Trust"), encumbering  
 4 certain real property commonly known as 331 Walnut Street, Newport  
 5 Beach, CA 92663 ("Property") and more particularly described therein.  
 6 (Hebrank Declaration ¶ 5.) The 9/25/08 Deed of Trust was duly recorded  
 7 on October 3, 2008, as Document Number 2008-000462279, in the  
 8 Official Records of the County of Orange, State of California. (Id.)

9 On or about October 30, 2008, the Spraggins Debtors executed  
 10 and delivered to CFI3 an additional "Note Secured by Deed of Trust"  
 11 dated October 30, 2008 ("10/30/08 Note") in the original principal amount  
 12 of Thirty-Four Thousand Dollars (\$34,000.00) ("10/30/08 Loan").  
 13 (Hebrank Declaration ¶ 6.) As security for payment of the 10/30/08 Loan,  
 14 the Spraggins Debtors executed, and delivered to CFI3 an additional  
 15 Deed of Trust, dated October 30, 2008 ("10/30/08 Deed of Trust"),  
 16 further encumbering the Property. (Hebrank Declaration ¶ 7.) The  
 17 10/30/08 Deed of Trust was duly recorded on October 31, 2008, as  
 18 Document Number 2008-000500324, in the Official Records of the  
 19 County of Orange, State of California. (Id.)

20 On or about June 25, 2011, the Spraggins Debtors defaulted under  
 21 the terms of the above referenced loans ("Loans") by failing to make  
 22 monthly payments when due. (Hebrank Declaration ¶ 8.) The Receiver  
 23 made several written demands upon the Spraggins Debtors for payment  
 24 of the sums due; however, the Spraggins Debtors failed to pay the Loans  
 25 in full. (Hebrank Declaration ¶ 9.)

26 On March 1, 2013, the Receiver commenced non-judicial  
 27 foreclosure proceedings against the Property by causing a Notice of  
 28 Default and Election to Sell for the 9/25/08 Loan to be recorded in the

Official Records of the County of Orange, State of California as Document Number 2013000127404 ("9/25/08 NOD") and a Notice of Default and Election to Sell for the 10/30/08 Loan to be recorded in the Official Records of the County of Orange, State of California as Document Number 2013000127402 ("10/30/08 NOD"). (Hebrank Declaration ¶ 10.)

As of April 16, 2013, the 9/25/08 Loan had an unpaid principal balance in the amount of \$70,000.00, plus accrued interest through April 12, 2013, in the amount of \$12,677.98, plus attorney's fees in the amount of \$1,298.00, plus foreclosure fees in the amount of \$960.41. (Hebrank Declaration ¶ 11.) As of April 12, 2013, the 9/25/08 Loan had an unpaid principal balance in the amount of \$34,000.00, plus accrued interest through April 16, 2013, in the amount of \$6,160.52, plus attorney's fees in the amount of \$1,298.00, plus foreclosure fees in the amount of \$869.12. (Hebrank Declaration ¶ 12.)

Subject to court approval, the Receiver and the Spraggins Debtors have entered into a Forbearance Agreement pursuant to the terms of which, *inter alia*, the Spraggins agree to pay to the Receiver the total amount of \$117,844.78 over a period of ninety (90) days, representing approximately ninety three percent (93%) of the total obligation due.<sup>1</sup> (Hebrank Declaration ¶ 13.) In exchange, the Receiver has agreed to forbear from proceeding with the nonjudicial foreclosure of the Property, and to cancel the foreclosure upon payment of the settlement amount in full. (*Id.*) In light of allegations by the Spraggins Debtors that there may not have been sufficient consideration for the Loans, and the costs of proceeding with the foreclosure and subsequent maintenance and sale

<sup>1</sup> The Receiver has agreed to reduce the interest under the Loans by fifty percent (50%), but is otherwise collecting the total obligation due and owing under the Loans.

1 of the Property, the Receiver believes the terms of the Spraggins  
 2 Settlement are fair, equitable, and represent reasonable and diligent  
 3 efforts to collect the total amount due under the Loans. (Hebrank  
 4 Declaration ¶ 14.)

5 The complete terms of the Spraggins Settlement are set forth in  
 6 the Forbearance Agreement, a true and correct copy of which is  
 7 attached as **Exhibit "A"** to the Hebrank Declaration, and is incorporated  
 8 herein by this reference as though set forth at length. (Hebrank  
 9 Declaration ¶ 15.)

#### 10 **B. SoCal Settlement**

11 On or about August 28, 2007, CFI2 made a loan to SoCal Del, LLC  
 12 aka SoCal Del LLC, now known as SoCal Restaurants, LLC, a limited  
 13 liability company ("SoCal") in the original principal amount of  
 14 \$800,000.00 (the "SoCal Loan"). (Hebrank Declaration ¶ 16.) The SoCal  
 15 Loan is evidenced by, *inter alia*, a Straight Note ("Note") in the original  
 16 principal amount of \$800,000.00 ("Note"), dated August 28, 2007.  
 17 Pursuant to the terms of the Note, interest accrued at the rate of ten  
 18 percent (10.00%) per annum, and interest payments in the amount of  
 19 \$6,666.67 were due on or before the 28th day of each month. (Hebrank  
 20 Declaration ¶ 17.) Further, pursuant to the Note, the total unpaid  
 21 principal balance, plus unpaid interest, was due and payable in full on  
 22 August 28, 2012. (*Id.*) The Receiver is informed and believes that the  
 23 purpose of the SoCal Loan was to provide working capital in connection  
 24 with three (3) Del Taco franchise fast food restaurants operated by  
 25 SoCal. (Hebrank Declaration ¶ 18.)

26 As an inducement to CFI2 to extend financial accommodations to  
 27 SoCal, on or about August 28, 2007, Leroy Hansberger, an individual,  
 28 Jeffrey Hansberger, an individual, and Michael Hansberger, an individual

(collectively "SoCal Guarantors") each executed, and delivered to CFI 2, as part of CFI 2's loan to SoCal, a separate Commercial Guaranty in which each of them unconditionally guaranteed and promised to pay CFI2 all obligations of SoCal to CFI2 under the Note, plus interest, and all expenses of, for, and incidental to collection, including reasonable attorneys' fees and costs (collectively "SoCal Guaranties"). (Hebrank Declaration ¶ 19.)

The Note matured by its terms on August 28, 2012, and became immediately due and payable in full as of that date. (Hebrank Declaration ¶ 20.) SoCal defaulted on its obligations to CFI2 by failing to pay the total amount due under the Note. (Hebrank Declaration ¶ 21.) The Receiver made several written demands on SoCal and the SoCal Guarantors; despite these demands, the SoCal Loan remained unpaid. (Id.)

On January 31, 2013, the Receiver commenced an action against SoCal and the SoCal Guarantors in the Superior Court of California, County of San Bernardino, as Case Number CIVDS 1301172, stating causes of action for Breach of Contract, Breach of Guaranty and Common Counts ("SoCal Lawsuit"). (Hebrank Declaration ¶ 22.) As of April 15, 2013, the amount due and owing under the SoCal Loan was the principal amount of \$800,000.00, plus interest in the amount of \$6,666.67, plus continuing interest at the rate of ten percent (10.00%) per annum from April 15, 2013 until paid in full, plus attorney's fees and costs. (Hebrank Declaration ¶ 23.)

Subject to court approval, the Receiver and the SoCal Debtors have entered into a Settlement Agreement and Mutual Release pursuant to the terms of which, *inter alia*, the SoCal Debtors have agreed to immediately pay to the Receiver the total amount of Three Hundred Fifty Thousand Dollars (\$350,000.00), plus attorney's fees and costs not to



1 exceed Five Thousand Dollars (\$5,000.00), representing approximately  
 2 forty four percent (44%) of the total obligation due. (Hebrank Declaration  
 3 ¶ 24.) In exchange, the Receiver has agreed to dismiss the SoCal  
 4 Lawsuit with prejudice. (Id.)

5 The Receiver is informed and believes that SoCal has attempted to  
 6 refinance the SoCal Loan, but has been unsuccessful in doing so due to  
 7 the lack of adequate security. (Hebrank Declaration ¶ 25.) Additionally,  
 8 according to profit and loss statements provided to the Receiver, SoCal  
 9 has been operating at a loss for several years. (Id.) The Receiver is  
 10 informed and believes that SoCal is unable to expand to make the  
 11 business profitable due to the recent economic downturn. (Hebrank  
 12 Declaration ¶ 26.) The Receiver is further informed and believes that the  
 13 settlement amount is being loaned to SoCal by a family member. (Id.)

14 In light of the financial condition of the SoCal Debtors, as verified  
 15 by the Receiver's review of the profit and loss statements and certain  
 16 financial statements provided by SoCal and the SoCal Guarantors, and  
 17 the apparent inability of the SoCal Debtors to pay the full amount due  
 18 under the SoCal Loan, the Receiver believes the SoCal Settlement  
 19 represents the best recovery currently available under the  
 20 circumstances. (Hebrank Declaration ¶ 27.)

21 The complete terms of the SoCal Settlement are set forth in  
 22 Settlement Agreement and Mutual Release, a true and correct copy of  
 23 which is attached as **Exhibit "B"** to the Hebrank Declaration, and is  
 24 incorporated herein by this reference as though set forth at length.  
 25 (Hebrank Declaration ¶ 28.)

### 26 **C. Advance Settlement**

27 On or about May 1, 2011, CP15 entered into a written lease  
 28 agreement ("Lease") with Advance Desert Sleep Center, LLC, a

1 California limited liability company ("Advance"). (Hebrank Declaration ¶  
 2 29.) Pursuant to the Lease, CP15 agreed to lease to Advance the real  
 3 property located at 35-900 Bob Hope Drive, Suite 130, Rancho Mirage,  
 4 California ("Premises"). (Id.) On or about May 1, 2011, Venkatasvara  
 5 Rao, an individual ("V. Rao") and Bobby Bhasker-Rao, M.D., an  
 6 individual ("B. Rao") (collectively "Advance Guarantors") executed an  
 7 AIR Commercial Real Estate Association Guaranty of Lease dated May  
 8 1, 2011 in favor of CP 15 ("Advance Guaranty"). (Hebrank Declaration ¶  
 9 30.)

10 On April 25, 2012, the Receiver served a "Three Day Notice to Pay  
 11 Rent or Quit" ("Notice") on Advance demanding it pay \$29,554.44 owed  
 12 by Advance to the Receiver for rent, construction costs, and common  
 13 area maintenance charges pursuant to the Lease or quit the Premises  
 14 and that, in the event that Advance failed to pay the above-described  
 15 amounts, the Receiver elected to and did declare a forfeiture of the  
 16 Lease. (Hebrank Declaration ¶ 31.) Advance did not pay the \$29,554.44  
 17 it owed in rent, construction costs, and common area maintenance  
 18 charges that the Receiver demanded, and it did not quit the Premises  
 19 within the three days provided for in the Notice. (Hebrank Declaration ¶  
 20 32.)

21 Subsequently, the Receiver filed a motion with this Court  
 22 requesting authorization to abandon the Premises and to declare that the  
 23 Premises were no longer part of the Receivership Estate. (Hebrank  
 24 Declaration ¶ 33.) On October 1, 2012, the Court granted the Receiver's  
 25 motion and entered an order authorizing the Receiver to abandon the  
 26 Premises and declaring that the Premises were abandoned by the  
 27 Receiver and no longer part of the Receivership Estate. (Hebrank  
 28 Declaration ¶ 34.) The Court's October 1, 2012 Order further provided

1 that the Receiver had “the right to bring legal actions or other  
2 proceedings to collect unpaid rent and other obligations, from existing or  
3 prior tenants and their guarantors, due and owing through September  
4 30, 2012.” (Id.)

5 Pursuant to the Lease, the Advance Guaranty, and the above-  
6 described October 1, 2012 Order, the Receiver demanded that Advance  
7 and the Advance Guarantors pay the Receiver amounts due under the  
8 Lease as of September 30, 2012, plus damages suffered by the  
9 Receiver as a result of Advance’s alleged breach of the lease, including  
10 amounts payable pursuant to the Lease after the termination thereof,  
11 and attorneys’ fees and costs. (Hebrank Declaration ¶ 35.)

12 Subject to court approval, the Receiver has entered into a  
13 Settlement Agreement with Advance and the Advance Guarantors  
14 pursuant to the terms of which V. Rao and B. Rao have each agreed to  
15 pay the amount of Twenty Thousand Dollars (\$20,000.00) to the  
16 Receiver, in installments, over a period of approximately two (2) years,  
17 and have further agreed to confess to judgment in the increased amount  
18 of Twenty Five Thousand Dollars (\$25,000.00) each, less any payments  
19 made, to be entered upon the event of default in any installment  
20 payments. (Hebrank Declaration ¶ 36.) This represents payment of  
21 approximately forty percent (40%) of the total obligation due. (Id.) In  
22 exchange, upon payment of the settlement amount in full, or upon entry  
23 of the Judgment pursuant to the confession of Judgment, the Receiver  
24 has agreed to deem the obligation satisfied and hold off on further  
25 enforcement efforts, including litigation. (Hebrank Declaration ¶ 37.)

26 The Receiver has reviewed personal financial statements and tax  
27 returns provided by the Advance Guarantors. (Hebrank Declaration ¶  
28 38.) Additionally, the Receiver is informed and believes that Advance is

1 no longer a viable business. (Id.) Based thereon, the Receiver believes  
2 that the Advance Settlement represents the best potential for recovery  
3 under the present circumstances. (Id.)

4 The complete terms of the agreement are set forth in the  
5 Settlement Agreement and Mutual Release, a true and correct copy of  
6 which is attached as **Exhibit "C"** to the Hebrank Declaration, and is  
7 incorporated herein by this reference as though set forth at length.  
8 (Hebrank Declaration ¶ 39.)

9 **IV.**  
10 **ARGUMENT**

11 "The power of a district court to impose a receivership or grant  
12 other forms of ancillary relief does not in the first instance depend on a  
13 statutory grant of power from the securities laws. Rather, the authority  
14 derives from the inherent power of a court of equity to fashion effective  
15 relief." *SEC v. Wencke*, 622 F.2d 1363, 1369 (9<sup>th</sup> Cir. 1980). The  
16 "primary purpose of equity receiverships is to promote orderly and  
17 efficient administration of the estate by the district court for the benefit of  
18 creditors." *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9<sup>th</sup> Cir. 1986). As the  
19 appointment of a receiver is authorized by the broad equitable powers of  
20 the court, any distribution of assets must also be done equitably and  
21 fairly. *See S.E.C. v. Elliot*, 953 F.2d 1560, 1569 (11<sup>th</sup> Cir. 1992).

22 District courts have the broad power of a court of equity to  
23 determine the appropriate action in the administration and supervision of  
24 an equity receivership. *See S.E.C. v. Capital Consultants, LLC*, 397 F.  
25 3d 733, 738 (9<sup>th</sup> Cir. 2005). The *Capital Consultants* Court directed:

26 A district court's power to supervise an equity  
27 receivership and to determine the appropriate  
28 action to be taken in the administration of the  
receivership is extremely broad. The district  
court has broad powers and wide discretion to

determine the appropriate relief in an equity receivership. The basis for this broad deference to the district court's supervisory role in equity receiverships arises out of the fact that most receiverships involve multiple parties and complex transactions. A district court's decision concerning the supervision of an equitable receivership is reviewed for abuse of discretion.

Id. (citations omitted); see also *Commodities Futures Trading Comm'n. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9<sup>th</sup> Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role, and 'we generally uphold reasonable procedures instituted by the district court that serve th[e] purpose' of orderly and efficient administration of the receivership for the benefit of creditors.") Accordingly, the Court has broad equitable powers and discretion in formulating procedures, schedules, and guidelines for administration of the receivership estate and disposition of receivership assets.

In this case, pursuant to the 10/25/11 Order, this Court granted authorization for the Receiver to do the following:

(f) to make such payments and disbursements from the funds and assets taken into custody, control and possession or thereafter received by him or her, and to incur, or authorize the making of, such agreements as may be necessary and advisable in discharging his or her duties as permanent receiver;

. . .

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

(10/25/11 Order, page 5, lines 16-20; page 6, lines 7-10).

1 The above referenced Forbearance Agreement and Settlement  
2 Agreements (collectively "Agreements") entered into between the  
3 Receiver and the Account Receivable Debtors accomplish a fair,  
4 equitable, orderly and efficient administration of the Receivership estate.  
5 Pursuant to the terms of the Agreements, the Receiver is recovering  
6 amounts that he considers to be the best recovery under the  
7 circumstances of each case. In each case, where necessary, the  
8 Receiver has analyzed the relevant financial status of the Debtors, and  
9 has taken into consideration any alleged defenses to collection.

10 In the Spraggins Settlement, the Receiver is collecting  
11 approximately ninety three (93%) of the total obligation, and is avoiding  
12 the costs associated with completing the foreclosure of the Property, and  
13 the potential costs associated with maintaining the Property and selling  
14 it. This is reasonable in light of the Spraggins Debtors' allegations that  
15 the Loans may not have been supported by sufficient consideration.

16 In the SoCal Settlement, the Receiver is collecting approximately  
17 forty four percent (44%) of the total obligation, in cash, immediately upon  
18 approval of the SoCal Settlement Agreement. Based on the fact that the  
19 SoCal Debtors have insufficient resources to pay the total amount due  
20 under the SoCal loan, which is substantiated by the information and  
21 documentation provided to the Receiver by the SoCal Debtors, and the  
22 settlement funds are coming from a family member, the SoCal settlement  
23 appears to be the best possible recovery under the circumstances.

24 In the Advance Settlement, the Receiver is collecting  
25 approximately forty percent (40%) of the total obligation over a period of  
26 two (2) years. The Advance Debtors have each executed a Confession  
27 of Judgment Statement, pursuant to which a Judgment can immediately  
28 be entered against the party that defaults in the event of a default in



1 payments. Given the Advance Debtors' inability to pay the total amount  
2 due, as verified by the Receiver with financial statements, the Advance  
3 Settlement appears to be the best possible recovery under the  
4 circumstances.

5 In each case, the Receiver has performed a thorough review of the  
6 potential for recovery, and has concluded that the Settlements are fair,  
7 reasonable, and appropriate. Accordingly, the Receiver requests that the  
8 Settlements be approved, so the terms can be effectuated.

9 **IV.**

10 **CONCLUSION**

11 Based upon the foregoing, all pleadings on file herein, as well as  
12 such argument and evidence as may be admitted during the hearing, the  
13 Receiver requests entry of an order approving the Agreements proposed  
14 to be entered into by and between the Receiver and the Account  
15 Receiveable Debtors.

16 Dated: May 3, 2013

MULVANEY BARRY BEATTY LINN &  
MAYERS, LLP

19 By: /s/ Everett G. Barry, Jr.  
20 Attorneys for Thomas C. Hebrank,  
21 Receiver

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Attorneys for Thomas C. Hebrank,  
Permanent Receiver

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION – LOS ANGELES

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-cv-08607-R-DTB

**DECLARATION OF THOMAS C.  
HEBRANK IN SUPPORT OF  
MOTION FOR ORDER  
APPROVING SETTLEMENTS  
WITH CERTAIN NOTES  
RECEIVABLE ACCOUNT  
DEBTORS**

Date: June 3, 2013

Time: 10:00 a.m.

Ctrm: 8, 2<sup>nd</sup> Floor

Judge: Hon. Manuel L. Real

I, Thomas C. Hebrank, declare as follows:

1. I am the court-appointed Permanent Receiver for Copeland Wealth Management, a Financial Advisory Corporation ("CWM"), Copeland Wealth Management, a Real Estate Corporation ("Copeland Realty"), and their subsidiaries and affiliates (collectively, the "Receivership Entities") including, but not limited to, Copeland Fixed Income Two, LP ("CFI2"), Copeland Fixed Income Three, LP ("CFI3"),

1 and Copeland Properties Fifteen, LP ("CP 15").

2 2. The following are facts within my knowledge and if called as  
3 a witness I would testify to them under oath.

4 3. Subject to court approval, I have entered into the following  
5 settlements: (1) a settlement between myself as Receiver, on the one  
6 hand, and Notes Receivable Account Debtors Gina Spraggins, an  
7 individual, and Scott Spraggins, an individual (collectively the "Spraggins  
8 Debtors"), on the other hand (the "Spraggins Settlement"), regarding a  
9 secured obligation owed by the Spraggins Debtors to CFI3; (2) a  
10 settlement between myself as Receiver, on the one hand, and Notes  
11 Receivable Account Debtors SoCal Restaurants, LLC, a California  
12 limited liability company, Leroy Hansberger, an individual, Jeffrey  
13 Hansberger, an individual, and Michael Hansberger, an individual  
14 (collectively the "SoCal Debtors"), on the other hand (the "SoCal  
15 Settlement"), regarding an unsecured obligation owed by the SoCal  
16 Debtors to CFI2; and (3) a settlement between myself as Receiver, on  
17 the one hand, and Notes Receivable Account Debtors Advance Desert  
18 Sleep Center, LLC, a California limited liability company, Venkatasvara  
19 Rao, an individual, and Bobby Bhasker-Rao, an individual (collectively  
20 the "Advance Debtors"), on the other hand (the "Advance Settlement"),  
21 regarding an unsecured obligation owed by the Advance Debtors to  
22 CP15.

### 23 **The Spraggins Settlement**

24 4. On or about September 25, 2008, the Spraggins Debtors  
25 executed and delivered to CFI3 a "Note Secured by Deed of Trust" dated  
26 September 25, 2008 ("9/25/08 Note") in the original principal amount of  
27 Seventy Thousand Dollars (\$70,000.00) ("9/25/08 Loan").

28 / / /

1           5. As security for payment of the 9/25/08 Loan, the Spraggins  
2 Debtors executed, and delivered to CFI3 a Deed of Trust, dated  
3 September 25, 2008 ("9/25/08 Deed of Trust"), encumbering certain real  
4 property commonly known as 331 Walnut Street, Newport Beach, CA  
5 92663 ("Property") and more particularly described therein. The 9/25/08  
6 Deed of Trust was duly recorded on October 3, 2008, as Document  
7 Number 2008-000462279, in the Official Records of the County of  
8 Orange, State of California.

9           6. On or about October 30, 2008, the Spraggins Debtors  
10 executed and delivered to CFI3 an additional "Note Secured by Deed of  
11 Trust" dated October 30, 2008 ("10/30/08 Note") in the original principal  
12 amount of Thirty-Four Thousand Dollars (\$34,000.00) ("10/30/08 Loan").

13           7. As security for payment of the 10/30/08 Loan, the Spraggins  
14 Debtors executed, and delivered to CFI3 an additional Deed of Trust,  
15 dated October 30, 2008 ("10/30/08 Deed of Trust"), further encumbering  
16 the Property. The 10/30/08 Deed of Trust was duly recorded on October  
17 31, 2008, as Document Number 2008-000500324, in the Official  
18 Records of the County of Orange, State of California.

19           8. On or about June 25, 2011, the Spraggins Debtors defaulted  
20 under the terms of the above referenced loans ("Loans") by failing to  
21 make monthly payments when due.

22           9. The Receiver made several written demands upon the  
23 Spraggins Debtors for payment of the sums due; however, the Spraggins  
24 Debtors failed to pay the Loans in full.

25           10. On March 1, 2013, I commenced non-judicial foreclosure  
26 proceedings against the Property by causing a Notice of Default and  
27 Election to Sell for the 9/25/08 Loan to be recorded in the Official  
28 Records of the County of Orange, State of California as Document

1 Number 2013000127404 ("9/25/08 NOD") and a Notice of Default and  
 2 Election to Sell for the 10/30/08 Loan to be recorded in the Official  
 3 Records of the County of Orange, State of California as Document  
 4 Number 2013000127402 ("10/30/08 NOD").

5 11. As of April 16, 2013, the 9/25/08 Loan had an unpaid  
 6 principal balance in the amount of \$70,000.00, plus accrued interest  
 7 through April 12, 2013, in the amount of \$12,677.98, plus attorney's fees  
 8 in the amount of \$1,298.00, plus foreclosure fees in the amount of  
 9 \$960.41.

10 12. As of April 12, 2013, the 9/25/08 Loan had an unpaid  
 11 principal balance in the amount of \$34,000.00, plus accrued interest  
 12 through April 16, 2013, in the amount of \$6,160.52, plus attorney's fees  
 13 in the amount of \$1,298.00, plus foreclosure fees in the amount of  
 14 \$869.12.

15 13. Subject to court approval, I have entered into a Forbearance  
 16 Agreement with the Spraggins Debtors pursuant to the terms of which,  
 17 *inter alia*, the Spraggins have agreed to pay to me the total amount of  
 18 \$117,844.78 over a period of ninety (90) days, representing  
 19 approximately ninety three percent (93%) of the total obligation due to  
 20 CFI3.<sup>1</sup> In exchange, I have agreed to forbear from proceeding with the  
 21 nonjudicial foreclosure of the Property, and to cancel the foreclosure  
 22 upon payment of the settlement amount in full.

23 14. In light of allegations by the Spraggins Debtors that there  
 24 may not have been sufficient consideration for the Loans, and the costs  
 25 of proceeding with the foreclosure and subsequent maintenance and  
 26 sale of the Property, I believe the terms of the Spraggins Settlement are

27 <sup>1</sup> I have agreed to reduce the interest under the Loans by fifty percent (50%), but I am otherwise  
 28 collecting the total obligation due and owing under the Loans.

1 fair, equitable, and represent reasonable and diligent efforts to collect the  
2 total amount due under the Loans.

3 15. The complete terms of the Spraggins Settlement are set forth  
4 in the Forbearance Agreement, a true and correct copy of which is  
5 attached hereto as **Exhibit "A"** and incorporated herein by reference.

### 6 The SoCal Settlement

7 16. On or about August 28, 2007, CFI2 made a loan to SoCal  
8 Del, LLC aka SoCal Del LLC, now known as SoCal Restaurants, LLC, a  
9 limited liability company ("SoCal") in the original principal amount of  
10 \$800,000.00 (the "SoCal Loan").

11 17. The SoCal Loan is evidenced by, *inter alia*, a Straight Note  
12 ("Note") in the original principal amount of \$800,000.00 ("Note"), dated  
13 August 28, 2007. Pursuant to the terms of the Note, interest accrued at  
14 the rate of ten percent (10.00%) per annum, and interest payments in the  
15 amount of \$6,666.67 were due on or before the 28th day of each month.  
16 Further, pursuant to the Note, the total unpaid principal balance, plus  
17 unpaid interest, was due and payable in full on August 28, 2012.

18 18. I am informed and believe that the purpose of the SoCal  
19 Loan was to provide working capital in connection with three (3) Del  
20 Taco franchise fast food restaurants operated by SoCal.

21 19. As an inducement to CFI2 to extend financial  
22 accommodations to SoCal, on or about August 28, 2007, Leroy  
23 Hansberger, an individual, Jeffrey Hansberger, an individual, and  
24 Michael Hansberger, an individual (collectively "SoCal Guarantors") each  
25 executed, and delivered to CFI 2, as part of CFI 2's loan to SoCal, a  
26 separate Commercial Guaranty in which each of them unconditionally  
27 guaranteed and promised to pay CFI2 all obligations of SoCal to CFI2  
28 under the Note, plus interest, and all expenses of, for, and incidental to



1 collection, including reasonable attorneys' fees and costs (collectively  
2 "SoCal Guaranties").

3 20. The Note matured by its terms on August 28, 2012, and  
4 became immediately due and payable in full as of that date.

5 21. SoCal defaulted on its obligations to CFI2 by failing to pay  
6 the total amount due under the Note. The Receiver made several written  
7 demands on SoCal and the SoCal Guarantors; despite these demands,  
8 the SoCal Loan remained unpaid.

9 22. On January 31, 2013, I commenced an action, in my capacity  
10 as Receiver, against SoCal and the SoCal Guarantors in the Superior  
11 Court of California, County of San Bernardino, as Case Number CIVDS  
12 1301172, stating causes of action for Breach of Contract, Breach of  
13 Guaranty and Common Counts ("SoCal Lawsuit").

14 23. As of April 15, 2013, the amount due and owing under the  
15 SoCal Loan was the principal amount of \$800,000.00, plus interest in the  
16 amount of \$6,666.67, plus continuing interest at the rate of ten percent  
17 (10.00%) per annum from April 15, 2013 until paid in full, plus attorney's  
18 fees and costs.

19 24. Subject to court approval, I have entered into a Settlement  
20 Agreement and Mutual Release with the SoCal Debtors pursuant to the  
21 terms of which, *inter alia*, the SoCal Debtors have agreed to immediately  
22 pay to me the total amount of Three Hundred Fifty Thousand Dollars  
23 (\$350,000.00), plus attorney's fees and costs not to exceed Five  
24 Thousand Dollars (\$5,000.00), representing approximately forty four  
25 percent (44%) of the total obligation due. In exchange for payment of this  
26 amount, I have agreed to dismiss the SoCal Lawsuit with prejudice.

27 25. I am informed and believe that SoCal has attempted to  
28 refinance the SoCal Loan, but has been unsuccessful in doing so due to

1 the lack of adequate security. Additionally, according to profit and loss  
 2 statements provided to me, it appears that SoCal has been operating at  
 3 a loss for the last several years.

4 26. I am informed and believe that SoCal is unable to expand to  
 5 make the business profitable due to the recent economic downturn. I am  
 6 further informed and believe that the settlement amount is being loaned  
 7 to SoCal by a family member.

8 27. In light of the financial condition of the SoCal Debtors, as  
 9 verified by my review of the profit and loss statements and certain  
 10 financial statements provided to me by SoCal and the SoCal Guarantors,  
 11 and the apparent inability of the SoCal Debtors to pay the full amount  
 12 due under the SoCal Loan, I believe the SoCal Settlement represents  
 13 the best recovery currently available under the circumstances.

14 28. The complete terms of the SoCal Settlement are set forth in  
 15 the Settlement Agreement and Mutual Release, a true and correct copy  
 16 of which is attached hereto as **Exhibit "B"** and incorporated herein by  
 17 reference.

### 18 **The Advance Settlement**

19 29. On or about May 1, 2011, CP15 entered into a written lease  
 20 agreement ("Lease") with Advance Desert Sleep Center, LLC, a  
 21 California limited liability company ("Advance"). Pursuant to the Lease,  
 22 CP15 agreed to lease to Advance the real property located at 35-900  
 23 Bob Hope Drive, Suite 130, Rancho Mirage, California ("Premises").

24 30. On or about May 1, 2011, Venkatasvara Rao, an individual  
 25 ("V. Rao") and Bobby Bhasker-Rao, M.D., an individual ("B. Rao")  
 26 (collectively "Advance Guarantors") executed an AIR Commercial Real  
 27 Estate Association Guaranty of Lease dated May 1, 2011 in favor of CP  
 28 15 ("Advance Guaranty").

1           31. On April 25, 2012, the Receiver served a “Three Day Notice  
2 to Pay Rent or Quit” (“Notice”) on Advance demanding it pay \$29,554.44  
3 owed by Advance to the Receiver for rent, construction costs, and  
4 common area maintenance charges pursuant to the Lease or quit the  
5 Premises and that, in the event that Advance failed to pay the above-  
6 described amounts, the Receiver elected to and did declare a forfeiture  
7 of the Lease.

8           32. Advance did not pay the \$29,554.44 it owed in rent,  
9 construction costs, and common area maintenance charges that the  
10 Receiver demanded, and it did not quit the Premises within the three  
11 days provided for in the Notice.

12           33. Subsequently, I filed a motion with this Court requesting  
13 authorization to abandon the Premises and to declare that the Premises  
14 were no longer part of the Receivership Estate.

15           34. On October 1, 2012, the Court granted this motion and  
16 entered an order authorizing the Receiver to abandon the Premises and  
17 declaring that the Premises were abandoned by the Receiver and no  
18 longer part of the Receivership Estate. The Court’s October 1, 2012  
19 Order further provided that in my capacity as Receiver, I had “the right to  
20 bring legal actions or other proceedings to collect unpaid rent and other  
21 obligations, from existing or prior tenants and their guarantors, due and  
22 owing through September 30, 2012.”

23           35. Pursuant to the Lease, the Advance Guaranty, and the  
24 above-described October 1, 2012 Order, the Receiver demanded that  
25 Advance and the Advance Guarantors pay the Receiver amounts due  
26 under the Lease as of September 30, 2012, plus damages suffered by  
27 the Receiver as a result of Advance’s alleged breach of the lease,  
28 including amounts payable pursuant to the Lease after the termination

thereof, and attorneys' fees and costs.

36. Subject to court approval, I have entered into a Settlement Agreement with Advance and the Advance Guarantors pursuant to the terms of which V. Rao and B. Rao have each agreed to pay the amount of Twenty Thousand Dollars (\$20,000.00) to the Receiver, in installments, over a period of approximately two (2) years, and have further agreed to confess to judgment in the increased amount of Twenty Five Thousand Dollars (\$25,000.00) each, less any payments made, to be entered upon the event of default in any installment payments. This represents payment of approximately forty percent (40%) of the total obligation due.

37. In exchange, upon payment of the settlement amount in full, or upon entry of the Judgment pursuant to the confession of Judgment, I have agreed to deem the obligation satisfied and hold off on further enforcement efforts, including litigation.

38. I have reviewed personal financial statements and tax returns provided by the Advance Guarantors. Additionally, I am informed and believe that Advance is no longer a viable business. Based thereon, I believe that the Advance Settlement represents the best potential for recovery under the present circumstances.

39. The complete terms of the agreement are set forth in the Settlement Agreement and Mutual Release, a true and correct copy of which is attached hereto as **Exhibit "C"** and incorporated herein by reference.

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1 I declare under penalty of perjury under the laws of the State of  
2 California that the foregoing is true and correct, and that this Declaration  
3 was executed in San Diego, California on May 3, 2013.

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5 By: /s/ Thomas C. Hebrank  
6 Thomas C. Hebrank, Permanent Receiver  
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FACSIMILE 619 238-1981

# EXHIBIT A

## FORBEARANCE AGREEMENT

This Forbearance Agreement ("Agreement") is made and entered into as of April 30, 2013, between and among **THOMAS C. HEBRANK, COURT APPOINTED PERMANENT RECEIVER FOR COPELAND FIXED INCOME THREE, LP** ("Receiver"), on one hand, and **SCOTT SPRAGGINS**, an individual and **GINA SPRAGGINS**, an individual (collectively "Borrowers"), on the other hand, with respect to the following facts:

### RECITALS:

This Agreement is made and entered into in reliance on the following Recitals, which are acknowledged by the above referenced parties ("Parties") as follows:

A. On or about September 25, 2008, Borrowers executed and delivered to Copeland Fixed Income Three, LP ("CFI3") a "Note Secured by Deed of Trust" dated September 25, 2008 ("9/25/08 Note") in the original principal amount of Seventy Thousand Dollars (\$70,000.00) ("9/25/08 Loan").

B. As security for payment of the 9/25/08 Loan, Borrowers executed, and delivered to CFI3 a Deed of Trust, dated September 25, 2008 ("9/25/08 Deed of Trust"), encumbering certain real property commonly known as 331 Walnut Street, Newport Beach, CA 92663 ("Property") and more particularly described therein. The 9/25/08 Deed of Trust was duly recorded on October 3, 2008, as Document Number 2008-000462279, in the Official Records of the County of Orange, State of California.

C. On or about October 30, 2008, Borrowers executed and delivered to CFI3 an additional "Note Secured by Deed of Trust" dated October 30, 2008 ("10/30/08 Note") in the original principal amount of Thirty-Four Thousand Dollars (\$34,000.00) ("10/30/08 Loan").

D. As security for payment of the 10/30/08 Loan, Borrowers executed, and delivered to CFI3 an additional Deed of Trust, dated October 30, 2008 ("10/30/08 Deed of Trust"), further encumbering the Property. The 10/30/08 Deed of Trust was duly recorded on October 31, 2008, as Document Number 2008-000500324, in the Official Records of the County of Orange, State of California.

E. The 9/25/08 Note, 9/25/08 Deed of Trust, 10/30/08 Note, and 10/30/08 Deed of Trust, together with any other documents executed by the parties in connection with the 9/25/08 Loan and the 10/30/08 Loan (collectively "Loans"), and any and all amendments and modifications thereto, shall be collectively referred to as the "Loan Documents". There are no written or oral agreements concerning or affecting the Loans between Borrowers, on the one hand, and CFI3, on the other hand, other than the Loan Documents. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Loan Documents.

F. On or about June 25, 2011, Borrowers defaulted under the terms of the Loans by failing to make monthly payments when due.

G. On or about October 19, 2011, pursuant to a "Judgment of Permanent Injunction and Other Relief" ("10/19/11 Order") issued by the United States District Court, Central District of California in the case entitled Securities and Exchange Commission v. Charles P. Copeland, et. al., case number CV-08607-R-DTB ("the Receivership Action"), the District Court appointed Thomas C. Hebrank as the permanent receiver for all assets of Copeland Wealth Management,



FORBEARANCE AGREEMENT

a Financial Advisory Corporation and Copeland Wealth Management, a Real Estate Corporation, and their subsidiaries and affiliates ("Receivership Entities"), thereby placing the assets of the Receivership Entities into Mr. Hebrank's possession and control and granting him the full powers of an equity receiver, including the power to make such agreements as may be necessary and advisable in discharging his duties.

H. On or about March 12, 2012, in the Receivership Action, the District Court issued an order clarifying the scope of the above-described Receivership ("3/12/12 Order"), which provided, *inter alia*, as follows: (1) all of the assets of CFI3, including choses in action, were included in the Receivership; and (2) the Receiver had the authority to pursue causes of action against third parties who owed money to entities subject to the Receivership, including CFI3.

I. As of April 16, 2013, the 9/25/08 Loan had an unpaid principal balance in the amount of \$70,000.00, plus accrued interest through April 12, 2013, in the amount of \$12,677.98, plus attorney's fees in the amount of \$1,298.00, plus foreclosure fees in the amount of \$960.41. As of April 12, 2013, the 9/25/08 Loan had an unpaid principal balance in the amount of \$34,000.00, plus accrued interest through April 16, 2013, in the amount of \$6,160.52, plus attorney's fees in the amount of \$1,298.00, plus foreclosure fees in the amount of \$869.12. Because of the existence of these defaults, and the powers and authority granted in the Receiver by the 10/19/11 Order and the 3/12/12 Order, the Receiver, on behalf of CFI3, has the current right to exercise any and all of CFI3's rights or remedies against Borrowers under applicable law and the Loan Documents.

J. On March 1, 2013, the Receiver commenced non-judicial foreclosure proceedings against the Property by causing a Notice of Default and Election to Sell for the 9/25/08 Loan to be recorded in the Official Records of the County of Orange, State of California as Document Number 2013000127404 ("9/25/08 NOD") and a Notice of Default and Election to Sell for the 10/30/08 Loan to be recorded in the Official Records of the County of Orange, State of California as Document Number 2013000127402 ("10/30/08 NOD").

K. Borrowers may have other liabilities and obligations owing to the Receivership Entities; Borrowers and the Receiver intend that other such liabilities and obligations shall not be affected by this Agreement and shall remain in full force and effect in all respects.

L. Borrowers have requested that the Receiver forbear from exercising the default rights and remedies of CFI3 against them in order to allow Borrowers to pay the Loans as provided in this Agreement. Borrowers have each assured the Receiver that his respective position will not deteriorate during the Forbearance Period (defined below), and that Borrowers shall perform in accordance with this Agreement and the Loan Documents. Although the Receiver is under no obligation to do so, the Receiver is willing to forbear from continuing the exercise of CFI3's default rights against Borrowers for the period set forth herein on the terms and conditions set forth in this Agreement, provided all security interests and liens under the Loan Documents shall continue to exist and remain in full force and effect. The Receiver is entering into this Agreement for the sole purpose of allowing Borrowers an opportunity to repay the Loans as provided herein without immediate further exercise of CFI3's default rights by the Receiver.

FORBEARANCE AGREEMENT

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The recitals set forth above are hereby incorporated herein as true and correct.

2. **Confirmation of Property.** Borrowers hereby confirm that all obligations of Borrowers to CFI3 are secured by second and third priority perfected security interests in the Property.

3. **Confirmation of Debt.** Borrowers hereby ratify, reaffirm, and confirm all of the terms and conditions of the Loan Documents in all respects, and hereby acknowledge that the Loan Documents are valid and enforceable obligations against Borrowers, due and payable in full, without defenses, setoff, or counterclaim of any kind. As of April 16, 2013, the 9/25/08 Loan had an unpaid principal balance in the amount of \$70,000.00, plus accrued interest through April 12, 2013, in the amount of \$12,677.98, plus attorney's fees in the amount of \$1,298.00, plus foreclosure fees in the amount of \$960.41. As of April 12, 2013, the 9/25/08 Loan had an unpaid principal balance in the amount of \$34,000.00, plus accrued interest through April 16, 2013, in the amount of \$6,160.52, plus attorney's fees in the amount of \$1,298.00, plus foreclosure fees in the amount of \$869.12. This indebtedness evidenced by the Loan Documents is hereby acknowledged and admitted.

4. **Conditions Precedent.** This Agreement is specifically subject to court approval as set forth in paragraph 11 below. Borrowers understand that this Agreement shall not be effective and the Receiver shall have no obligation to forbear from exercising any of CFI3's rights or remedies unless and until each of the following Conditions Precedent has been satisfied not later than May 1, 2013, or waived in writing by the Receiver, in the Receiver's sole discretion:

a. Borrowers shall have executed and delivered to the Receiver this Agreement.

b. Borrowers shall have taken any and all actions and executed and delivered to the Receiver any and all further documents necessary or appropriate in the Receiver's reasonable discretion to effectuate this Agreement.

5. **Forbearance.** Subject to the following and the terms and conditions of this Agreement, until the earlier of ninety (90) days from the date of this Agreement, or the date of the occurrence of any event of default as defined in the Loan Documents ("Event of Default") or the date of occurrence of any Forbearance Default (defined below), or, subject to any applicable notice and cure periods, any condition, act, or event which with the giving of notice or the passage of time or both would constitute an Event of Default or Forbearance Default ("Forbearance Period"), the Receiver will forbear from further exercising his rights and remedies against Borrowers due to Borrowers' default on the Loans:

a. Borrowers agree that all obligations of Borrowers hereunder, and under the Loan Documents, shall survive the termination of the Forbearance Period.

## FORBEARANCE AGREEMENT

b. Borrowers hereby acknowledge and agree that the granting of the forbearance and the acceptance of any amounts by the Receiver shall: (i) not constitute a cure of the default under the Loan Documents; (ii) be without prejudice to or a waiver of any rights and/or remedies that the Receiver has due to the default or any other defaults; (iii) not prevent the Receiver from initiating or proceeding with any proceeding, including the non-judicial foreclosure proceedings against the Property, in the event Borrowers default under the terms of this Agreement or any other Loan Document. Borrowers expressly acknowledge and agree that all payments made to, or received by, the Receiver are made voluntarily and the Receiver may apply the payments to reduce the Loans.

6. **Modification and Confirmation of Loan Documents.** The Parties agree that the Loan Documents are hereby supplemented, modified and/or confirmed as follows:

a. As consideration for the extension and modification of the Loans, upon the Parties' execution of this Agreement, Borrowers shall pay to the Receiver, in good funds, the sum of Twenty Thousand Dollars (\$20,000.00), to be held in the Receiver's counsel's client trust account pending court approval of this Agreement as set forth in paragraph 11 below.

b. During the Forbearance Period, Borrowers shall make the following payments to the Receiver, to be applied the Loans:

(1) Within sixty (60) days from the date of this Agreement, Borrowers shall pay to the Receiver, in good funds, the sum of \$50,000.00.

(2) Within ninety (90) days from the date of this Agreement, Borrowers shall pay to the Receiver, in good funds, the sum of \$47,844.78.

c. During the Forbearance Period, the foreclosure proceeding on the Property evidenced by the 9/25/08 NOD and the 10/30/08 NOD (collectively "NODs") shall remain in full force and effect and shall not be rescinded. In the event of an Event of Default or Forbearance Default on this Agreement, the Receiver shall have the absolute right to proceed with a Notice of Sale and subsequent sale pursuant to the NOD.

d. Upon timely payment in full, in good funds, of the amounts referenced in paragraphs 6(a) and 6(b) above, the Receiver shall: (1) cancel the 9/25/08 Note and the 10/30/08 Note (collectively "Notes") and deem them paid in full; and (2) request that the foreclosure trustee cancel the foreclosure proceedings, including the NODs, and reconvey the 9/25/08 Deed of Trust and the 10/30/08 Deed of Trust (collectively "Deeds of Trust").

e. Except as expressly modified by this Agreement, all of the terms and conditions of the Loan Documents, and all agreements evidencing or securing the obligation(s) evidenced thereby, remain unchanged and in full force and effect.

7. **Borrowers' Representations and Warranties.** To induce the Receiver to enter into this Agreement, Borrowers hereby represent and warrant to the Receiver that:

a. The Loan Documents represent unconditional, absolute, valid, and enforceable obligations against Borrowers.

FORBEARANCE AGREEMENT

b. Borrowers have no claims or defenses against CFI3, the Receiver, or any other person or entity which would or might affect (i) the enforceability of any provisions of the Loan Documents; or (ii) the collectability of sums advanced by CFI3 in connection with the Loans.

c. The execution, delivery, and performance by Borrowers of this Agreement and the Loan Documents has been duly authorized, and will not violate any law, rule, or order of any court or governmental agency or body to which Borrowers are subject. All representations and warranties contained in this Agreement and in any and all of the other Loan Documents are true and correct as of the date of this Agreement, and all such representations and warranties shall survive the execution of this Agreement. Borrowers understand and acknowledge that the Receiver is entering into this Agreement in reliance upon, and in partial consideration for, these acknowledgments and representations, and agree that such reliance is reasonable and appropriate.

8. **The Receiver's Representations and Warranties.** To induce the Borrowers to enter into this Agreement, the Receiver hereby represents and warrants that:

a. The Receiver has not, and will not, report any derogatory information relating to the Loans to any credit agencies.

b. The Receiver has full authority to: (i) enter into this Agreement; (ii) cancel the Notes and deem then paid in full; and (iii) cause the Deeds of Trust to be reconveyed.

9. **Borrowers' Covenants.** Unless the Receiver otherwise consents in writing during the Forbearance Period provided herein, Borrowers will comply with all requirements of all Loan Documents to the extent not inconsistent with this Agreement and take any and all actions of any kind or nature whatsoever, either directly or indirectly, that are necessary to prevent the Receiver from suffering a loss with respect to the Loans or being deprived of the Property, or of any rights or remedies of the Receiver with respect to the Loans, the Loan Documents, or this Agreement in the event of a default by Borrowers under this Agreement or any other Loan Documents (or the ability to exercise such rights or remedies).

10. **Additional Events of Default.** In addition to the Events of Default set forth in the Loan Documents, the occurrence of any of the following events of default other than one existing on the date of this Agreement shall be an event of default ("Forbearance Default") and, at the Receiver's option, the Forbearance Period shall immediately terminate and the Receiver may make all obligations of Borrowers immediately due and payable, all without demand, presentment, or notice, all of which requirements Borrowers hereby waive:

a. Subject to any applicable notice and cure periods, failure to perform any of the obligations set forth in this Agreement or in any other Loan Document (as the same may be modified by this Agreement).

b. Any representation or warranty of Borrowers in this Agreement or in any other Loan Document shall be false, misleading, or incorrect.

11. **Remedies.** Upon the occurrence of an Event of Default and/or a Forbearance Default and at all times thereafter, the Receiver, shall be entitled under the Loan Documents to exercise, in respect of the Property or other collateral it may hold, all rights and remedies of a



## FORBEARANCE AGREEMENT

secured creditor available to it under applicable laws, and the Receiver shall also be entitled to exercise all rights and remedies available to the Receiver as a creditor generally, including without limitation, all remedies available to CFI3 under the Loan Documents, as well as rights and remedies available to CFI3 at law or in equity, including without limitation, the right to appoint a receiver, by ex parte application, to take possession of all or any part of the Property, with the power to protect and preserve the Property. All such rights and remedies shall be cumulative. No failure or delay on the part of the Receiver in exercising any power, right, or remedy under any of the Loan Documents shall operate as a waiver thereof, and no single or partial exercise of any such power, right, or remedy shall preclude any further exercise thereof or the exercise of any other power, right, or remedy.

12. **Operation and Effectiveness of the Agreement.** Subsequent to the execution of this Agreement by all parties, the Receiver will immediately seek court approval of the terms of this Agreement in the Receivership Action. It is specifically understood and agreed that the operation and effectiveness of this Agreement is conditioned upon, and subject to, court approval evidenced by an Order approving the terms of this Agreement.

13. **Release.** Borrowers hereby, for themselves, and their successors, heirs, executors, administrators, and assigns (each a "Releasing Party" and collectively, the "Releasing Parties"), release, acquit, and forever discharge the Receiver, his directors, officers, employees, agents, attorneys, affiliates, successors, administrators, and assigns ("Released Parties") of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses, and compensation whatsoever which any Releasing Party might have because of anything done, omitted to be done, or allowed to be done by any of the Released Parties and in any way connected with the Loans or this Agreement or the other Loan Documents or any other indebtedness, loans, credit facilities, or relationships with the Receiver or CFI3, as of the date of execution of this Agreement, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, including, without limitation, any settlement negotiations and any damages and the consequences thereof resulting or to result from the events described, referred to or inferred hereinabove ("Released Matters"). Releasing Parties further agree never to commence, aid, or participate in (except to the extent required by order or legal process issued by a court or governmental agency of competent jurisdiction) any legal action or other proceeding based in whole or in part upon the foregoing. In furtherance of this general release, Releasing Parties acknowledge and waive the benefits of California Civil Code Section 1542 (and all similar ordinances and statutory, regulatory, or judicially created laws or rules of any other jurisdiction), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Releasing Parties agree that this waiver and release is an essential and material term of this Agreement and that the agreements in this paragraph are intended to be in full satisfaction of any alleged injuries or damages in connection with the Released Matters. Releasing Parties represent and warrant that he/she/it has not purported to convey, transfer, or assign any right, title, or interest in any Released Matter to any other person or entity and that the foregoing constitutes a full and complete release of the Released Matters. Releasing Parties also understand that this release shall apply to all unknown or unanticipated results of the transactions and occurrences described above, as well as those known and anticipated. Releasing Parties have consulted with legal counsel prior to signing this release, or had an

FORBEARANCE AGREEMENT

opportunity to obtain such counsel and knowingly chose not to do so, and each executes such release voluntarily, with the intention of fully and finally extinguishing all Released Matters.

14. **Effect of Agreement.** All of the representations, warranties, terms, and conditions of the Loan Documents remain unaltered and in full force and effect in accordance with their respective terms, except as specifically amended by this Agreement. In the event of any inconsistency between the terms of this Agreement and the Loan Documents, this Agreement shall govern. Borrowers acknowledge that they have consulted with counsel and such other experts and advisors as they deem necessary in connection with the negotiation, execution, and delivery of this Agreement, or have had an opportunity to so consult and have knowingly chosen not to do so. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto, their respective successors and assigns. No other person shall be entitled to claim any right or benefit hereunder, except the Released Parties.

15. **Reversal of Payments.** If the Receiver receives any payments or rents, issues, profits, or proceeds of the Property, which are subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be paid to a trustee, receiver, or any other party under any bankruptcy law, common law, equitable cause, or otherwise, then, to such extent, the obligations or part thereof intended to be satisfied by such payments or proceeds shall be reserved and continue as if such payments or proceeds had not been received by the Receiver.

16. **Severability.** In case any provision of this Agreement shall be invalid, illegal, or unenforceable, such provision shall be severable from the remainder of this Agreement and the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

17. **Counterparts; Validity.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. The failure of any party to execute this Agreement shall have no effect on its validity or enforceability as to or among the other parties.

18. **Applicable Law; Jurisdiction.** Except as otherwise provided herein, this Agreement and all other Loan Documents and the rights and obligations of the parties hereto shall be governed by the laws of the State of California without regard to principles concerning choice of law.

19. **JURY TRIAL WAIVER.** TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, ALL PARTIES TO THIS AGREEMENT HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY.

20. **Attorneys' Fees.** Upon the occurrence of an Event of Default or a Forbearance Default, Borrowers shall reimburse the Receiver for all costs and expenses including, without limitation, reasonable attorneys' fees and disbursements expended or incurred by the Receiver in any arbitration, mediation, judicial reference, legal action, or otherwise in connection with: (a) the negotiation, preparation, amendment, interpretation and enforcement of the Loan Documents including, without limitation, during any workout, attempted workout, and/or in connection with the rendering of legal advice as to the Receiver's rights, remedies and obligations under the Loan Documents; (b) collecting any sum which becomes due the Receiver under any Loan Document; (c) any proceeding for declaratory relief, any counterclaim to any

FORBEARANCE AGREEMENT

proceeding, or any appeal; or (d) the protection, preservation, or enforcement of any rights of the Receiver. For the purposes of this section, attorneys' fees shall include, without limitation, fees incurred in connection with the following: (1) contempt proceedings; (2) discovery; (3) any motion, proceeding or other activity of any kind in connection with a bankruptcy proceeding or case arising out of or relating to any petition under Title 11 of the United States Code, as the same shall be in effect from time to time, or any similar law; (4) garnishment, levy, and debtor and third party examinations; and (5) post-judgment motions and proceedings of any kind including, without limitation, any activity taken to collect or enforce any judgment. All of such costs and expenses shall bear interest from the time of demand at the rate then in effect under the Note.

21. **Survival After Forbearance Period.** All representations, warranties, covenants, agreements, waivers and releases of Borrowers contained herein shall survive the termination of the Forbearance Period and the payment in full of Borrowers' obligations to the Receiver.

22. **Notices.** All written notices or demands of any kind that either party hereto may be required or may desire to serve on the other in connection with this Agreement shall be served (as an alternative to personal service) by registered or certified mail, recognized overnight courier service or facsimile transmission. Any such notice or demand so to be served by registered or certified mail, recognized overnight courier service or facsimile transmission shall be delivered with all applicable delivery charges thereon fully prepaid and, if the party so to be served be Borrowers, addressed to Borrowers as follows:

Scott Spraggins  
4725 Eagle Ridge Court  
Riverside, CA 92509

Gina Spraggins  
4725 Eagle Ridge Court  
Riverside, CA 92509

with a copy thereof to:

Mark Lobb  
Lobb & Cliff, LLP  
25240 Hancock Avenue, Suite 315  
Murrieta, CA 92562  
E-mail: mlobb@lobbcliff.com

and, if the party so to be served be the Receiver, addressed to the Receiver as follows:

Thomas C. Hebrank, Court Appointed Permanent Receiver for Copeland  
Fixed Income Three, LP  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
E-mail: thebrank@ethreeadvisors.com

with a copy thereof to:



notices or demands are thereafter to be addressed.

23. **Entire Agreement.** The Loan Documents, as amended by this Agreement, are intended by the parties as the final expression of their agreement and therefore contain the entire agreement between the parties and supersede all prior understandings or agreements concerning the subject matter hereof. This Agreement may only be amended in a writing signed by Borrowers and the Receiver.

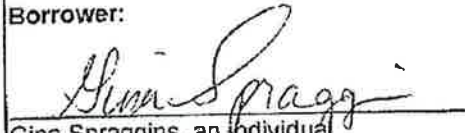
IN WITNESS WHEREOF, Borrowers and the Receiver have executed this Agreement as of the date set forth in the preamble.

Borrower:



Scott Spraggins, an individual

Borrower:



Gina Spraggins, an individual

Receiver:

Thomas C. Hebrank, Court Appointed Permanent Receiver for  
Copeland Fixed Income Three, LP

By: \_\_\_\_\_  
Thomas C. Hebrank

## FORBEARANCE AGREEMENT

This Forbearance Agreement ("Agreement") is made and entered into as of April 30, 2013, between and among **THOMAS C. HEBRANK, COURT APPOINTED PERMANENT RECEIVER FOR COPELAND FIXED INCOME THREE, LP** ("Receiver"), on one hand, and **SCOTT SPRAGGINS**, an individual and **GINA SPRAGGINS**, an individual (collectively "Borrowers"), on the other hand, with respect to the following facts:

### RECITALS:

This Agreement is made and entered into in reliance on the following Recitals, which are acknowledged by the above referenced parties ("Parties") as follows:

A. On or about September 25, 2008, Borrowers executed and delivered to Copeland Fixed Income Three, LP ("CFI3") a "Note Secured by Deed of Trust" dated September 25, 2008 ("9/25/08 Note") in the original principal amount of Seventy Thousand Dollars (\$70,000.00) ("9/25/08 Loan").

B. As security for payment of the 9/25/08 Loan, Borrowers executed, and delivered to CFI3 a Deed of Trust, dated September 25, 2008 ("9/25/08 Deed of Trust"), encumbering certain real property commonly known as 331 Walnut Street, Newport Beach, CA 92663 ("Property") and more particularly described therein. The 9/25/08 Deed of Trust was duly recorded on October 3, 2008, as Document Number 2008-000462279, in the Official Records of the County of Orange, State of California.

C. On or about October 30, 2008, Borrowers executed and delivered to CFI3 an additional "Note Secured by Deed of Trust" dated October 30, 2008 ("10/30/08 Note") in the original principal amount of Thirty-Four Thousand Dollars (\$34,000.00) ("10/30/08 Loan").

D. As security for payment of the 10/30/08 Loan, Borrowers executed, and delivered to CFI3 an additional Deed of Trust, dated October 30, 2008 ("10/30/08 Deed of Trust"), further encumbering the Property. The 10/30/08 Deed of Trust was duly recorded on October 31, 2008, as Document Number 2008-000500324, in the Official Records of the County of Orange, State of California.

E. The 9/25/08 Note, 9/25/08 Deed of Trust, 10/30/08 Note, and 10/30/08 Deed of Trust, together with any other documents executed by the parties in connection with the 9/25/08 Loan and the 10/30/08 Loan (collectively "Loans"), and any and all amendments and modifications thereto, shall be collectively referred to as the "Loan Documents". There are no written or oral agreements concerning or affecting the Loans between Borrowers, on the one hand, and CFI3, on the other hand, other than the Loan Documents. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Loan Documents.

F. On or about June 25, 2011, Borrowers defaulted under the terms of the Loans by failing to make monthly payments when due.

G. On or about October 19, 2011, pursuant to a "Judgment of Permanent Injunction and Other Relief" ("10/19/11 Order") issued by the United States District Court, Central District of California in the case entitled Securities and Exchange Commission v. Charles P. Copeland, et. al., case number CV-08607-R-DTB ("the Receivership Action"), the District Court appointed Thomas C. Hebrank as the permanent receiver for all assets of Copeland Wealth Management,

FORBEARANCE AGREEMENT

a Financial Advisory Corporation and Copeland Wealth Management, a Real Estate Corporation, and their subsidiaries and affiliates ("Receivership Entities"), thereby placing the assets of the Receivership Entities into Mr. Hebrank's possession and control and granting him the full powers of an equity receiver, including the power to make such agreements as may be necessary and advisable in discharging his duties.

H. On or about March 12, 2012, in the Receivership Action, the District Court issued an order clarifying the scope of the above-described Receivership ("3/12/12 Order"), which provided, *inter alia*, as follows: (1) all of the assets of CFI3, including choses in action, were included in the Receivership; and (2) the Receiver had the authority to pursue causes of action against third parties who owed money to entities subject to the Receivership, including CFI3.

I. As of April 16, 2013, the 9/25/08 Loan had an unpaid principal balance in the amount of \$70,000.00, plus accrued interest through April 12, 2013, in the amount of \$12,677.98, plus attorney's fees in the amount of \$1,298.00, plus foreclosure fees in the amount of \$960.41. As of April 12, 2013, the 9/25/08 Loan had an unpaid principal balance in the amount of \$34,000.00, plus accrued interest through April 16, 2013, in the amount of \$6,160.52, plus attorney's fees in the amount of \$1,298.00, plus foreclosure fees in the amount of \$869.12. Because of the existence of these defaults, and the powers and authority granted in the Receiver by the 10/19/11 Order and the 3/12/12 Order, the Receiver, on behalf of CFI3, has the current right to exercise any and all of CFI3's rights or remedies against Borrowers under applicable law and the Loan Documents.

J. On March 1, 2013, the Receiver commenced non-judicial foreclosure proceedings against the Property by causing a Notice of Default and Election to Sell for the 9/25/08 Loan to be recorded in the Official Records of the County of Orange, State of California as Document Number 2013000127404 ("9/25/08 NOD") and a Notice of Default and Election to Sell for the 10/30/08 Loan to be recorded in the Official Records of the County of Orange, State of California as Document Number 2013000127402 ("10/30/08 NOD").

K. Borrowers may have other liabilities and obligations owing to the Receivership Entities; Borrowers and the Receiver intend that other such liabilities and obligations shall not be affected by this Agreement and shall remain in full force and effect in all respects.

L. Borrowers have requested that the Receiver forbear from exercising the default rights and remedies of CFI3 against them in order to allow Borrowers to pay the Loans as provided in this Agreement. Borrowers have each assured the Receiver that his respective position will not deteriorate during the Forbearance Period (defined below), and that Borrowers shall perform in accordance with this Agreement and the Loan Documents. Although the Receiver is under no obligation to do so, the Receiver is willing to forbear from continuing the exercise of CFI3's default rights against Borrowers for the period set forth herein on the terms and conditions set forth in this Agreement, provided all security interests and liens under the Loan Documents shall continue to exist and remain in full force and effect. The Receiver is entering into this Agreement for the sole purpose of allowing Borrowers an opportunity to repay the Loans as provided herein without immediate further exercise of CFI3's default rights by the Receiver.

FORBEARANCE AGREEMENT

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The recitals set forth above are hereby incorporated herein as true and correct.

2. **Confirmation of Property.** Borrowers hereby confirm that all obligations of Borrowers to CFI3 are secured by second and third priority perfected security interests in the Property.

3. **Confirmation of Debt.** Borrowers hereby ratify, reaffirm, and confirm all of the terms and conditions of the Loan Documents in all respects, and hereby acknowledge that the Loan Documents are valid and enforceable obligations against Borrowers, due and payable in full, without defenses, setoff, or counterclaim of any kind. As of April 16, 2013, the 9/25/08 Loan had an unpaid principal balance in the amount of \$70,000.00, plus accrued interest through April 12, 2013, in the amount of \$12,677.98, plus attorney's fees in the amount of \$1,298.00, plus foreclosure fees in the amount of \$960.41. As of April 12, 2013, the 9/25/08 Loan had an unpaid principal balance in the amount of \$34,000.00, plus accrued interest through April 16, 2013, in the amount of \$6,160.52, plus attorney's fees in the amount of \$1,298.00, plus foreclosure fees in the amount of \$869.12. This indebtedness evidenced by the Loan Documents is hereby acknowledged and admitted.

4. **Conditions Precedent.** This Agreement is specifically subject to court approval as set forth in paragraph 11 below. Borrowers understand that this Agreement shall not be effective and the Receiver shall have no obligation to forbear from exercising any of CFI3's rights or remedies unless and until each of the following Conditions Precedent has been satisfied not later than May 1, 2013, or waived in writing by the Receiver, in the Receiver's sole discretion:

a. Borrowers shall have executed and delivered to the Receiver this Agreement.

b. Borrowers shall have taken any and all actions and executed and delivered to the Receiver any and all further documents necessary or appropriate in the Receiver's reasonable discretion to effectuate this Agreement.

5. **Forbearance.** Subject to the following and the terms and conditions of this Agreement, until the earlier of ninety (90) days from the date of this Agreement, or the date of the occurrence of any event of default as defined in the Loan Documents ("Event of Default") or the date of occurrence of any Forbearance Default (defined below), or, subject to any applicable notice and cure periods, any condition, act, or event which with the giving of notice or the passage of time or both would constitute an Event of Default or Forbearance Default ("Forbearance Period"), the Receiver will forbear from further exercising his rights and remedies against Borrowers due to Borrowers' default on the Loans:

a. Borrowers agree that all obligations of Borrowers hereunder, and under the Loan Documents, shall survive the termination of the Forbearance Period.

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b. Borrowers hereby acknowledge and agree that the granting of the forbearance and the acceptance of any amounts by the Receiver shall: (i) not constitute a cure of the default under the Loan Documents; (ii) be without prejudice to or a waiver of any rights and/or remedies that the Receiver has due to the default or any other defaults; (iii) not prevent the Receiver from initiating or proceeding with any proceeding, including the non-judicial foreclosure proceedings against the Property, in the event Borrowers default under the terms of this Agreement or any other Loan Document. Borrowers expressly acknowledge and agree that all payments made to, or received by, the Receiver are made voluntarily and the Receiver may apply the payments to reduce the Loans.

6. **Modification and Confirmation of Loan Documents.** The Parties agree that the Loan Documents are hereby supplemented, modified and/or confirmed as follows:

a. As consideration for the extension and modification of the Loans, upon the Parties' execution of this Agreement, Borrowers shall pay to the Receiver, in good funds, the sum of Twenty Thousand Dollars (\$20,000.00), to be held in the Receiver's counsel's client trust account pending court approval of this Agreement as set forth in paragraph 11 below.

b. During the Forbearance Period, Borrowers shall make the following payments to the Receiver, to be applied the Loans:

(1) Within sixty (60) days from the date of this Agreement, Borrowers shall pay to the Receiver, in good funds, the sum of \$50,000.00.

(2) Within ninety (90) days from the date of this Agreement, Borrowers shall pay to the Receiver, in good funds, the sum of \$47,844.78.

c. During the Forbearance Period, the foreclosure proceeding on the Property evidenced by the 9/25/08 NOD and the 10/30/08 NOD (collectively "NODs") shall remain in full force and effect and shall not be rescinded. In the event of an Event of Default or Forbearance Default on this Agreement, the Receiver shall have the absolute right to proceed with a Notice of Sale and subsequent sale pursuant to the NOD.

d. Upon timely payment in full, in good funds, of the amounts referenced in paragraphs 6(a) and 6(b) above, the Receiver shall: (1) cancel the 9/25/08 Note and the 10/30/08 Note (collectively "Notes") and deem them paid in full; and (2) request that the foreclosure trustee cancel the foreclosure proceedings, including the NODs, and reconvey the 9/25/08 Deed of Trust and the 10/30/08 Deed of Trust (collectively "Deeds of Trust").

e. Except as expressly modified by this Agreement, all of the terms and conditions of the Loan Documents, and all agreements evidencing or securing the obligation(s) evidenced thereby, remain unchanged and in full force and effect.

7. **Borrowers' Representations and Warranties.** To induce the Receiver to enter into this Agreement, Borrowers hereby represent and warrant to the Receiver that:

a. The Loan Documents represent unconditional, absolute, valid, and enforceable obligations against Borrowers.



FORBEARANCE AGREEMENT

b. Borrowers have no claims or defenses against CFI3, the Receiver, or any other person or entity which would or might affect (i) the enforceability of any provisions of the Loan Documents; or (ii) the collectability of sums advanced by CFI3 in connection with the Loans.

c. The execution, delivery, and performance by Borrowers of this Agreement and the Loan Documents has been duly authorized, and will not violate any law, rule, or order of any court or governmental agency or body to which Borrowers are subject. All representations and warranties contained in this Agreement and in any and all of the other Loan Documents are true and correct as of the date of this Agreement, and all such representations and warranties shall survive the execution of this Agreement. Borrowers understand and acknowledge that the Receiver is entering into this Agreement in reliance upon, and in partial consideration for, these acknowledgments and representations, and agree that such reliance is reasonable and appropriate.

8. **The Receiver's Representations and Warranties.** To induce the Borrowers to enter into this Agreement, the Receiver hereby represents and warrants that:

a. The Receiver has not, and will not, report any derogatory information relating to the Loans to any credit agencies.

b. The Receiver has full authority to: (i) enter into this Agreement; (ii) cancel the Notes and deem then paid in full; and (iii) cause the Deeds of Trust to be reconveyed.

9. **Borrowers' Covenants.** Unless the Receiver otherwise consents in writing during the Forbearance Period provided herein, Borrowers will comply with all requirements of all Loan Documents to the extent not inconsistent with this Agreement and take any and all actions of any kind or nature whatsoever, either directly or indirectly, that are necessary to prevent the Receiver from suffering a loss with respect to the Loans or being deprived of the Property, or of any rights or remedies of the Receiver with respect to the Loans, the Loan Documents, or this Agreement in the event of a default by Borrowers under this Agreement or any other Loan Documents (or the ability to exercise such rights or remedies).

10. **Additional Events of Default.** In addition to the Events of Default set forth in the Loan Documents, the occurrence of any of the following events of default other than one existing on the date of this Agreement shall be an event of default ("Forbearance Default") and, at the Receiver's option, the Forbearance Period shall immediately terminate and the Receiver may make all obligations of Borrowers immediately due and payable, all without demand, presentment, or notice, all of which requirements Borrowers hereby waive:

a. Subject to any applicable notice and cure periods, failure to perform any of the obligations set forth in this Agreement or in any other Loan Document (as the same may be modified by this Agreement).

b. Any representation or warranty of Borrowers in this Agreement or in any other Loan Document shall be false, misleading, or incorrect.

11. **Remedies.** Upon the occurrence of an Event of Default and/or a Forbearance Default and at all times thereafter, the Receiver, shall be entitled under the Loan Documents to exercise, in respect of the Property or other collateral it may hold, all rights and remedies of a

FORBEARANCE AGREEMENT

secured creditor available to it under applicable laws, and the Receiver shall also be entitled to exercise all rights and remedies available to the Receiver as a creditor generally, including without limitation, all remedies available to CFI3 under the Loan Documents, as well as rights and remedies available to CFI3 at law or in equity, including without limitation, the right to appoint a receiver, by ex parte application, to take possession of all or any part of the Property, with the power to protect and preserve the Property. All such rights and remedies shall be cumulative. No failure or delay on the part of the Receiver in exercising any power, right, or remedy under any of the Loan Documents shall operate as a waiver thereof, and no single or partial exercise of any such power, right, or remedy shall preclude any further exercise thereof or the exercise of any other power, right, or remedy.

12. **Operation and Effectiveness of the Agreement.** Subsequent to the execution of this Agreement by all parties, the Receiver will immediately seek court approval of the terms of this Agreement in the Receivership Action. It is specifically understood and agreed that the operation and effectiveness of this Agreement is conditioned upon, and subject to, court approval evidenced by an Order approving the terms of this Agreement.

13. **Release.** Borrowers hereby, for themselves, and their successors, heirs, executors, administrators, and assigns (each a "Releasing Party" and collectively, the "Releasing Parties"), release, acquit, and forever discharge the Receiver, his directors, officers, employees, agents, attorneys, affiliates, successors, administrators, and assigns ("Released Parties") of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses, and compensation whatsoever which any Releasing Party might have because of anything done, omitted to be done, or allowed to be done by any of the Released Parties and in any way connected with the Loans or this Agreement or the other Loan Documents or any other indebtedness, loans, credit facilities, or relationships with the Receiver or CFI3, as of the date of execution of this Agreement, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, including, without limitation, any settlement negotiations and any damages and the consequences thereof resulting or to result from the events described, referred to or inferred hereinabove ("Released Matters"). Releasing Parties further agree never to commence, aid, or participate in (except to the extent required by order or legal process issued by a court or governmental agency of competent jurisdiction) any legal action or other proceeding based in whole or in part upon the foregoing. In furtherance of this general release, Releasing Parties acknowledge and waive the benefits of California Civil Code Section 1542 (and all similar ordinances and statutory, regulatory, or judicially created laws or rules of any other jurisdiction), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Releasing Parties agree that this waiver and release is an essential and material term of this Agreement and that the agreements in this paragraph are intended to be in full satisfaction of any alleged injuries or damages in connection with the Released Matters. Releasing Parties represent and warrant that he/she/it has not purported to convey, transfer, or assign any right, title, or interest in any Released Matter to any other person or entity and that the foregoing constitutes a full and complete release of the Released Matters. Releasing Parties also understand that this release shall apply to all unknown or unanticipated results of the transactions and occurrences described above, as well as those known and anticipated. Releasing Parties have consulted with legal counsel prior to signing this release, or had an



FORBEARANCE AGREEMENT

opportunity to obtain such counsel and knowingly chose not to do so, and each executes such release voluntarily, with the intention of fully and finally extinguishing all Released Matters.

14. **Effect of Agreement.** All of the representations, warranties, terms, and conditions of the Loan Documents remain unaltered and in full force and effect in accordance with their respective terms, except as specifically amended by this Agreement. In the event of any inconsistency between the terms of this Agreement and the Loan Documents, this Agreement shall govern. Borrowers acknowledge that they have consulted with counsel and such other experts and advisors as they deem necessary in connection with the negotiation, execution, and delivery of this Agreement, or have had an opportunity to so consult and have knowingly chosen not to do so. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto, their respective successors and assigns. No other person shall be entitled to claim any right or benefit hereunder, except the Released Parties.

15. **Reversal of Payments.** If the Receiver receives any payments or rents, issues, profits, or proceeds of the Property, which are subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be paid to a trustee, receiver, or any other party under any bankruptcy law, common law, equitable cause, or otherwise, then, to such extent, the obligations or part thereof intended to be satisfied by such payments or proceeds shall be reserved and continue as if such payments or proceeds had not been received by the Receiver.

16. **Severability.** In case any provision of this Agreement shall be invalid, illegal, or unenforceable, such provision shall be severable from the remainder of this Agreement and the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

17. **Counterparts; Validity.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. The failure of any party to execute this Agreement shall have no effect on its validity or enforceability as to or among the other parties.

18. **Applicable Law; Jurisdiction.** Except as otherwise provided herein, this Agreement and all other Loan Documents and the rights and obligations of the parties hereto shall be governed by the laws of the State of California without regard to principles concerning choice of law.

19. **JURY TRIAL WAIVER.** TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, ALL PARTIES TO THIS AGREEMENT HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY.

20. **Attorneys' Fees.** Upon the occurrence of an Event of Default or a Forbearance Default, Borrowers shall reimburse the Receiver for all costs and expenses including, without limitation, reasonable attorneys' fees and disbursements expended or incurred by the Receiver in any arbitration, mediation, judicial reference, legal action, or otherwise in connection with: (a) the negotiation, preparation, amendment, interpretation and enforcement of the Loan Documents including, without limitation, during any workout, attempted workout, and/or in connection with the rendering of legal advice as to the Receiver's rights, remedies and obligations under the Loan Documents; (b) collecting any sum which becomes due the Receiver under any Loan Document; (c) any proceeding for declaratory relief, any counterclaim to any

FORBEARANCE AGREEMENT

proceeding, or any appeal; or (d) the protection, preservation, or enforcement of any rights of the Receiver. For the purposes of this section, attorneys' fees shall include, without limitation, fees incurred in connection with the following: (1) contempt proceedings; (2) discovery; (3) any motion, proceeding or other activity of any kind in connection with a bankruptcy proceeding or case arising out of or relating to any petition under Title 11 of the United States Code, as the same shall be in effect from time to time, or any similar law; (4) garnishment, levy, and debtor and third party examinations; and (5) post-judgment motions and proceedings of any kind including, without limitation, any activity taken to collect or enforce any judgment. All of such costs and expenses shall bear interest from the time of demand at the rate then in effect under the Note.

21. **Survival After Forbearance Period.** All representations, warranties, covenants, agreements, waivers and releases of Borrowers contained herein shall survive the termination of the Forbearance Period and the payment in full of Borrowers' obligations to the Receiver.

22. **Notices.** All written notices or demands of any kind that either party hereto may be required or may desire to serve on the other in connection with this Agreement shall be served (as an alternative to personal service) by registered or certified mail, recognized overnight courier service or facsimile transmission. Any such notice or demand so to be served by registered or certified mail, recognized overnight courier service or facsimile transmission shall be delivered with all applicable delivery charges thereon fully prepaid and, if the party so to be served be Borrowers, addressed to Borrowers as follows:

Scott Spraggins  
4725 Eagle Ridge Court  
Riverside, CA 92509

Gina Spraggins  
4725 Eagle Ridge Court  
Riverside, CA 92509

with a copy thereof to:

Mark Lobb  
Lobb & Cliff, LLP  
25240 Hancock Avenue, Suite 315  
Murrieta, CA 92562  
E-mail: mlobb@lobbcliff.com

and, if the party so to be served be the Receiver, addressed to the Receiver as follows:

Thomas C. Hebrank, Court Appointed Permanent Receiver for Copeland  
Fixed Income Three, LP  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
E-mail: thebrank@ethreeadvisors.com

with a copy thereof to:

notices or demands are thereafter to be addressed.

23. **Entire Agreement.** The Loan Documents, as amended by this Agreement, are intended by the parties as the final expression of their agreement and therefore contain the entire agreement between the parties and supersede all prior understandings or agreements concerning the subject matter hereof. This Agreement may only be amended in a writing signed by Borrowers and the Receiver.

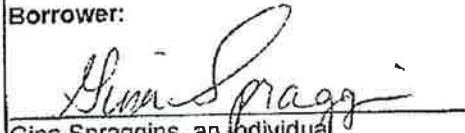
IN WITNESS WHEREOF, Borrowers and the Receiver have executed this Agreement as of the date set forth in the preamble.

Borrower:



Scott Spraggins, an individual

Borrower:



Gina Spraggins, an individual

Receiver:

Thomas C. Hebrank, Court Appointed Permanent Receiver for  
Copeland Fixed Income Three, LP

By: \_\_\_\_\_  
Thomas C. Hebrank

# **EXHIBIT B**



## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release ("Settlement Agreement") is made, effective as of April 30, 2013, between and among **THOMAS C. HEBRANK, COURT-APPOINTED PERMANENT RECEIVER FOR COPELAND FIXED INCOME TWO, L.P.** (the "Receiver"), on the one hand, and **SOCAL DEL, LLC aka SOCAL DEL LLC**, now known as **SOCAL RESTAURANTS, LLC**, a limited liability company ("Borrower"); **LEROY HANSBERGER**, an individual ("L. HANSBERGER"); **JEFFREY HANSBERGER**, an individual ("J. HANSBERGER"); and **MICHAEL HANSBERGER**, an individual ("M. HANSBERGER") (collectively "Guarantors"), on the other hand, with respect to the following facts:

### **RECITALS:**

- A. On or about August 28, 2007, Copeland Fixed Income Two, L.P. ("CFI2") made a loan to Borrower in the original principal amount of \$800,000.00 (the "Loan"). The Loan is evidenced by, *inter alia*, a Straight Note ("Note") in the original principal amount of \$800,000.00 ("Note"), dated August 28, 2007.
- B. Pursuant to the terms of the Note, interest accrued at the rate of ten percent (10.00%) per annum, and interest payments in the amount of \$6,666.67 were due on or before the 28th day of each month. Further, pursuant to the Note, the total unpaid principal balance, plus unpaid interest, was due and payable in full on August 28, 2012.
- C. As an inducement to CFI2 to extend financial accommodations to Borrower, on or about August 28, 2007, each Guarantor executed, and delivered to CFI 2, as part of CFI 2's loan to Borrower, a separate Commercial Guaranty in which each of them unconditionally guaranteed and promised to pay CFI2 all obligations of Borrower to CFI2 under the Note, plus interest, and all expenses of, for, and incidental to collection, including reasonable attorneys' fees and costs (collectively "Guaranties").
- D. On or about October 19, 2011, pursuant to a "Judgment of Permanent Injunction and Other Relief" ("10/19/11 Order") issued by the United States District Court, Central District of California in the case entitled Securities and Exchange Commission v. Charles P. Copeland, et. al., case number CV-08607-R-DTB ("the Receivership Action"), the District Court appointed Thomas C. Hebrank as the permanent receiver for all assets of Copeland Wealth Management, a Financial Advisory Corporation and Copeland Wealth Management, a Real Estate Corporation, and their subsidiaries and affiliates ("Receivership Entities"), thereby placing the assets of the Receivership Entities into Mr. Hebrank's possession and control and granting him the full powers of an equity receiver, including the power to make such agreements as may be necessary and advisable in discharging his duties.
- E. On or about March 12, 2012, in the Receivership Action, the District Court issued an order clarifying the scope of the above-described Receivership ("3/12/12 Order"), which provided, *inter alia*, as follows: (1) all of the assets of CFI2, including choses in action, were included in the Receivership; and (2) the Receiver had the authority to pursue causes of action against third parties who owed money to entities subject to the Receivership, including CFI2.
- F. The Note matured by its terms on August 28, 2012, and became immediately due and payable in full as of that date. Borrower defaulted on its obligations to CFI2 by failing to pay the total amount due under the Note.



## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

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G. On January 31, 2013, the Receiver commenced an action against Borrower and Guarantors in the Superior Court of California, County of San Bernardino, as Case Number CIVDS 1301172, stating causes of action for Breach of Contract, Breach of Guaranty and Common Counts ("Lawsuit").

H. As of April 15, 2013, there is now due, owing, and unpaid from Borrower and Guarantors the principal amount of \$800,000.00, plus interest in the amount of \$6,666.67, plus continuing interest at the rate of ten percent (10.00%) per annum from April 15, 2013 until paid in full, plus attorney's fees and costs.

I. All of the documents which evidence the Note and Guaranties, together with any other documents executed by or among the parties in connection with the Note and Guaranties, and any and all amendments and modifications thereto, shall be collectively referred to as the "Loan Documents". There are no written or oral agreements concerning or affecting the Note and the Guaranties, other than the Loan Documents. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Loan Documents. Borrower and Guarantors may have other liabilities and obligations owing to the Receivership Entities; Borrower and Guarantors intend that such other liabilities and obligations are not affected by this Settlement Agreement and shall remain in full force and effect in all respects.

J. It is the desire of the parties hereto (each a "Party" and collectively, the "Parties") to finally and fully terminate and cancel all relationships, controversies, claims, debts, obligations, and other matters whatsoever existing between them or which may hereafter arise between the Parties by reason of the Loan, the Note, the Guaranties, and the Lawsuit, except those obligations specifically created by this Settlement Agreement.

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

### **AGREEMENT**

1. Affirmation of Recitals. The recitals set forth above are true and correct and are incorporated herein by this reference.

2. Payment and Dismissal.

a. Upon execution of this Settlement Agreement by all Parties, but in no event later than May 15, 2013, Borrower and Guarantors agree to, and shall, pay to the Receiver, in good funds, the following:

- i. The sum of Three Hundred Fifty Thousand Dollars (\$350,000.00) ("Settlement Amount"); and
- ii. The attorney's fees and costs incurred by the Receiver in enforcing the Loan Documents, not to exceed Five Thousand Dollars (\$5,000.00) ("Attorney's Fees").

b. The Settlement Amount and the Attorney's Fees (collectively "Settlement Funds") shall be held in the Receiver's counsel's client trust account pending approval of this Settlement Agreement by the District Court as set forth in paragraph 3 below. If the



## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

Page 3 of 7

settlement is approved by the District Court, the Settlement Funds held in the client trust account shall be disbursed to the Receiver within ten (10) days of final approval. If the District Court disapproves the settlement, Receiver's counsel shall, within ten (10) days of such disapproval, transfer the Settlement Funds to the client trust account of Mirau, Edwards, Cannon, Lewin & Tooke.

c. Upon court approval as set forth in paragraph 3 below, and confirmation of payment of the Settlement Amount and Attorney's Fees, in good funds, the Loan will be deemed paid in full, and the Receiver shall dismiss the Lawsuit with prejudice.

3. Operation and Effectiveness of the Agreement. Subsequent to the execution of this Settlement Agreement by all Parties, the Receiver will immediately seek court approval of the terms of this Settlement Agreement in the Receivership Action. It is specifically understood and agreed that the operation and effectiveness of this Settlement Agreement is conditioned upon, and subject to, court approval evidenced by an Order approving the terms of this Settlement Agreement.

4. Borrower's and Guarantors' Representations. Borrower and Guarantors hereby warrant and represent that all representations made by Borrower and Guarantors to the Receiver in connection with this Settlement Agreement including, but not limited to, all representations regarding Borrower's and Guarantors' financial status, were true and correct as of the date made. All representations and warranties provided herein shall survive the execution hereof and performance hereunder.

5. Time Is of the Essence. The Parties agree that time is of the essence in the performance of all covenants and conditions of this Settlement Agreement.

6. Revival. In the event the Receiver is required to disgorge, repay and/or restore any transfer, sum, or other consideration given to the Receiver under the terms of this Settlement Agreement, or upon advice of counsel is advised to do so as a result of, or by virtue of any proceeding under the United States Bankruptcy Code, or if any transfer, sum or other consideration given to the Receiver is subsequently declared to be "fraudulent" within the meaning of any state or federal law relating to fraudulent conveyances or preferences or otherwise avoidable or recoverable, in whole or in part, for any reason whatsoever under the United States Bankruptcy Code or any other state or federal law (collectively "Voidable Transfer"), then as to any Voidable Transfer and/or sums disgorged, repaid and/or restored, the liability of Borrower and Guarantors shall automatically be revived, reinstated and restored and shall exist as though such Voidable Transfer never had been made, and the Receiver shall be entitled to, and shall have a valid, undisputed, and liquidated claim in said bankruptcy proceeding in the Settlement Amount.

7. Mutual Release of Claims. For valuable consideration hereby acknowledged, except for the obligations imposed by this Settlement Agreement, the Receiver, Borrower and each Guarantor hereby mutually release and forever discharge each other and their respective assignees, transferees, officers, directors, shareholders, partners, employees, servants, successors, heirs, agents, attorneys, insurers, and representatives thereof from any and all claims, demands, damages, debts, liabilities, actions, causes of action, suits, contracts, controversies, agreements, accounts, reckonings, promises, obligations, whether in law or in equity, which the Parties to this Settlement Agreement, or any of them, or their successors or assigns, had, owned or held, or now have, own or hold, or hereafter may have, own, or hold which, directly or indirectly, arise out of the Loan, the Note, the Guaranties and the Lawsuit,



## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

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including but not limited to any actions taken by the Receiver in connection with the collection thereof.

8. Intention of the Parties. It is the intention of the Parties executing this Settlement Agreement that it shall be effective as a full and final accord and satisfactory release of all matters relating to the Loan, the Note, the Guaranties and the Lawsuit, except as to those obligations specifically created herein. In furtherance of this intention, the Parties agree as follows:

There is a risk that subsequent to the execution of this Settlement Agreement, one or more of the Parties will incur or suffer loss, damages, or injuries which are in some way caused by the transactions referred to above, but which are unknown and unanticipated at the time this Settlement Agreement is signed.

The Parties do hereby assume the above-mentioned risks and understand that, except as specifically provided herein, this Settlement Agreement SHALL APPLY TO ALL UNKNOWN OR UNANTICIPATED RESULTS OF THE TRANSACTIONS AND OCCURRENCES DESCRIBED ABOVE, AS WELL AS THOSE KNOWN AND ANTICIPATED, and upon advice of legal counsel, the Parties do hereby waive any and all rights under California Civil Code Section 1542, which section has been explained and reads as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

The Parties, and each of them, understand and acknowledge that the consequence of this waiver of California Civil Code Section 1542 is that even if a Party should eventually suffer additional damages arising out of the Note, the Guaranties or the Lawsuit or in connection with any matters related thereto, that Party will not be able to make any claim for those damages. Furthermore, the Parties acknowledge that they intend these consequences even as to claims for damages that may exist as of the date of this Settlement Agreement, but of which they are not presently aware. The Parties acknowledge that they intend to waive even those claims which, if known, would materially affect the decision to execute this release, regardless of whether the lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

Each of the Parties has consulted with legal counsel prior to signing this Settlement Agreement, or had an opportunity to obtain such counsel and knowingly chose not to do so. The Parties execute this Settlement Agreement voluntarily, with full knowledge of its significance, and with the express intention of affecting the legal consequences provided by Civil Code Section 1541, i.e., the extinguishment of all obligations.

9. Execution Knowing and Voluntary. The Parties hereto acknowledge and represent that they (a) have fully and carefully read this Settlement Agreement prior to execution, (b) have been fully apprised by attorneys of their choice of the legal effect and meaning of this Settlement Agreement, including all terms and conditions hereof and thereof, (c) to the extent they have deemed it appropriate, have had the benefit of and relied upon counsel of their choice for any legal or financial advice relative to entering into this Settlement Agreement and agreeing to the terms hereof, (d) have had the opportunity to make whatever



## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

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investigation or inquiry they deemed necessary or appropriate in connection with the subject matters of this Settlement Agreement, and (e) have been afforded the opportunity to negotiate as to any and all terms hereof.

10. Attorneys' Fees. In the event that any Party hereto shall institute any action or proceeding to enforce, construe, or interpret any rights granted hereunder, the prevailing Party in such action or proceeding shall be entitled, in addition to any other relief granted by the Court or other applicable judicial body, to reasonable attorneys' fees and court costs.

11. Advice of Counsel. The Parties acknowledge and agree that they have had an opportunity to be represented by independent counsel in the negotiation, preparation, and execution of this Settlement Agreement and that each of them has read this Settlement Agreement and has had the opportunity to have it fully explained by his or its counsel prior to its execution and is fully aware of its contents and legal effect.

12. Binding Upon Successors and Assigns. This Settlement Agreement and the covenants and conditions contained herein shall apply to, be binding upon, and inure to the benefit of the respective heirs, administrators, executives, legal representatives, assignees, successors, and agents of the Parties hereto.

13. Counterparts. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together, shall constitute one and the same instrument.

14. Amendment. This Settlement Agreement may not be, and shall not, be deemed or construed to have been modified, amended, rescinded, cancelled, or waived, in whole or in part, except by written instrument signed by the Parties hereto.

15. Entire Agreement. This Settlement Agreement is intended by the Parties as the final expression of their agreement and therefore contains the entire agreement between the Parties and supersedes all prior understandings or agreements concerning the subject matter hereof.

16. Future Assurances. Each Party hereto agrees to execute, acknowledge, deliver, file, and record such further certificates, documents and instruments, and to do all such further acts and things as may be necessary to carry out the intent and purposes of this Settlement Agreement.

17. Warranty Against Prior Assignment. The Parties to this Settlement Agreement represent and warrant that they have not heretofore assigned, transferred, or purported to assign or transfer, to any other person or entity, any rights, claims, or causes of action herein released and discharged.

18. No Strict Construction. Notwithstanding any statute or rule of contract construction to the contrary, the language of this Settlement Agreement shall be construed as a whole, according to its fair meaning and intent, and not strictly for or against any Party hereto, regardless of who drafted or was principally responsible for drafting the Settlement Agreement or any specific term or condition thereof. This Settlement Agreement shall be deemed to have been drafted by all Parties hereto and no Party or any person claiming an interest in rights under this Settlement Agreement shall urge otherwise.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

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19. Governing Law and Construction. This Settlement Agreement has been delivered and accepted and deemed to have been made in San Diego County, California. This Settlement Agreement shall, in all respects, be interpreted, enforced and governed by and under the laws of the State of California. This Settlement Agreement is deemed to have been jointly prepared by the Parties, and any uncertainty or ambiguity existing herein shall not be interpreted against any of the other Parties, but according to the application of the rules of interpretation of contracts, if any such uncertainty or ambiguity exists. In the event that any suit or action is brought to enforce any of the provisions of this Settlement Agreement or to interpret same, the venue will be any court of competent jurisdiction sitting in San Diego County, California.

20. JURY TRIAL WAIVER. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL PARTIES TO THIS SETTLEMENT AGREEMENT HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY.

21. Severability. The provisions of this Settlement Agreement are severable and should any provision be, for any reason, unenforceable, the balance shall, nonetheless, be of full force and effect.

22. Gender and Person. As used in this Settlement Agreement, the masculine, feminine and neuter gender and the singular and plural shall be deemed to include the other whenever the context so indicates.

23. Captions. The paragraph titles or captions used in this Settlement Agreement are inserted only and intended solely for convenience of reference and shall in no manner modify, expand, limit, explain, construe, or describe the scope of or intent of, or in any way affect the terms and conditions of this Settlement Agreement.

24. Warranty of Authority. Each individual executing this document on behalf of any Party represents that he/she has been authorized by said Party to execute this Settlement Agreement, and does so execute this Settlement Agreement on behalf of said Party.


IN WITNESS WHEREOF, the Receiver, Borrower and Guarantors have executed this Settlement Agreement as of the date set forth in the preamble.

**Borrower:**

Address for Notice:

5 1/2 East State Street, Suite 4  
Redlands, CA 92373

SoCal Restaurants, LLC, a California limited liability company

By:   
Its: Manager/Member

\*\*\* ADDITIONAL SIGNATURES APPEAR ON THE FOLLOWING PAGE \*\*\*



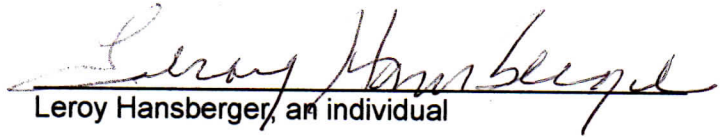
SETTLEMENT AGREEMENT AND MUTUAL RELEASE

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**Guarantor:**

Address for Notice:

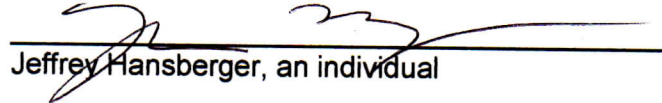
21 West South Street  
Redlands, CA 92373

  
Leroy Hansberger, an individual

**Guarantor:**

Address for Notice:

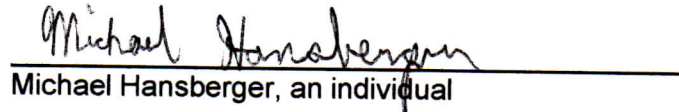
8937 Morning Hills Drive  
Riverside, CA 92508

  
Jeffrey Hansberger, an individual

**Guarantor:**

Address for Notice:

550 North Cornell Avenue  
Fullerton, CA 92831

  
Michael Hansberger, an individual

**Receiver:**

Address for Notice:

501 W. Broadway, Suite 600  
San Diego, CA 92101

Thomas C. Hebrank, Court Appointed Permanent  
Receiver for Copeland Fixed Income Two, LP

By: \_\_\_\_\_  
Thomas C. Hebrank

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release ("Settlement Agreement") is made, effective as of April 30, 2013, between and among **THOMAS C. HEBRANK, COURT-APPOINTED PERMANENT RECEIVER FOR COPELAND FIXED INCOME TWO, L.P.** (the "Receiver"), on the one hand, and **SOCAL DEL, LLC aka SOCAL DEL LLC**, now known as **SOCAL RESTAURANTS, LLC**, a limited liability company ("Borrower"); **LEROY HANSBERGER**, an individual ("L. HANSBERGER"); **JEFFREY HANSBERGER**, an individual ("J. HANSBERGER"); and **MICHAEL HANSBERGER**, an individual ("M. HANSBERGER") (collectively "Guarantors"), on the other hand, with respect to the following facts:

### **RECITALS:**

- A. On or about August 28, 2007, Copeland Fixed Income Two, L.P. ("CFI2") made a loan to Borrower in the original principal amount of \$800,000.00 (the "Loan"). The Loan is evidenced by, *inter alia*, a Straight Note ("Note") in the original principal amount of \$800,000.00 ("Note"), dated August 28, 2007.
- B. Pursuant to the terms of the Note, interest accrued at the rate of ten percent (10.00%) per annum, and interest payments in the amount of \$6,666.67 were due on or before the 28th day of each month. Further, pursuant to the Note, the total unpaid principal balance, plus unpaid interest, was due and payable in full on August 28, 2012.
- C. As an inducement to CFI2 to extend financial accommodations to Borrower, on or about August 28, 2007, each Guarantor executed, and delivered to CFI 2, as part of CFI 2's loan to Borrower, a separate Commercial Guaranty in which each of them unconditionally guaranteed and promised to pay CFI2 all obligations of Borrower to CFI2 under the Note, plus interest, and all expenses of, for, and incidental to collection, including reasonable attorneys' fees and costs (collectively "Guaranties").
- D. On or about October 19, 2011, pursuant to a "Judgment of Permanent Injunction and Other Relief" ("10/19/11 Order") issued by the United States District Court, Central District of California in the case entitled Securities and Exchange Commission v. Charles P. Copeland, et. al., case number CV-08607-R-DTB ("the Receivership Action"), the District Court appointed Thomas C. Hebrank as the permanent receiver for all assets of Copeland Wealth Management, a Financial Advisory Corporation and Copeland Wealth Management, a Real Estate Corporation, and their subsidiaries and affiliates ("Receivership Entities"), thereby placing the assets of the Receivership Entities into Mr. Hebrank's possession and control and granting him the full powers of an equity receiver, including the power to make such agreements as may be necessary and advisable in discharging his duties.
- E. On or about March 12, 2012, in the Receivership Action, the District Court issued an order clarifying the scope of the above-described Receivership ("3/12/12 Order"), which provided, *inter alia*, as follows: (1) all of the assets of CFI2, including choses in action, were included in the Receivership; and (2) the Receiver had the authority to pursue causes of action against third parties who owed money to entities subject to the Receivership, including CFI2.
- F. The Note matured by its terms on August 28, 2012, and became immediately due and payable in full as of that date. Borrower defaulted on its obligations to CFI2 by failing to pay the total amount due under the Note.



## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

G. On January 31, 2013, the Receiver commenced an action against Borrower and Guarantors in the Superior Court of California, County of San Bernardino, as Case Number CIVDS 1301172, stating causes of action for Breach of Contract, Breach of Guaranty and Common Counts ("Lawsuit").

H. As of April 15, 2013, there is now due, owing, and unpaid from Borrower and Guarantors the principal amount of \$800,000.00, plus interest in the amount of \$6,666.67, plus continuing interest at the rate of ten percent (10.00%) per annum from April 15, 2013 until paid in full, plus attorney's fees and costs.

I. All of the documents which evidence the Note and Guaranties, together with any other documents executed by or among the parties in connection with the Note and Guaranties, and any and all amendments and modifications thereto, shall be collectively referred to as the "Loan Documents". There are no written or oral agreements concerning or affecting the Note and the Guaranties, other than the Loan Documents. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Loan Documents. Borrower and Guarantors may have other liabilities and obligations owing to the Receivership Entities; Borrower and Guarantors intend that such other liabilities and obligations are not affected by this Settlement Agreement and shall remain in full force and effect in all respects.

J. It is the desire of the parties hereto (each a "Party" and collectively, the "Parties") to finally and fully terminate and cancel all relationships, controversies, claims, debts, obligations, and other matters whatsoever existing between them or which may hereafter arise between the Parties by reason of the Loan, the Note, the Guaranties, and the Lawsuit, except those obligations specifically created by this Settlement Agreement.

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

### **AGREEMENT**

1. Affirmation of Recitals. The recitals set forth above are true and correct and are incorporated herein by this reference.

2. Payment and Dismissal.

a. Upon execution of this Settlement Agreement by all Parties, but in no event later than May 15, 2013, Borrower and Guarantors agree to, and shall, pay to the Receiver, in good funds, the following:

i. The sum of Three Hundred Fifty Thousand Dollars (\$350,000.00) ("Settlement Amount"); and

ii. The attorney's fees and costs incurred by the Receiver in enforcing the Loan Documents, not to exceed Five Thousand Dollars (\$5,000.00) ("Attorney's Fees").

b. The Settlement Amount and the Attorney's Fees (collectively "Settlement Funds") shall be held in the Receiver's counsel's client trust account pending approval of this Settlement Agreement by the District Court as set forth in paragraph 3 below. If the



settlement is approved by the District Court, the Settlement Funds held in the client trust account shall be disbursed to the Receiver within ten (10) days of final approval. If the District Court disapproves the settlement, Receiver's counsel shall, within ten (10) days of such disapproval, transfer the Settlement Funds to the client trust account of Mirau, Edwards, Cannon, Lewin & Tooke.

c. Upon court approval as set forth in paragraph 3 below, and confirmation of payment of the Settlement Amount and Attorney's Fees, in good funds, the Loan will be deemed paid in full, and the Receiver shall dismiss the Lawsuit with prejudice.

3. Operation and Effectiveness of the Agreement. Subsequent to the execution of this Settlement Agreement by all Parties, the Receiver will immediately seek court approval of the terms of this Settlement Agreement in the Receivership Action. It is specifically understood and agreed that the operation and effectiveness of this Settlement Agreement is conditioned upon, and subject to, court approval evidenced by an Order approving the terms of this Settlement Agreement.

4. Borrower's and Guarantors' Representations. Borrower and Guarantors hereby warrant and represent that all representations made by Borrower and Guarantors to the Receiver in connection with this Settlement Agreement including, but not limited to, all representations regarding Borrower's and Guarantors' financial status, were true and correct as of the date made. All representations and warranties provided herein shall survive the execution hereof and performance hereunder.

5. Time Is of the Essence. The Parties agree that time is of the essence in the performance of all covenants and conditions of this Settlement Agreement.

6. Revival. In the event the Receiver is required to disgorge, repay and/or restore any transfer, sum, or other consideration given to the Receiver under the terms of this Settlement Agreement, or upon advice of counsel is advised to do so as a result of, or by virtue of any proceeding under the United States Bankruptcy Code, or if any transfer, sum or other consideration given to the Receiver is subsequently declared to be "fraudulent" within the meaning of any state or federal law relating to fraudulent conveyances or preferences or otherwise avoidable or recoverable, in whole or in part, for any reason whatsoever under the United States Bankruptcy Code or any other state or federal law (collectively "Voidable Transfer"), then as to any Voidable Transfer and/or sums disgorged, repaid and/or restored, the liability of Borrower and Guarantors shall automatically be revived, reinstated and restored and shall exist as though such Voidable Transfer never had been made, and the Receiver shall be entitled to, and shall have a valid, undisputed, and liquidated claim in said bankruptcy proceeding in the Settlement Amount.

7. Mutual Release of Claims. For valuable consideration hereby acknowledged, except for the obligations imposed by this Settlement Agreement, the Receiver, Borrower and each Guarantor hereby mutually release and forever discharge each other and their respective assignees, transferees, officers, directors, shareholders, partners, employees, servants, successors, heirs, agents, attorneys, insurers, and representatives thereof from any and all claims, demands, damages, debts, liabilities, actions, causes of action, suits, contracts, controversies, agreements, accounts, reckonings, promises, obligations, whether in law or in equity, which the Parties to this Settlement Agreement, or any of them, or their successors or assigns, had, owned or held, or now have, own or hold, or hereafter may have, own, or hold which, directly or indirectly, arise out of the Loan, the Note, the Guaranties and the Lawsuit,



including but not limited to any actions taken by the Receiver in connection with the collection thereof.

8. Intention of the Parties. It is the intention of the Parties executing this Settlement Agreement that it shall be effective as a full and final accord and satisfactory release of all matters relating to the Loan, the Note, the Guaranties and the Lawsuit, except as to those obligations specifically created herein. In furtherance of this intention, the Parties agree as follows:

There is a risk that subsequent to the execution of this Settlement Agreement, one or more of the Parties will incur or suffer loss, damages, or injuries which are in some way caused by the transactions referred to above, but which are unknown and unanticipated at the time this Settlement Agreement is signed.

The Parties do hereby assume the above-mentioned risks and understand that, except as specifically provided herein, this Settlement Agreement SHALL APPLY TO ALL UNKNOWN OR UNANTICIPATED RESULTS OF THE TRANSACTIONS AND OCCURRENCES DESCRIBED ABOVE, AS WELL AS THOSE KNOWN AND ANTICIPATED, and upon advice of legal counsel, the Parties do hereby waive any and all rights under California Civil Code Section 1542, which section has been explained and reads as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

The Parties, and each of them, understand and acknowledge that the consequence of this waiver of California Civil Code Section 1542 is that even if a Party should eventually suffer additional damages arising out of the Note, the Guaranties or the Lawsuit or in connection with any matters related thereto, that Party will not be able to make any claim for those damages. Furthermore, the Parties acknowledge that they intend these consequences even as to claims for damages that may exist as of the date of this Settlement Agreement, but of which they are not presently aware. The Parties acknowledge that they intend to waive even those claims which, if known, would materially affect the decision to execute this release, regardless of whether the lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

Each of the Parties has consulted with legal counsel prior to signing this Settlement Agreement, or had an opportunity to obtain such counsel and knowingly chose not to do so. The Parties execute this Settlement Agreement voluntarily, with full knowledge of its significance, and with the express intention of affecting the legal consequences provided by Civil Code Section 1541, i.e., the extinguishment of all obligations.

9. Execution Knowing and Voluntary. The Parties hereto acknowledge and represent that they (a) have fully and carefully read this Settlement Agreement prior to execution, (b) have been fully apprised by attorneys of their choice of the legal effect and meaning of this Settlement Agreement, including all terms and conditions hereof and thereof, (c) to the extent they have deemed it appropriate, have had the benefit of and relied upon counsel of their choice for any legal or financial advice relative to entering into this Settlement Agreement and agreeing to the terms hereof, (d) have had the opportunity to make whatever



investigation or inquiry they deemed necessary or appropriate in connection with the subject matters of this Settlement Agreement, and (e) have been afforded the opportunity to negotiate as to any and all terms hereof.

10. Attorneys' Fees. In the event that any Party hereto shall institute any action or proceeding to enforce, construe, or interpret any rights granted hereunder, the prevailing Party in such action or proceeding shall be entitled, in addition to any other relief granted by the Court or other applicable judicial body, to reasonable attorneys' fees and court costs.

11. Advice of Counsel. The Parties acknowledge and agree that they have had an opportunity to be represented by independent counsel in the negotiation, preparation, and execution of this Settlement Agreement and that each of them has read this Settlement Agreement and has had the opportunity to have it fully explained by his or its counsel prior to its execution and is fully aware of its contents and legal effect.

12. Binding Upon Successors and Assigns. This Settlement Agreement and the covenants and conditions contained herein shall apply to, be binding upon, and inure to the benefit of the respective heirs, administrators, executives, legal representatives, assignees, successors, and agents of the Parties hereto.

13. Counterparts. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together, shall constitute one and the same instrument.

14. Amendment. This Settlement Agreement may not be, and shall not, be deemed or construed to have been modified, amended, rescinded, cancelled, or waived, in whole or in part, except by written instrument signed by the Parties hereto.

15. Entire Agreement. This Settlement Agreement is intended by the Parties as the final expression of their agreement and therefore contains the entire agreement between the Parties and supersedes all prior understandings or agreements concerning the subject matter hereof.

16. Future Assurances. Each Party hereto agrees to execute, acknowledge, deliver, file, and record such further certificates, documents and instruments, and to do all such further acts and things as may be necessary to carry out the intent and purposes of this Settlement Agreement.

17. Warranty Against Prior Assignment. The Parties to this Settlement Agreement represent and warrant that they have not heretofore assigned, transferred, or purported to assign or transfer, to any other person or entity, any rights, claims, or causes of action herein released and discharged.

18. No Strict Construction. Notwithstanding any statute or rule of contract construction to the contrary, the language of this Settlement Agreement shall be construed as a whole, according to its fair meaning and intent, and not strictly for or against any Party hereto, regardless of who drafted or was principally responsible for drafting the Settlement Agreement or any specific term or condition thereof. This Settlement Agreement shall be deemed to have been drafted by all Parties hereto and no Party or any person claiming an interest in rights under this Settlement Agreement shall urge otherwise.

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

19. Governing Law and Construction. This Settlement Agreement has been delivered and accepted and deemed to have been made in San Diego County, California. This Settlement Agreement shall, in all respects, be interpreted, enforced and governed by and under the laws of the State of California. This Settlement Agreement is deemed to have been jointly prepared by the Parties, and any uncertainty or ambiguity existing herein shall not be interpreted against any of the other Parties, but according to the application of the rules of interpretation of contracts, if any such uncertainty or ambiguity exists. In the event that any suit or action is brought to enforce any of the provisions of this Settlement Agreement or to interpret same, the venue will be any court of competent jurisdiction sitting in San Diego County, California.

20. JURY TRIAL WAIVER. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL PARTIES TO THIS SETTLEMENT AGREEMENT HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY.

21. Severability. The provisions of this Settlement Agreement are severable and should any provision be, for any reason, unenforceable, the balance shall, nonetheless, be of full force and effect.

22. Gender and Person. As used in this Settlement Agreement, the masculine, feminine and neuter gender and the singular and plural shall be deemed to include the other whenever the context so indicates.

23. Captions. The paragraph titles or captions used in this Settlement Agreement are inserted only and intended solely for convenience of reference and shall in no manner modify, expand, limit, explain, construe, or describe the scope of or intent of, or in any way affect the terms and conditions of this Settlement Agreement.

24. Warranty of Authority. Each individual executing this document on behalf of any Party represents that he/she has been authorized by said Party to execute this Settlement Agreement, and does so execute this Settlement Agreement on behalf of said Party.


IN WITNESS WHEREOF, the Receiver, Borrower and Guarantors have executed this Settlement Agreement as of the date set forth in the preamble.

**Borrower:**

Address for Notice:

5 ½ East State Street, Suite 4  
Redlands, CA 92373

SoCal Restaurants, LLC, a California limited liability company

By:   
Its: Manager/Member

\*\*\* ADDITIONAL SIGNATURES APPEAR ON THE FOLLOWING PAGE \*\*\*



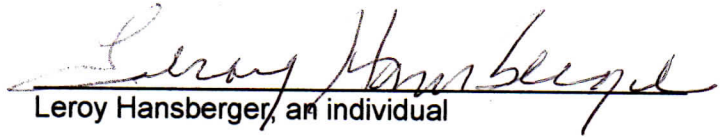
SETTLEMENT AGREEMENT AND MUTUAL RELEASE

Page 7 of 7

**Guarantor:**

Address for Notice:

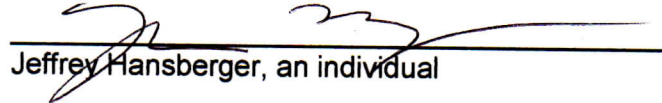
21 West South Street  
Redlands, CA 92373

  
Leroy Hansberger, an individual

**Guarantor:**

Address for Notice:

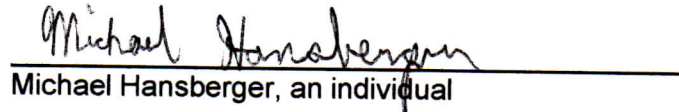
8937 Morning Hills Drive  
Riverside, CA 92508

  
Jeffrey Hansberger, an individual

**Guarantor:**

Address for Notice:

550 North Cornell Avenue  
Fullerton, CA 92831

  
Michael Hansberger, an individual

**Receiver:**

Address for Notice:

501 W. Broadway, Suite 600  
San Diego, CA 92101

Thomas C. Hebrank, Court Appointed Permanent  
Receiver for Copeland Fixed Income Two, LP

By: \_\_\_\_\_  
Thomas C. Hebrank

# EXHIBIT C



## **SETTLEMENT AGREEMENT & MUTUAL RELEASE**

### **1. The Parties**

1.1 This Settlement Agreement and Mutual Release ("Agreement") is entered as of April 17, 2013 into by and between Thomas C. Hebrank, as and only as the court-appointed Receiver for Copeland Properties Fifteen, L.P. ("Mr. Hebrank"), on the one hand, and Advance Desert Sleep Center LLC ("Advance"), Venkatasvara Rao ("V. Rao"), and Bobby Bhasker-Rao, M.D. ("B. Rao"), on the other hand. Mr. Hebrank, Advance Desert Sleep Center, LLC, Venkatasvara Rao, and Bobby Bhasker-Rao, M.D. are sometimes collectively referred to as "Parties" in this Agreement.

### **2. Recitals**

2.1 On or about May 1, 2011, Copeland Properties Fifteen, L.P. ("CP 15") entered into a written lease agreement with Advance. Pursuant to that lease agreement, CP 15 agreed to lease to Advance the real property located at 35-900 Bob Hope Drive, Suite 130, Rancho Mirage ("the Premises"). A true and correct copy of the AIR Commercial Real Estate Association Standard Multi-Tenant Office Lease – Net dated May 1, 2011 that CP 15 and Advance entered into ("the Lease") is attached hereto as Exhibit "A" and is incorporated herein by reference.

2.2 On or about May 1, 2011, V. Rao and B. Rao, (collectively sometimes hereinafter referred to as "the Guarantors") executed an AIR Commercial Real Estate Association Guaranty of Lease dated May 1, 2011 in favor of CP 15 ("the Guaranty"). A true and correct copy of the Guaranty is attached hereto as Exhibit "B" and is incorporated herein by reference.

2.3 On or about October 19, 2011, pursuant to a Judgment of Permanent Injunction and Other Relief issued by the United States District Court, Central District of California in the case entitled Securities and Exchange Commission v. Charles P. Copeland, et. al., Case No.CV-08607-R-DTB ("the Receivership Action"), the District Court appointed Thomas C. Hebrank to be the permanent receiver for all assets of Copeland Wealth Management, a Financial Advisory Corporation and Copeland Wealth Management, a Real Estate Corporation and their subsidiaries and affiliates placing their assets into Mr. Hebrank's possession and control and granting him the full powers of an equity receiver, including the power to make such agreements as may be necessary and advisable in discharging his duties.

2.4 On or about March 12, 2012, in the Receivership Action, the District Court issued an order clarifying the scope of the above-described receivership, which provided as follows: (1) all of the assets of CP 15, including choses in action, were included in the receivership; (2) Thomas C. Hebrank ("the Receiver") had the authority to pursue causes of action against third parties who owed money to entities subject to the Receivership, including CP 15; and (3) the Receiver had the authority to terminate leases in connection with his management of property owned by CP 15, including the Premises.

2.5 On April 25, 2012, the Receiver served a "Three Day Notice to Pay Rent or Quit" ("Notice") on Advance demanding it pay \$29,554.44 owed by Advance to the Receiver for rent, construction costs, and common area maintenance charges pursuant to the Lease or quit the Premises and that, in the event that Advance failed to pay the above-described amounts, the Receiver elected to and did declare a forfeiture of the Lease.

2.6 Advance did not pay the \$29,554.44 it owed in rent, construction costs, and common area maintenance charges that the Receiver demanded, and it did not quit the Premises within the three days provided for in the Notice.

2.7 Subsequently, the Receiver filed a motion with the District Court in the Receivership Action asking that the District Court authorize the Receiver to abandon the Premises and to declare that the Premises were abandoned and no longer part of the Receivership Estate.

2.8 On October 1, 2012, the District Court granted the Receiver's motion and entered an order authorizing the Receiver to abandon the Premises and declaring that the Premises were abandoned by the Receiver and no longer part of the Receivership Estate. The District Court's order further provided that the Receiver had "the right to bring legal actions or other proceedings to collect unpaid rent and other obligations, from existing or prior tenants and their guarantors, due and owing through September 30, 2012."

2.9 Pursuant to the Lease, the Guaranty and the above-described October 1, 2012 Order, the Receiver has demanded that Advance and the Guarantors pay the Receiver amounts to compensate it for rent owed by Advance pursuant to the Lease as of September 30, 2012, damages suffered by the Receiver as a result of Advance's alleged breach of the lease, including amounts payable pursuant to the

Lease after the termination thereof, attorneys' fees and costs ("the Contested Amounts").

2.10 All of the documents which evidence the Lease and Guaranty, together with any other documents executed by or among the parties in connection with the Lease and Guaranty, and any and all amendments and modifications thereto, shall be collectively referred to as the "Lease Documents". There are no written or oral agreements concerning or affecting the Lease and the Guaranty, other than the Lease Documents. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Lease Documents. Except for obligations and liabilities owing pursuant to the Lease Documents, this Agreement shall not affect liabilities and obligations owed by Advance or the Guarantors to any Receivership Entity, if any. As of the execution of this Agreement, the Parties are not aware of any such obligations or liabilities.

2.11 The Parties desire to resolve their disputes and claims arising out of the Lease and the Guaranty, including claims for the Contested Amounts without litigation.

### **3. Covenants**

Based on the recitals set forth above, and in consideration of the promises contained herein, the Parties agree as follows:

3.1 B. Rao and V. Rao each agree to pay the amount of \$20,000 (the "Settlement Amount") to the Receiver in installments, pursuant to the schedule attached hereto as Exhibit "C" and incorporated herein by reference. The Settlement Amount shall be made in monthly installments on the tenth day of each month, as described more particularly in the above-referenced schedule, to the Receiver at the following address: 501 W. Broadway, Suite 800, San Diego, CA 92101. The obligations of B. Rao and V. Rao to make the settlement payments referenced herein are independent of each other and a breach by one of them shall not be considered a breach by the other with respect to the other's obligations hereunder.

3.2 B. Rao agrees to confess to judgment in the increased amount of \$25,000, in the form of the Confession of Judgment Statement and Declaration attached hereto as Exhibit "D" and hereby incorporated by reference ("B. Rao Confession of Judgment"). In the event of a default under this Agreement by B. Rao, the Receiver shall have the absolute right to have judgment entered against B.

Rao ("B. Rao Judgment") pursuant to the B. Rao Confession of Judgment, less any payments made, and the Receiver shall be entitled to immediately execute on the B. Rao Judgment.

3.3 V. Rao agrees to confess to judgment in the increased amount of \$25,000, in the form of the Confession of Judgment Statement and Declaration attached hereto as Exhibit "E" and hereby incorporated by reference ("V. Rao Confession of Judgment"). In the event of a default under this Agreement by V. Rao, the Receiver shall have the absolute right to have judgment entered against V. Rao ("V. Rao Judgment") pursuant to the V. Rao Confession of Judgment, less any payments made, and the Receiver shall be entitled to immediately execute on the V. Rao Judgment.

3.4 Subsequent to the execution of this Agreement by all Parties, the Receiver will immediately seek court approval of the terms of this Agreement in the Receivership Action. It is specifically understood and agreed that the operation and effectiveness of this Agreement is conditioned upon, and subject to, court approval evidenced by an Order approving the terms of this Agreement.

3.5 All representations made by Advance and the Guarantors to the Receiver in connection with this Agreement including, but not limited to, all representations regarding Advance's and the Guarantors' financial status, were true and correct as of the date made. All representations and warranties provided herein shall survive the execution hereof and performance hereunder.

3.6 In the event the Receiver is required to disgorge, repay and/or restore any transfer, sum, or other consideration given to the Receiver under the terms of this Agreement, or upon advice of counsel is advised to do so as a result of, or by virtue of any proceeding under the United States Bankruptcy Code, or if any transfer, sum or other consideration given to the Receiver is subsequently declared to be "fraudulent" within the meaning of any state or federal law relating to fraudulent conveyances or preferences or otherwise avoidable or recoverable, in whole or in part, for any reason whatsoever under the United States Bankruptcy Code or any other state or federal law (collectively "Voidable Transfer"), then as to any Voidable Transfer and/or sums disgorged, repaid and/or restored, the liability of the party from whom the consideration was received shall automatically be revived, reinstated and restored and shall exist as though such Voidable Transfer never had been made, and the Receiver shall be entitled to, and shall have a valid, undisputed, and liquidated claim in said bankruptcy proceeding in the Settlement Amount.



3.7 Except for the obligations created by this Agreement, the Receiver for himself and for CP15, and for each and all of its shareholders, partners, parents, subsidiaries, assignees, and successors, and for all others claiming through or under it (collectively "the Lessor Releasers"), hereby irrevocably and unconditionally remise, release, acquit, absolve and forever discharge Advance and the Guarantors, and each and all of their past or present predecessors, successors, members, parents, subsidiaries, shareholders, affiliates, divisions, heirs, executors, administrators, agents, representatives, consultants, servants, directors, trustees, officers, attorneys, employees, and insurers (collectively "the Lessee Releasees") of and from any and all manner of actions, causes of action, in law or in equity, debts, contracts, charges, complaints, claims, suits, damages, obligations, promises, agreements, controversies, losses, costs, judgments, or expenses (including attorney's fees and court costs), of any nature whatsoever, known or unknown, fixed or contingent, direct or derivative, subrogated or assigned, suspected or unsuspected, which the Lessor Releasers have or may have, or which the Lessor Releasers at any time heretofore had or claimed to have, or which Lessor Releasers at any time hereafter may have or claim to have, against any of the Lessee Releasees based upon or arising out of all acts and omissions of the Lessee Releasees related to the Lease or the Guaranty, including claims for the Contested Amounts.

3.8 Except for the obligations created by this Agreement, Advance and the Guarantors, for themselves, and for each and all of their shareholders, partners, parents, subsidiaries, assignees, and successors, and for all others claiming through or under them (collectively "the Lessee Releasers"), hereby irrevocably and unconditionally remise, release, acquit, absolve and forever discharge the Receiver and CP15, and each and all of its past or present predecessors, successors, members, parents, subsidiaries, shareholders, affiliates, divisions, heirs, executors, administrators, agents, representatives, consultants, servants, directors, officers, attorneys, employees, and insurers (hereinafter collectively "the Lessor Releasees") of and from any and all manner of actions, causes of action, in law or in equity, debts, contracts, charges, complaints, claims, suits, damages, obligations, promises, agreements, controversies, losses, costs, judgments, or expenses (including attorney's fees and court costs), of any nature whatsoever, known or unknown, fixed or contingent, direct or derivative, subrogated or assigned, suspected or unsuspected, which the Lessee Releasers has or may have, or which the Lessee Releasers at any time heretofore had or claimed to have, or which Lessee Releasers at any time hereafter may have or claim to have, against any of the Lessor Releasees based upon or arising out of all acts and omissions of the Lessor



Releasees related to the Lease or the Guaranty, including claims for the Contested Amounts.

3.9 The Parties hereto, and each of them, hereby expressly waive all rights or benefits which they now have, or in the future may have, under Section 1542 of the California Civil Code, and any law or principle of similar effect of any state or territory of the United States. Section 1542 of the California Civil Code reads as follows:

“Section 1542. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

3.10 The Parties hereto hereby acknowledge that they are aware that they may hereafter discover facts in addition to or different from those which they now know or believe to exist with respect to the matters covered by this Agreement. The Parties hereto also acknowledge that such different or additional facts, if they exist, may have given or may hereafter give rise to causes of action, claims, demands, controversies, damages, costs, and expenses which are presently unknown, unanticipated, and unsuspected. The Parties hereto further agree, represent, and warrant that the releases contained herein have been negotiated and agreed upon in light of that realization, and that it is their intention through this Agreement, and with the advice of counsel, fully, finally, and forever to settle and release to the fullest extent permitted by law any and all possible claims, causes of action, disputes, and differences, known or unknown, suspected or unsuspected, arising out of the facts, events, or circumstances underlying the Lease and the Guaranty. In furtherance of such intention, the Parties agree that the releases contained in this Agreement will remain in effect and will be fully binding notwithstanding the discovery or existence of any additional or different facts.

3.11 Advance and the Guarantors acknowledge and agree that this Agreement does not modify, waive, or in any way affect any other obligation of any kind to CP 15 or the Receiver, if any, as to any of the Parties to this Agreement. No failure to exercise, nor delay by the Receiver in exercising, any right, power, or privilege hereunder shall preclude any other or further exercise thereof, or the exercise of any other right, power, or privilege. Except as otherwise set forth herein, Advance and the Guarantors acknowledge and agree that the Receiver's agreement to release Advance and the Guarantors as provided herein is

not, and shall not, be deemed a waiver of any of the Receiver's other rights against any other persons or entities.

#### **4. Miscellaneous**

4.1 Each party to this Agreement agrees to do all things necessary or convenient to carry out or effectuate the terms and intent of this Agreement. Each and every provision hereof requiring a party to do a certain act, however expressed, shall include the obligation of such party not to take directly or indirectly, any action or do any act, or aid, assist or cooperate with any third party in the taking of any action or in the doing of any act, that would tend to defeat in any way the intent of this Agreement.

4.2 This Settlement Agreement has been delivered and accepted and deemed to have been made in San Diego County, California. This Settlement Agreement shall, in all respects, be interpreted, enforced and governed by and under the laws of the State of California. This Settlement Agreement is deemed to have been jointly prepared by the Parties, and any uncertainty or ambiguity existing herein shall not be interpreted against any of the other Parties, but according to the application of the rules of interpretation of contracts, if any such uncertainty or ambiguity exists. In the event that any suit or action is brought to enforce any of the provisions of this Settlement Agreement or to interpret same, the venue will be any court of competent jurisdiction sitting in San Diego County, California.

4.3 This Agreement is the entire agreement between the Parties and supersedes any and all other agreements, understandings, negotiations or discussions, either oral or in writing, express or implied, between the Parties concerning settlement. The Parties to this Agreement each acknowledge that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by them or any of them, or anyone acting on their behalf which are not embodied in this Agreement, that they have not executed this Agreement in reliance on any representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement or warranty not contained in this Agreement, including, without limitation, any purported supplements, modifications, waivers or terminations of this Agreement shall be valid or binding, unless executed in writing by all of the Parties to this Agreement.

4.4 This Agreement may be executed in one or more counterparts including facsimile copies, each of which when executed and delivered shall be

considered an original, and all of which when executed shall constitute one and the same instrument. A signature transmitted by facsimile or electronic mail shall be as binding and effective as an original. Moreover, photocopies of this Agreement, including photocopies of the signature pages hereof, may be used as originals, in the absence of any bona fide challenge to their authenticity.

4.5 The Parties to this Agreement, and each of them, represent and warrant that none of the claims or rights purported to be released herein has previously been assigned, expressly or impliedly, or otherwise transferred to any other person or entity, including by way of subrogation or operation of law.

4.6 The provisions of this Agreement shall be deemed severable and the invalidity of unenforceability of any one or more of the provisions hereof shall not affect the validity and enforceability of the other provisions hereof.

4.7 This Agreement shall inure to the benefit of and bind the successors, assigns, heirs, executors, and administrators of the Parties.

4.8 Each person signing this Agreement on behalf of a party hereto warrants and represents that he or she is duly authorized to execute this Agreement and the Parties hereto so stipulate.

4.9. The Parties hereto acknowledge and represent that they (a) have fully and carefully read this Agreement prior to execution, (b) have been fully apprised by attorneys of their choice of the legal effect and meaning of this Agreement, including all terms and conditions hereof and thereof, (c) to the extent they have deemed it appropriate, have had the benefit of and relied upon counsel of their choice for any legal or financial advice relative to entering into this Agreement and agreeing to the terms hereof, (d) have had the opportunity to make whatever investigation or inquiry they deemed necessary or appropriate in connection with the subject matters of this Agreement, and (e) have been afforded the opportunity to negotiate as to any and all terms hereof.

4.10 In the event that any Party hereto shall institute any action or proceeding to enforce, construe, or interpret any rights granted hereunder, the prevailing Party in such action or proceeding shall be entitled, in addition to any other relief granted by the Court or other applicable judicial body, to reasonable attorneys' fees and court costs.

4.11 For the purposes of interpretation of this Agreement, it is specifically agreed by the Parties hereto that it shall be assumed that the Parties drafted each provision of this Agreement.

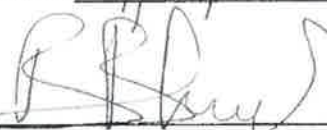
Dated: \_\_\_\_\_

Advance Desert Sleep Center LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: 4/29/13

  
\_\_\_\_\_  
Bobby Bhasker-Rao, M.D., an individual

Dated: \_\_\_\_\_

\_\_\_\_\_  
Venkatasvara Rao, an individual

Dated: \_\_\_\_\_

\_\_\_\_\_  
Thomas C. Hebrank, Court Appointed Permanent Receiver for Copeland Properties Fifteen, L.P.

agreed by the Parties hereto that it shall be assumed that the Parties drafted each provision of this Agreement.

Dated: 4/30/13

Advance Desert Sleep Center LLC

By: Vaishali Venkatasvara Rao  
Its: member.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Bobby Bhasker-Rao, M.D., an individual

Dated: 4/30/13

Vaishali Rao  
Venkatasvara Rao, an individual

Dated: \_\_\_\_\_

\_\_\_\_\_  
Thomas C. Mcbrank, Court Appointed Permanent Receiver for Copeland Properties Fifteen, L.P.



EXHIBIT A

EXHIBIT C



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 May 1, 2011  
is made by and between Copeland Properties Fifteen, L.P.

("Lessor")

and Advance Desert Sleep Center, LLC.

("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  
usable square feet ("Premises"). The Premises are located at: 35 000 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) Assigned Space # 15.

1.3 Term: Five (5) years and 0 months ("Original Term") commencing  
May 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  
May 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 16, 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 5.1  
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: \$5,939.62 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  
☐ 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 \_\_\_\_\_ % 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.



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1.11 Guarantor. The obligations of the Lessee under this Lease shall be guaranteed by Venkatasvara Rao and Dr. Bobby Blasker Rao ("Guarantor"). (See also Paragraph 37)

1.12 Business Hours for the Building: 6:00 a.m. to 6:00 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 observation of New Year's Day, Presidents 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 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 40), 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

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

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

2.9 **Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to adopt, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the 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 all 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, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;
  - (bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, communication systems and other equipment used in common by, or for the benefit of, lessees or occupants of the Project, including elevators and escalators, tenant directories, fire detection systems including sprinkler system maintenance and repair.
  - (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



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an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual 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.

(a) 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 person 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

  
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investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(a)) 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), 5 (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

  
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Paragraph 26 below.

**8. Insurance; Indemnity.**

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

**8.2 Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. 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-tenant, 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.**



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9.1 Definitions.

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

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

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

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

(e) "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, 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 it 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 30 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 in lieu 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

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

11. Utilities and Services.

11.1 Services Provided by Lessor. Lessor shall provide heating, ventilation, air conditioning, reasonable amounts of electricity for normal lighting and office machines, water for reasonable and normal drinking and lavatory use in connection with an office, and replacement light bulbs and/or fluorescent tubes and ballasts for standard overhead fixtures. Lessor shall also provide janitorial services to the 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 specialty 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, i.e. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Default; Breach; Remedies.

13.1 Default; Breach. A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants,

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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 (f) 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 have been 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 (ii) 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

  
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diligently pursued to completion.

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

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

15. **Brokerage Fees.**

15.1 **Additional Commission.** 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



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requiring such consent.

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

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

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

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

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

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



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adverse effect to Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee. In addition, Lessor shall have the right to retain keys to the Premises and to unlock all doors in or upon the Premises other than to files, vaults and safes, and in the case of emergency to enter the Premises by any reasonably appropriate means, and any such entry shall not be deemed a forcible or unlawful entry or detainer of the Premises or an eviction. Lessee waives any charges for damages or injuries or interference with Lessee's property or business in connection therewith.

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

34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. 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 Eschoppel 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" within 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

  
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typewritten or handwritten provisions.

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

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

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

48. 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: Redlands, CA

Executed at: Rancho Mirage, CA

On: May 1, 2011

On: May 1, 2011

By LESSOR:

By LESSEE:

Copeland Properties Fifteen, L.P.

Advance Desert Sleep Center, LLC

By:

By:

Name Printed: Donald E. Copeland

Name Printed: Venkatasvara Rao

Title: Managing Partner

Title:

By:

By:

Name Printed:

Name Printed:

Title:

Title:

Address: 25809 Business Center Drive

Address: 1690 Barton Road

Suite F

Suite 107

Redlands, CA 92374

Redlands, CA 92373

Telephone: (909) 799-8565

Telephone: (909) 954-7753

Facsimile: (909) 799-8566

Facsimile: (909) 335-5446

Email: dave@copelandwealth.com

Email:

Email:

Email:

Federal ID No. 20-5056604

Federal ID No. 45-3423858

LESSOR'S BROKER:

LESSEE'S BROKER:

Attn:

Attn:

Title:

Title:

Address:

Address:

Telephone: ( )

Telephone: ( )

Facsimile: ( )

Facsimile: ( )

Email:

Email:

Federal ID No.

Federal ID No.

Broker/Agent DRE License #:

Broker/Agent DRE License #:



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FORM MTON-7-03/10E

EXHIBIT C



**RENT ADJUSTMENT(S)**  
**STANDARD LEASE ADDENDUM**

Dated May 1 2011

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

(Lessee) Advance Desert Sleep Center, LLC.

Address of Premises: 35-300 Bob Hope Dr., Suite 110  
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)):

The New Base Rent shall be:

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

\$1,949.06 per Month (5% Incr)  
\$2,046.52 per Month (5% Incr)  
\$2,148.94 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.

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FORM RA-3-8/00E

EXHIBIT C



**OPTION(S) TO EXTEND  
STANDARD LEASE ADDENDUM**

Dated May 1, 2011

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

By and Between (Lessee) Advance Desert Sleep Center, LLC.

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

Paragraph 5.2

**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).  
(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, 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, 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 Broker shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease.~~

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FORM OE-3-8/00E

EXHIBIT C

# EXHIBIT B





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 concerning the premises commonly  
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 herein 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 fully 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 CNM Real Estate  
On: May 1, 2011  
Address: 35-900 Bob Hope Drive, # 210  
Rancho Mirage, CA 92270

Venkatasvara Rao  
Bobby Bhasker Rao

GUARANTORS

# Exhibit C

**EXHIBIT "C"**

1. Bobby Bhasker-Rao, M.D.: Dr. Rao will pay a total of \$20,000 to Mr. Hebrank, the Receiver for Copeland Properties 15, L.P. ("the Receiver"), in monthly installments of \$1,000. Dr. Rao will pay \$1,000 to the Receiver immediately upon his receipt of a copy of this Agreement, which has been executed by the Receiver, and will pay \$1,000 on the tenth day of each following month for nineteen months resulting in a total of twenty payments of \$20,000.

2. Venkatasvara Rao: Mr. Rao will also pay a total of \$20,000 to the Receiver in monthly installments. Mr. Rao will pay \$750 to the Receiver immediately upon his receipt of a copy of this Agreement, which has been executed by the Receiver, and will pay \$750 per month on the tenth day of the month for eleven months thereafter resulting in payments totaling \$8,000 during the above-described twelve months. Thereafter, Mr. Rao will increase the amount of his monthly payments to \$1,000 for twelve additional months.

**EXHIBIT D**

**EXHIBIT C**



1 Everett G. Barry, Jr., CSB #053119  
Toby S. Kovalivker, CSB #234386  
2 MULVANEY BARRY BEATTY LINN & MAYERS LLP  
401 West A Street, 17th Floor  
3 San Diego, CA 92101-7994  
Telephone: 619 238-1010  
4 Facsimile: 619 238-1981

5 Attorneys for Plaintiff Thomas C. Hebrank,  
Court Appointed Permanent Receiver for  
6 Copeland Properties Fifteen, L.P.

7  
8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 In the Matter of the Confession of  
Judgment by

CASE NO.

11 Bobby Bhasker-Rao, an individual

**CONFESSION OF JUDGMENT  
STATEMENT**

12 Defendant,

13 In Favor of

**[CCP SECTION 1132]**

14 Thomas C. Hebrank, Court Appointed  
15 Permanent Receiver for Copeland  
Properties Fifteen, L.P.,

16 Plaintiff.  
17

18 I, Bobby Bhasker-Rao, ("Defendant"), hereby confesses to judgment in the  
19 above-entitled cause in favor of Plaintiff Thomas C. Hebrank, Court Appointed  
20 Permanent Receiver for Copeland Properties Fifteen, L.P. ("Receiver"), and authorize  
21 entry of judgment against me as provided herein.

22 This Confession of Judgment is for a commercial debt justly due to Copeland  
23 Properties Fifteen, L.P. ("CP 15") arising out of a lease by CP 15 to Advanced Desert  
24 Sleep Center, LLC ("Borrower") and is evidenced, in part, inter alia, by an AIR  
25 Commercial Real Estate Association Standard Multi-Tenant Office Lease dated May 1,  
26 2011 ("Lease"). As part of the consideration for the Lease, and pursuant to the terms of  
27 an AIR Commercial Real Estate Association Guaranty of Lease dated May 1, 2011, I  
28 guaranteed the payment by Borrower to CP 15 of all rents and all other sums payable

1  
CONFESSON OF JUDGMENT STATEMENT

**EXHIBIT C**

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

1 by Borrower to CP 15 under the Lease (the "Guaranty"). Borrower defaulted on the  
2 Lease by failing to make payments as required by its terms.

3 Pursuant to that certain Settlement Agreement and Mutual Release entered into  
4 as of April 17, 2013 by and among the Receiver, Borrower and myself (the  
5 "Agreement"), I agreed and acknowledged, inter alia, that I am liable to the Receiver  
6 pursuant to the terms of the Guaranty for all sums due to CP 15 under the Lease.  
7 Pursuant to the Agreement, I agreed, inter alia, to confess to judgment ("Judgment")  
8 and that the Judgment shall be entered against me upon the occurrence of an Event of  
9 Default as defined in the Agreement ("Event of Default"). Therefore, upon the  
10 occurrence of an Event of Default, this Statement shall be filed, and the Judgment shall  
11 be entered, against me in the amount of \$25,000.00, less any payments made.

12 **VERIFICATION**

13 I, Bobby Bhasker-Rao, individually, a Defendant in the above-entitled cause,  
14 have read the foregoing Confession of Judgment Statement and know the contents  
15 thereof. The facts in the Confession of Judgment Statement are true of my own  
16 knowledge.

17 I declare under penalty of perjury under the laws of the State of California that the  
18 foregoing is true and correct, and that this Declaration was executed on April 29,  
19 2013, at Riverside, California.

20   
21 By: Bobby Bhasker-Rao

22  
23 HEBCO.135.446598.1

1 Everett G. Barry, Jr., CSB #053119  
Toby S. Kovalivker, CSB #234386  
2 MULVANEY BARRY BEATTY LINN & MAYERS LLP  
401 West A Street, 17th Floor  
3 San Diego, CA 92101-7994  
Telephone: 619 238-1010  
4 Facsimile: 619 238-1981

5 Attorneys for Plaintiff Thomas C. Hebrank,  
Court Appointed Permanent Receiver for  
6 Copeland Properties Fifteen, L.P.

7  
8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 In the Matter of the Confession of  
Judgment by

CASE NO.

11 Bobby Bhasker-Rao, an individual,  
12 Defendant,

**ATTORNEY'S DECLARATION IN  
SUPPORT OF CONFESSION OF  
JUDGMENT STATEMENT**

13 In Favor of

**[CCP SECTION 1132]**

14 Thomas C. Hebrank, Court Appointed  
15 Permanent Receiver for Copeland  
Properties Fifteen, L.P.,

16 Plaintiff.  
17

18 I, Marshall Brubacher, declare:

19 I am an attorney at law duly admitted to practice before all the courts in the State  
20 of California and the attorney herein for Bobby Bhasker-Rao, an individual, the party  
21 confessing Judgment in the above-entitled cause ("Defendant").


22 I further declare that I have examined the proposed Judgment and have advised  
23 the Defendant with respect to the waiver of rights and defenses under the confession of  
24 judgment procedure and have advised the Defendant to utilize the confession of  
25 judgment procedure.

26 ///

27 ///

28 ///

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct and that this Declaration was executed on April 30,  
3 2013 at San Bernardino, California.

4   
5 Marshall Brubacher, Esq.  
6 Mundell, Odum & Haws, LLP  
7 650 E. Hospitality Lane, Suite 470  
8 San Bernardino, CA 92408

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LAW OFFICES  
MULVANEY, BARRY, BEATTY, LINN & MAYERS LLP  
A LIMITED LIABILITY PARTNERSHIP  
SEVENTEENTH FLOOR  
FIRST NATIONAL BANK CENTER  
401 WEST A STREET  
SAN DIEGO, CALIFORNIA 92101-7944  
TELEPHONE 619 238-1010  
FACSIMILE 619 238-1991



# Exhibit E

1 Everett G. Barry, Jr., CSB #053119  
Toby S. Kovalivker, CSB #234386  
2 MULVANEY BARRY BEATTY LINN & MAYERS LLP  
401 West A Street, 17th Floor  
3 San Diego, CA 92101-7994  
Telephone: 619 238-1010  
4 Facsimile: 619 238-1981

5 Attorneys for Plaintiff Thomas C. Hebrank,  
Court Appointed Permanent Receiver for  
6 Copeland Properties Fifteen, L.P.

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 In the Matter of the Confession of  
Judgment by

CASE NO.

11 Venkatasvara Rao, an individual

**CONFESSION OF JUDGMENT  
STATEMENT**

12 Defendant,

**[CCP SECTION 1132]**

13 In Favor of

14 Thomas C. Hebrank, Court Appointed  
15 Permanent Receiver for Copeland  
Properties Fifteen, L.P.,

16 Plaintiff.

18 I, Venkatasvara Rao, ("Defendant"), hereby confesses to judgment in the above-  
19 entitled cause in favor of Plaintiff Thomas C. Hebrank, Court Appointed Permanent  
20 Receiver for Copeland Properties Fifteen, L.P. ("Receiver"), and authorize entry of  
21 judgment against me as provided herein.

22 This Confession of Judgment is for a commercial debt justly due to Copeland  
23 Properties Fifteen, L.P. ("CP 15") arising out of a lease by CP 15 to Advanced Desert  
24 Sleep Center, LLC ("Borrower") and is evidenced, in part, inter alia, by an AIR  
25 Commercial Real Estate Association Standard Multi-Tenant Office Lease dated May 1,  
26 2011 ("Lease"). As part of the consideration for the Lease, and pursuant to the terms of  
27 an AIR Commercial Real Estate Association Guaranty of Lease dated May 1, 2011, I  
28 guaranteed the payment by Borrower to CP 15 of all rents and all other sums payable

LAURENCE  
MURRAY, BARRY, BEATTY, LINDA & MAYERS LLP  
ATTORNEYS AT LAW  
SEVENTEENTH FLOOR  
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SAN DIEGO, CALIFORNIA 92101-7044  
TELEPHONE 619 234-9700  
FACSIMILE 619 234-9901

1 by Borrower to CP 15 under the Lease (the "Guaranty"). Borrower defaulted on the  
2 Lease by failing to make payments as required by its terms.

3 Pursuant to that certain Settlement Agreement and Mutual Release entered into  
4 as of April 17, 2013 by and among the Receiver, Borrower and myself (the  
5 "Agreement"), I agreed and acknowledged, inter alia, that I am liable to the Receiver  
6 pursuant to the terms of the Guaranty for all sums due to CP 15 under the Lease.  
7 Pursuant to the Agreement, I agreed, inter alia, to confess to judgment ("Judgment")  
8 and that the Judgment shall be entered against me upon the occurrence of an Event of  
9 Default as defined in the Agreement ("Event of Default"). Therefore, upon the  
10 occurrence of an Event of Default, this Statement shall be filed, and the Judgment shall  
11 be entered, against me in the amount of \$25,000.00, less any payments made.

12 VERIFICATION

13 I, Venkatasvara Rao, individually, a Defendant in the above-entitled cause, have  
14 read the foregoing Confession of Judgment Statement and know the contents thereof.  
15 The facts in the Confession of Judgment Statement are true of my own knowledge.

16 I declare under penalty of perjury under the laws of the State of California that the  
17 foregoing is true and correct, and that this Declaration was executed on April 30,  
18 2013, at Reedlands, California.

19   
20 By: Venkatasvara Rao

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1 Everett G. Barry, Jr., CSB #053119  
Toby S. Kovalivker, CSB #234386  
2 MULVANEY BARRY BEATTY LINN & MAYERS LLP  
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5 Attorneys for Plaintiff Thomas C. Hebrank,  
Court Appointed Permanent Receiver for  
6 Copeland Properties Fifteen, L.P.

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 In the Matter of the Confession of  
Judgment by

CASE NO.

11 Venkatasvara Rao, an individual,

**ATTORNEY'S DECLARATION IN  
SUPPORT OF CONFESSION OF  
JUDGMENT STATEMENT**

12 Defendant,

13 In Favor of

**[CCP SECTION 1132]**

14 Thomas C. Hebrank, Court Appointed  
15 Permanent Receiver for Copeland  
Properties Fifteen, L.P.,

16 Plaintiff.

17  
18 I, Marshall Brubacher, declare:

19 I am an attorney at law duly admitted to practice before all the courts in the State  
20 of California and the attorney herein for Venkatasvara Rao, an individual, the party  
21 confessing Judgment in the above-entitled cause ("Defendant").

22 I further declare that I have examined the proposed Judgment and have advised  
23 the Defendant with respect to the waiver of rights and defenses under the confession of  
24 judgment procedure and have advised the Defendant to utilize the confession of  
25 judgment procedure.


26 ///

27 ///

28 ///



1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct and that this Declaration was executed on April 30,  
3 2013 at San Bernardino, California.

4 

5 Marshall Brubacher, Esq.  
6 Mundell, Odum & Haws, LLP  
7 650 E. Hospitality Lane, Suite 470  
8 San Bernardino, CA 92408

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## **SETTLEMENT AGREEMENT & MUTUAL RELEASE**

### **1. The Parties**

1.1 This Settlement Agreement and Mutual Release ("Agreement") is entered as of April 17, 2013 into by and between Thomas C. Hebrank, as and only as the court-appointed Receiver for Copeland Properties Fifteen, L.P. ("Mr. Hebrank"), on the one hand, and Advance Desert Sleep Center LLC ("Advance"), Venkatasvara Rao ("V. Rao"), and Bobby Bhasker-Rao, M.D. ("B. Rao"), on the other hand. Mr. Hebrank, Advance Desert Sleep Center, LLC, Venkatasvara Rao, and Bobby Bhasker-Rao, M.D. are sometimes collectively referred to as "Parties" in this Agreement.

### **2. Recitals**

2.1 On or about May 1, 2011, Copeland Properties Fifteen, L.P. ("CP 15") entered into a written lease agreement with Advance. Pursuant to that lease agreement, CP 15 agreed to lease to Advance the real property located at 35-900 Bob Hope Drive, Suite 130, Rancho Mirage ("the Premises"). A true and correct copy of the AIR Commercial Real Estate Association Standard Multi-Tenant Office Lease – Net dated May 1, 2011 that CP 15 and Advance entered into ("the Lease") is attached hereto as Exhibit "A" and is incorporated herein by reference.

2.2 On or about May 1, 2011, V. Rao and B. Rao, (collectively sometimes hereinafter referred to as "the Guarantors") executed an AIR Commercial Real Estate Association Guaranty of Lease dated May 1, 2011 in favor of CP 15 ("the Guaranty"). A true and correct copy of the Guaranty is attached hereto as Exhibit "B" and is incorporated herein by reference.

2.3 On or about October 19, 2011, pursuant to a Judgment of Permanent Injunction and Other Relief issued by the United States District Court, Central District of California in the case entitled Securities and Exchange Commission v. Charles P. Copeland, et. al., Case No.CV-08607-R-DTB ("the Receivership Action"), the District Court appointed Thomas C. Hebrank to be the permanent receiver for all assets of Copeland Wealth Management, a Financial Advisory Corporation and Copeland Wealth Management, a Real Estate Corporation and their subsidiaries and affiliates placing their assets into Mr. Hebrank's possession and control and granting him the full powers of an equity receiver, including the power to make such agreements as may be necessary and advisable in discharging his duties.

2.4 On or about March 12, 2012, in the Receivership Action, the District Court issued an order clarifying the scope of the above-described receivership, which provided as follows: (1) all of the assets of CP 15, including choses in action, were included in the receivership; (2) Thomas C. Hebrank ("the Receiver") had the authority to pursue causes of action against third parties who owed money to entities subject to the Receivership, including CP 15; and (3) the Receiver had the authority to terminate leases in connection with his management of property owned by CP 15, including the Premises.

2.5 On April 25, 2012, the Receiver served a "Three Day Notice to Pay Rent or Quit" ("Notice") on Advance demanding it pay \$29,554.44 owed by Advance to the Receiver for rent, construction costs, and common area maintenance charges pursuant to the Lease or quit the Premises and that, in the event that Advance failed to pay the above-described amounts, the Receiver elected to and did declare a forfeiture of the Lease.

2.6 Advance did not pay the \$29,554.44 it owed in rent, construction costs, and common area maintenance charges that the Receiver demanded, and it did not quit the Premises within the three days provided for in the Notice.

2.7 Subsequently, the Receiver filed a motion with the District Court in the Receivership Action asking that the District Court authorize the Receiver to abandon the Premises and to declare that the Premises were abandoned and no longer part of the Receivership Estate.

2.8 On October 1, 2012, the District Court granted the Receiver's motion and entered an order authorizing the Receiver to abandon the Premises and declaring that the Premises were abandoned by the Receiver and no longer part of the Receivership Estate. The District Court's order further provided that the Receiver had "the right to bring legal actions or other proceedings to collect unpaid rent and other obligations, from existing or prior tenants and their guarantors, due and owing through September 30, 2012."

2.9 Pursuant to the Lease, the Guaranty and the above-described October 1, 2012 Order, the Receiver has demanded that Advance and the Guarantors pay the Receiver amounts to compensate it for rent owed by Advance pursuant to the Lease as of September 30, 2012, damages suffered by the Receiver as a result of Advance's alleged breach of the lease, including amounts payable pursuant to the

Lease after the termination thereof, attorneys' fees and costs ("the Contested Amounts").

2.10 All of the documents which evidence the Lease and Guaranty, together with any other documents executed by or among the parties in connection with the Lease and Guaranty, and any and all amendments and modifications thereto, shall be collectively referred to as the "Lease Documents". There are no written or oral agreements concerning or affecting the Lease and the Guaranty, other than the Lease Documents. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Lease Documents. Except for obligations and liabilities owing pursuant to the Lease Documents, this Agreement shall not affect liabilities and obligations owed by Advance or the Guarantors to any Receivership Entity, if any. As of the execution of this Agreement, the Parties are not aware of any such obligations or liabilities.

2.11 The Parties desire to resolve their disputes and claims arising out of the Lease and the Guaranty, including claims for the Contested Amounts without litigation.

### **3. Covenants**

Based on the recitals set forth above, and in consideration of the promises contained herein, the Parties agree as follows:

3.1 B. Rao and V. Rao each agree to pay the amount of \$20,000 (the "Settlement Amount") to the Receiver in installments, pursuant to the schedule attached hereto as Exhibit "C" and incorporated herein by reference. The Settlement Amount shall be made in monthly installments on the tenth day of each month, as described more particularly in the above-referenced schedule, to the Receiver at the following address: 501 W. Broadway, Suite 800, San Diego, CA 92101. The obligations of B. Rao and V. Rao to make the settlement payments referenced herein are independent of each other and a breach by one of them shall not be considered a breach by the other with respect to the other's obligations hereunder.

3.2 B. Rao agrees to confess to judgment in the increased amount of \$25,000, in the form of the Confession of Judgment Statement and Declaration attached hereto as Exhibit "D" and hereby incorporated by reference ("B. Rao Confession of Judgment"). In the event of a default under this Agreement by B. Rao, the Receiver shall have the absolute right to have judgment entered against B.



Rao ("B. Rao Judgment") pursuant to the B. Rao Confession of Judgment, less any payments made, and the Receiver shall be entitled to immediately execute on the B. Rao Judgment.

3.3 V. Rao agrees to confess to judgment in the increased amount of \$25,000, in the form of the Confession of Judgment Statement and Declaration attached hereto as Exhibit "E" and hereby incorporated by reference ("V. Rao Confession of Judgment"). In the event of a default under this Agreement by V. Rao, the Receiver shall have the absolute right to have judgment entered against V. Rao ("V. Rao Judgment") pursuant to the V. Rao Confession of Judgment, less any payments made, and the Receiver shall be entitled to immediately execute on the V. Rao Judgment.

3.4 Subsequent to the execution of this Agreement by all Parties, the Receiver will immediately seek court approval of the terms of this Agreement in the Receivership Action. It is specifically understood and agreed that the operation and effectiveness of this Agreement is conditioned upon, and subject to, court approval evidenced by an Order approving the terms of this Agreement.

3.5 All representations made by Advance and the Guarantors to the Receiver in connection with this Agreement including, but not limited to, all representations regarding Advance's and the Guarantors' financial status, were true and correct as of the date made. All representations and warranties provided herein shall survive the execution hereof and performance hereunder.

3.6 In the event the Receiver is required to disgorge, repay and/or restore any transfer, sum, or other consideration given to the Receiver under the terms of this Agreement, or upon advice of counsel is advised to do so as a result of, or by virtue of any proceeding under the United States Bankruptcy Code, or if any transfer, sum or other consideration given to the Receiver is subsequently declared to be "fraudulent" within the meaning of any state or federal law relating to fraudulent conveyances or preferences or otherwise avoidable or recoverable, in whole or in part, for any reason whatsoever under the United States Bankruptcy Code or any other state or federal law (collectively "Voidable Transfer"), then as to any Voidable Transfer and/or sums disgorged, repaid and/or restored, the liability of the party from whom the consideration was received shall automatically be revived, reinstated and restored and shall exist as though such Voidable Transfer never had been made, and the Receiver shall be entitled to, and shall have a valid, undisputed, and liquidated claim in said bankruptcy proceeding in the Settlement Amount.

3.7 Except for the obligations created by this Agreement, the Receiver for himself and for CP15, and for each and all of its shareholders, partners, parents, subsidiaries, assignees, and successors, and for all others claiming through or under it (collectively "the Lessor Releasors"), hereby irrevocably and unconditionally remise, release, acquit, absolve and forever discharge Advance and the Guarantors, and each and all of their past or present predecessors, successors, members, parents, subsidiaries, shareholders, affiliates, divisions, heirs, executors, administrators, agents, representatives, consultants, servants, directors, trustees, officers, attorneys, employees, and insurers (collectively "the Lessee Releasees") of and from any and all manner of actions, causes of action, in law or in equity, debts, contracts, charges, complaints, claims, suits, damages, obligations, promises, agreements, controversies, losses, costs, judgments, or expenses (including attorney's fees and court costs), of any nature whatsoever, known or unknown, fixed or contingent, direct or derivative, subrogated or assigned, suspected or unsuspected, which the Lessor Releasors have or may have, or which the Lessor Releasors at any time heretofore had or claimed to have, or which Lessor Releasors at any time hereafter may have or claim to have, against any of the Lessee Releasees based upon or arising out of all acts and omissions of the Lessee Releasees related to the Lease or the Guaranty, including claims for the Contested Amounts.

3.8 Except for the obligations created by this Agreement, Advance and the Guarantors, for themselves, and for each and all of their shareholders, partners, parents, subsidiaries, assignees, and successors, and for all others claiming through or under them (collectively "the Lessee Releasors"), hereby irrevocably and unconditionally remise, release, acquit, absolve and forever discharge the Receiver and CP15, and each and all of its past or present predecessors, successors, members, parents, subsidiaries, shareholders, affiliates, divisions, heirs, executors, administrators, agents, representatives, consultants, servants, directors, officers, attorneys, employees, and insurers (hereinafter collectively "the Lessor Releasees") of and from any and all manner of actions, causes of action, in law or in equity, debts, contracts, charges, complaints, claims, suits, damages, obligations, promises, agreements, controversies, losses, costs, judgments, or expenses (including attorney's fees and court costs), of any nature whatsoever, known or unknown, fixed or contingent, direct or derivative, subrogated or assigned, suspected or unsuspected, which the Lessee Releasors has or may have, or which the Lessee Releasors at any time heretofore had or claimed to have, or which Lessee Releasors at any time hereafter may have or claim to have, against any of the Lessor Releasees based upon or arising out of all acts and omissions of the Lessor

Releasees related to the Lease or the Guaranty, including claims for the Contested Amounts.

3.9 The Parties hereto, and each of them, hereby expressly waive all rights or benefits which they now have, or in the future may have, under Section 1542 of the California Civil Code, and any law or principle of similar effect of any state or territory of the United States. Section 1542 of the California Civil Code reads as follows:

“Section 1542. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

3.10 The Parties hereto hereby acknowledge that they are aware that they may hereafter discover facts in addition to or different from those which they now know or believe to exist with respect to the matters covered by this Agreement. The Parties hereto also acknowledge that such different or additional facts, if they exist, may have given or may hereafter give rise to causes of action, claims, demands, controversies, damages, costs, and expenses which are presently unknown, unanticipated, and unsuspected. The Parties hereto further agree, represent, and warrant that the releases contained herein have been negotiated and agreed upon in light of that realization, and that it is their intention through this Agreement, and with the advice of counsel, fully, finally, and forever to settle and release to the fullest extent permitted by law any and all possible claims, causes of action, disputes, and differences, known or unknown, suspected or unsuspected, arising out of the facts, events, or circumstances underlying the Lease and the Guaranty. In furtherance of such intention, the Parties agree that the releases contained in this Agreement will remain in effect and will be fully binding notwithstanding the discovery or existence of any additional or different facts.

3.11 Advance and the Guarantors acknowledge and agree that this Agreement does not modify, waive, or in any way affect any other obligation of any kind to CP 15 or the Receiver, if any, as to any of the Parties to this Agreement. No failure to exercise, nor delay by the Receiver in exercising, any right, power, or privilege hereunder shall preclude any other or further exercise thereof, or the exercise of any other right, power, or privilege. Except as otherwise set forth herein, Advance and the Guarantors acknowledge and agree that the Receiver's agreement to release Advance and the Guarantors as provided herein is

not, and shall not, be deemed a waiver of any of the Receiver's other rights against any other persons or entities.

#### **4. Miscellaneous**

4.1 Each party to this Agreement agrees to do all things necessary or convenient to carry out or effectuate the terms and intent of this Agreement. Each and every provision hereof requiring a party to do a certain act, however expressed, shall include the obligation of such party not to take directly or indirectly, any action or do any act, or aid, assist or cooperate with any third party in the taking of any action or in the doing of any act, that would tend to defeat in any way the intent of this Agreement.

4.2 This Settlement Agreement has been delivered and accepted and deemed to have been made in San Diego County, California. This Settlement Agreement shall, in all respects, be interpreted, enforced and governed by and under the laws of the State of California. This Settlement Agreement is deemed to have been jointly prepared by the Parties, and any uncertainty or ambiguity existing herein shall not be interpreted against any of the other Parties, but according to the application of the rules of interpretation of contracts, if any such uncertainty or ambiguity exists. In the event that any suit or action is brought to enforce any of the provisions of this Settlement Agreement or to interpret same, the venue will be any court of competent jurisdiction sitting in San Diego County, California.

4.3 This Agreement is the entire agreement between the Parties and supersedes any and all other agreements, understandings, negotiations or discussions, either oral or in writing, express or implied, between the Parties concerning settlement. The Parties to this Agreement each acknowledge that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by them or any of them, or anyone acting on their behalf which are not embodied in this Agreement, that they have not executed this Agreement in reliance on any representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement or warranty not contained in this Agreement, including, without limitation, any purported supplements, modifications, waivers or terminations of this Agreement shall be valid or binding, unless executed in writing by all of the Parties to this Agreement.

4.4 This Agreement may be executed in one or more counterparts including facsimile copies, each of which when executed and delivered shall be



considered an original, and all of which when executed shall constitute one and the same instrument. A signature transmitted by facsimile or electronic mail shall be as binding and effective as an original. Moreover, photocopies of this Agreement, including photocopies of the signature pages hereof, may be used as originals, in the absence of any bona fide challenge to their authenticity.

4.5 The Parties to this Agreement, and each of them, represent and warrant that none of the claims or rights purported to be released herein has previously been assigned, expressly or impliedly, or otherwise transferred to any other person or entity, including by way of subrogation or operation of law.

4.6 The provisions of this Agreement shall be deemed severable and the invalidity of unenforceability of any one or more of the provisions hereof shall not affect the validity and enforceability of the other provisions hereof.

4.7 This Agreement shall inure to the benefit of and bind the successors, assigns, heirs, executors, and administrators of the Parties.

4.8 Each person signing this Agreement on behalf of a party hereto warrants and represents that he or she is duly authorized to execute this Agreement and the Parties hereto so stipulate.

4.9. The Parties hereto acknowledge and represent that they (a) have fully and carefully read this Agreement prior to execution, (b) have been fully apprised by attorneys of their choice of the legal effect and meaning of this Agreement, including all terms and conditions hereof and thereof, (c) to the extent they have deemed it appropriate, have had the benefit of and relied upon counsel of their choice for any legal or financial advice relative to entering into this Agreement and agreeing to the terms hereof, (d) have had the opportunity to make whatever investigation or inquiry they deemed necessary or appropriate in connection with the subject matters of this Agreement, and (e) have been afforded the opportunity to negotiate as to any and all terms hereof.

4.10 In the event that any Party hereto shall institute any action or proceeding to enforce, construe, or interpret any rights granted hereunder, the prevailing Party in such action or proceeding shall be entitled, in addition to any other relief granted by the Court or other applicable judicial body, to reasonable attorneys' fees and court costs.

4.11 For the purposes of interpretation of this Agreement, it is specifically agreed by the Parties hereto that it shall be assumed that the Parties drafted each provision of this Agreement.

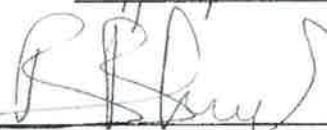
Dated: \_\_\_\_\_

Advance Desert Sleep Center LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: 4/29/13

  
\_\_\_\_\_  
Bobby Bhasker-Rao, M.D., an individual

Dated: \_\_\_\_\_

\_\_\_\_\_  
Venkatasvara Rao, an individual

Dated: \_\_\_\_\_

\_\_\_\_\_  
Thomas C. Hebrank, Court Appointed Permanent Receiver for Copeland Properties Fifteen, L.P.

agreed by the Parties hereto that it shall be assumed that the Parties drafted each provision of this Agreement.

Dated: 4/30/13

Advance Desert Sleep Center LLC

By: Vaishali Venkatasvara Rao  
Its: member.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Bobby Bhasker-Rao, M.D., an individual

Dated: 4/30/13

Vaishali Rao  
Venkatasvara Rao, an individual

Dated: \_\_\_\_\_

\_\_\_\_\_  
Thomas C. Mcbrank, Court Appointed Permanent Receiver for Copeland Properties Fifteen, L.P.

EXHIBIT A





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 May 1, 2011  
is made by and between Copeland Properties Fifteen, L.P.

("Lessor")

and Advance Desert Sleep Center, LLC.

("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  
usable square feet ("Premises"). The Premises are located at: 35 000 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) Assigned Space # 15.

1.3 Term: Five (5) years and 0 months ("Original Term") commencing  
May 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  
May 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 16, 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 5.1  
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: \$5,939.62 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  
☐ 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 \_\_\_\_\_ % 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.

INITIALS

PAGE 1 OF 14

INITIALS

1.11 Guarantor. The obligations of the Lessee under this Lease shall be guaranteed by Venkatasvara Rao and Dr.  
Bobby Blasker Rao ("Guarantor"). (See also Paragraph 37)

1.12 Business Hours for the Building: 6:00 a.m. to 6:00 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  
observation of New Year's Day, Presidents 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 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 40), 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 8 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 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.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.1 **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.

3.2 **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.

3.3 **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, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;
  - (bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, communication systems and other equipment used in common by, or for the benefit of, lessees or occupants of the Project, including elevators and escalators, tenant directories, fire detection systems including sprinkler system maintenance and repair.
  - (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



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an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual 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.

(a) 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 person 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

  
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investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(a)) 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), 5 (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

  
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Paragraph 26 below.

**8. Insurance; Indemnity.**

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

**8.2 Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. 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-tenant, 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.**



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9.1 Definitions.

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

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

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

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

(e) "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, 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 it 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 50 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 in lieu thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

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

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

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

10. Real Property Taxes.

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

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

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

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

10.5 Personal Property Taxes. Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned



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

11. Utilities and Services.

11.1 Services Provided by Lessor. Lessor shall provide heating, ventilation, air conditioning, reasonable amounts of electricity for normal lighting and office machines, water for reasonable and normal drinking and lavatory use in connection with an office, and replacement light bulbs and/or fluorescent tubes and ballasts for standard overhead fixtures. Lessor shall also provide janitorial services to the 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 specialty 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, i.e. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Default; Breach; Remedies.

13.1 Default; Breach. A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants,

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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 (a) 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 have been 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 relisting, 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 (ii) 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

  
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diligently pursued to completion.

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

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

15. **Brokerage Fees.**

15.1 **Additional Commission.** 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



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requiring such consent.

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

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

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

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

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

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



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adverse effect to Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee. In addition, Lessor shall have the right to retain keys to the Premises and to unlock all doors in or upon the Premises other than to files, vaults and safes, and in the case of emergency to enter the Premises by any reasonably appropriate means, and any such entry shall not be deemed a forcible or unlawful entry or detainer of the Premises or an eviction. Lessee waives any charges for damages or injuries or interference with Lessee's property or business in connection therewith.

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

34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. 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 Eschoppel 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 easements, so long as such easements, rights, dedications, maps, restrictions, and utility easements 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" within 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

  
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typewritten or handwritten provisions.

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

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

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

48. 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: Redlands, CA

Executed at: Rancho Mirage, CA

On: May 1, 2011

On: May 1, 2011

By LESSOR:

By LESSEE:

Copeland Properties Fifteen, L.P.

Advance Desert Sleep Center, LLC

By:

By:

Name Printed: Donald E. Copeland

Name Printed: Venkatasvara Rao

Title: Managing Partner

Title:

By:

By:

Name Printed:

Name Printed:

Title:

Title:

Address: 25809 Business Center Drive

Address: 1690 Barton Road

Suite F

Suite 107

Redlands, CA 92374

Redlands, CA 92373

Telephone: (909) 799-8565

Telephone: (909) 954-7753

Facsimile: (909) 799-8566

Facsimile: (909) 335-5446

Email: dave@copelandwealth.com

Email:

Email:

Email:

Federal ID No. 20-5056604

Federal ID No. 45-3423858

LESSOR'S BROKER:

LESSEE'S BROKER:

Attn:

Attn:

Title:

Title:

Address:

Address:

Telephone: ( )

Telephone: ( )

Facsimile: ( )

Facsimile: ( )

Email:

Email:

Federal ID No.

Federal ID No.

Broker/Agent DRE License #:

Broker/Agent DRE License #:



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FORM MT0N-7-03/10E



**RENT ADJUSTMENT(S)**  
**STANDARD LEASE ADDENDUM**

Dated May 1 2011

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

(Lessee) Advance Desert Sleep Center, LLC.

Address of Premises: 35-300 Bob Hope Dr., Suite 110  
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)):

The New Base Rent shall be:

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

\$1,949.06 per Month (5% Incr)  
\$2,046.52 per Month (5% Incr)  
\$2,148.94 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) 687-8816.

  
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## OPTION(S) TO EXTEND STANDARD LEASE ADDENDUM

Dated May 1, 2011

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

By and Between (Lessee) Advance Desert Sleep Center, LLC.

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

### Paragraph 5.2

#### 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).  
(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

INITIALS

PAGE 1 OF 2

INITIALS

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, 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, 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 Broker 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) 687-8816.



INITIALS

PAGE 2 OF 2

INITIALS

# EXHIBIT B



## 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 concerning the premises commonly  
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 herein 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 fully 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 CNM Real Estate  
On: May 1, 2011  
Address: 35 900 Bob Hope Drive, # 210  
Rancho Mirage, CA 92270

Venkatasvara Rao  
Bobby Bhasker Rao

\_\_\_\_\_  
"GUARANTORS"



**Exhibit C**

**EXHIBIT "C"**

1. Bobby Bhasker-Rao, M.D.: Dr. Rao will pay a total of \$20,000 to Mr. Hebrank, the Receiver for Copeland Properties 15, L.P. ("the Receiver"), in monthly installments of \$1,000. Dr. Rao will pay \$1,000 to the Receiver immediately upon his receipt of a copy of this Agreement, which has been executed by the Receiver, and will pay \$1,000 on the tenth day of each following month for nineteen months resulting in a total of twenty payments of \$20,000.

2. Venkatasvara Rao: Mr. Rao will also pay a total of \$20,000 to the Receiver in monthly installments. Mr. Rao will pay \$750 to the Receiver immediately upon his receipt of a copy of this Agreement, which has been executed by the Receiver, and will pay \$750 per month on the tenth day of the month for eleven months thereafter resulting in payments totaling \$8,000 during the above-described twelve months. Thereafter, Mr. Rao will increase the amount of his monthly payments to \$1,000 for twelve additional months.

**EXHIBIT D**

1 Everett G. Barry, Jr., CSB #053119  
Toby S. Kovalivker, CSB #234386  
2 MULVANEY BARRY BEATTY LINN & MAYERS LLP  
401 West A Street, 17th Floor  
3 San Diego, CA 92101-7994  
Telephone: 619 238-1010  
4 Facsimile: 619 238-1981

5 Attorneys for Plaintiff Thomas C. Hebrank,  
Court Appointed Permanent Receiver for  
6 Copeland Properties Fifteen, L.P.

7  
8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 In the Matter of the Confession of  
Judgment by

CASE NO.

11 Bobby Bhasker-Rao, an individual

**CONFESSION OF JUDGMENT  
STATEMENT**

12 Defendant,

13 In Favor of

**[CCP SECTION 1132]**

14 Thomas C. Hebrank, Court Appointed  
15 Permanent Receiver for Copeland  
Properties Fifteen, L.P.,

16 Plaintiff.  
17

18 I, Bobby Bhasker-Rao, ("Defendant"), hereby confesses to judgment in the  
19 above-entitled cause in favor of Plaintiff Thomas C. Hebrank, Court Appointed  
20 Permanent Receiver for Copeland Properties Fifteen, L.P. ("Receiver"), and authorize  
21 entry of judgment against me as provided herein.

22 This Confession of Judgment is for a commercial debt justly due to Copeland  
23 Properties Fifteen, L.P. ("CP 15") arising out of a lease by CP 15 to Advanced Desert  
24 Sleep Center, LLC ("Borrower") and is evidenced, in part, inter alia, by an AIR  
25 Commercial Real Estate Association Standard Multi-Tenant Office Lease dated May 1,  
26 2011 ("Lease"). As part of the consideration for the Lease, and pursuant to the terms of  
27 an AIR Commercial Real Estate Association Guaranty of Lease dated May 1, 2011, I  
28 guaranteed the payment by Borrower to CP 15 of all rents and all other sums payable



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

1 by Borrower to CP 15 under the Lease (the "Guaranty"). Borrower defaulted on the  
2 Lease by failing to make payments as required by its terms.

3 Pursuant to that certain Settlement Agreement and Mutual Release entered into  
4 as of April 17, 2013 by and among the Receiver, Borrower and myself (the  
5 "Agreement"), I agreed and acknowledged, inter alia, that I am liable to the Receiver  
6 pursuant to the terms of the Guaranty for all sums due to CP 15 under the Lease.  
7 Pursuant to the Agreement, I agreed, inter alia, to confess to judgment ("Judgment")  
8 and that the Judgment shall be entered against me upon the occurrence of an Event of  
9 Default as defined in the Agreement ("Event of Default"). Therefore, upon the  
10 occurrence of an Event of Default, this Statement shall be filed, and the Judgment shall  
11 be entered, against me in the amount of \$25,000.00, less any payments made.

#### 12 VERIFICATION

13 I, Bobby Bhasker-Rao, individually, a Defendant in the above-entitled cause,  
14 have read the foregoing Confession of Judgment Statement and know the contents  
15 thereof. The facts in the Confession of Judgment Statement are true of my own  
16 knowledge.

17 I declare under penalty of perjury under the laws of the State of California that the  
18 foregoing is true and correct, and that this Declaration was executed on April 29,  
19 2013, at Riverside, California.

20   
21 By: Bobby Bhasker-Rao

22  
23 HEBCO.135.446598.1

1 Everett G. Barry, Jr., CSB #053119  
Toby S. Kovalivker, CSB #234386  
2 MULVANEY BARRY BEATTY LINN & MAYERS LLP  
401 West A Street, 17th Floor  
3 San Diego, CA 92101-7994  
Telephone: 619 238-1010  
4 Facsimile: 619 238-1981

5 Attorneys for Plaintiff Thomas C. Hebrank,  
Court Appointed Permanent Receiver for  
6 Copeland Properties Fifteen, L.P.

7  
8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 In the Matter of the Confession of  
Judgment by

CASE NO.

11 Bobby Bhasker-Rao, an individual,  
12 Defendant,

**ATTORNEY'S DECLARATION IN  
SUPPORT OF CONFESSION OF  
JUDGMENT STATEMENT**

13 In Favor of

**[CCP SECTION 1132]**

14 Thomas C. Hebrank, Court Appointed  
15 Permanent Receiver for Copeland  
Properties Fifteen, L.P.,

16 Plaintiff.  
17

18 I, Marshall Brubacher, declare:

19 I am an attorney at law duly admitted to practice before all the courts in the State  
20 of California and the attorney herein for Bobby Bhasker-Rao, an individual, the party  
21 confessing Judgment in the above-entitled cause ("Defendant").


22 I further declare that I have examined the proposed Judgment and have advised  
23 the Defendant with respect to the waiver of rights and defenses under the confession of  
24 judgment procedure and have advised the Defendant to utilize the confession of  
25 judgment procedure.

26 ///

27 ///

28 ///

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct and that this Declaration was executed on April 30,  
3 2013 at San Bernardino, California.

4   
5 Marshall Brubacher, Esq.  
6 Mundell, Odum & Haws, LLP  
7 650 E. Hospitality Lane, Suite 470  
8 San Bernardino, CA 92408

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HEBCO.135.446693.1

LAW OFFICES  
MULVANEY, BARRY, BEATTY, LINN & MAYERS LLP  
A LIMITED LIABILITY PARTNERSHIP  
SEVENTEENTH FLOOR  
FIRST NATIONAL BANK CENTER  
401 WEST A STREET  
SAN DIEGO, CALIFORNIA 92101-7944  
TELEPHONE 619 238-1010  
FACSIMILE 619 238-1991

# Exhibit E



1 Everett G. Barry, Jr., CSB #053119  
Toby S. Kovalivker, CSB #234386  
2 MULVANEY BARRY BEATTY LINN & MAYERS LLP  
401 West A Street, 17th Floor  
3 San Diego, CA 92101-7994  
Telephone: 619 238-1010  
4 Facsimile: 619 238-1981

5 Attorneys for Plaintiff Thomas C. Hebrank,  
Court Appointed Permanent Receiver for  
6 Copeland Properties Fifteen, L.P.

7  
8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO**

10 In the Matter of the Confession of  
Judgment by

CASE NO.

11 Venkatasvara Rao, an individual

**CONFESSION OF JUDGMENT  
STATEMENT**

12 Defendant,

**[CCP SECTION 1132]**

13 In Favor of

14 Thomas C. Hebrank, Court Appointed  
15 Permanent Receiver for Copeland  
Properties Fifteen, L.P.,

16 Plaintiff.

17  
18 I, Venkatasvara Rao, ("Defendant"), hereby confesses to judgment in the above-  
19 entitled cause in favor of Plaintiff Thomas C. Hebrank, Court Appointed Permanent  
20 Receiver for Copeland Properties Fifteen, L.P. ("Receiver"), and authorize entry of  
21 judgment against me as provided herein.

22 This Confession of Judgment is for a commercial debt justly due to Copeland  
23 Properties Fifteen, L.P. ("CP 15") arising out of a lease by CP 15 to Advanced Desert  
24 Sleep Center, LLC ("Borrower") and is evidenced, in part, inter alia, by an AIR  
25 Commercial Real Estate Association Standard Multi-Tenant Office Lease dated May 1,  
26 2011 ("Lease"). As part of the consideration for the Lease, and pursuant to the terms of  
27 an AIR Commercial Real Estate Association Guaranty of Lease dated May 1, 2011, I  
28 guaranteed the payment by Borrower to CP 15 of all rents and all other sums payable

LAURENCE  
MURRAY, BARRY, BEATTY, LINDA & MAYERS LLP  
ATTORNEYS AT LAW  
SEVENTEENTH FLOOR  
FIRST NATIONAL BANK CENTER  
401 WEST 7th STREET  
SAN DIEGO, CALIFORNIA 92101-7044  
TELEPHONE 619 234-9700  
FACSIMILE 619 234-9901

1 by Borrower to CP 15 under the Lease (the "Guaranty"). Borrower defaulted on the  
2 Lease by failing to make payments as required by its terms.

3 Pursuant to that certain Settlement Agreement and Mutual Release entered into  
4 as of April 17, 2013 by and among the Receiver, Borrower and myself (the  
5 "Agreement"), I agreed and acknowledged, inter alia, that I am liable to the Receiver  
6 pursuant to the terms of the Guaranty for all sums due to CP 15 under the Lease.  
7 Pursuant to the Agreement, I agreed, inter alia, to confess to judgment ("Judgment")  
8 and that the Judgment shall be entered against me upon the occurrence of an Event of  
9 Default as defined in the Agreement ("Event of Default"). Therefore, upon the  
10 occurrence of an Event of Default, this Statement shall be filed, and the Judgment shall  
11 be entered, against me in the amount of \$25,000.00, less any payments made.

#### 12 VERIFICATION

13 I, Venkatasvara Rao, individually, a Defendant in the above-entitled cause, have  
14 read the foregoing Confession of Judgment Statement and know the contents thereof.  
15 The facts in the Confession of Judgment Statement are true of my own knowledge.

16 I declare under penalty of perjury under the laws of the State of California that the  
17 foregoing is true and correct, and that this Declaration was executed on April 30,  
18 2013, at Reedlands, California.

19   
20 By: Venkatasvara Rao

21  
22 HEBCO.135.446442.1

1 Everett G. Barry, Jr., CSB #053119  
Toby S. Kovalivker, CSB #234386  
2 MULVANEY BARRY BEATTY LINN & MAYERS LLP  
401 West A Street, 17th Floor  
3 San Diego, CA 92101-7994  
Telephone: 619 238-1010  
4 Facsimile: 619 238-1981

5 Attorneys for Plaintiff Thomas C. Hebrank,  
Court Appointed Permanent Receiver for  
6 Copeland Properties Fifteen, L.P.

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 In the Matter of the Confession of  
Judgment by

CASE NO.

11 Venkatasvara Rao, an individual,

**ATTORNEY'S DECLARATION IN  
SUPPORT OF CONFESSION OF  
JUDGMENT STATEMENT**

12 Defendant,

13 In Favor of

**[CCP SECTION 1132]**

14 Thomas C. Hebrank, Court Appointed  
15 Permanent Receiver for Copeland  
Properties Fifteen, L.P.,

16 Plaintiff.

17  
18 I, Marshall Brubacher, declare:

19 I am an attorney at law duly admitted to practice before all the courts in the State  
20 of California and the attorney herein for Venkatasvara Rao, an individual, the party  
21 confessing Judgment in the above-entitled cause ("Defendant").


22 I further declare that I have examined the proposed Judgment and have advised  
23 the Defendant with respect to the waiver of rights and defenses under the confession of  
24 judgment procedure and have advised the Defendant to utilize the confession of  
25 judgment procedure.

26 ///

27 ///

28 ///

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct and that this Declaration was executed on April 30,  
3 2013 at San Bernardino, California.

4 

5 Marshall Brubacher, Esq.  
6 Mundell, Odum & Haws, LLP  
7 650 E. Hospitality Lane, Suite 470  
8 San Bernardino, CA 92408

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HEBCO.135.446842.1

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



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

Attorneys for Thomas C. Hebrank,  
Permanent Receiver

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION – LOS ANGELES

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-cv-08607-R-DTB

**NOTICE OF LODGMENT OF  
ORDER APPROVING  
SETTLEMENTS WITH CERTAIN  
NOTES RECEIVABLE ACCOUNT  
DEBTORS**

Date: June 3, 2013

Time: 10:00 a.m.

Ctrm: 8, 2<sup>nd</sup> Floor

Judge: Hon. Manuel L. Real

Mulvaney Barry Beatty Linn & Mayers LLP, counsel for Thomas C. Hebrank ("Receiver"), the court-appointed Permanent Receiver for Copeland Wealth Management, a Financial Advisory Corporation, Copeland Wealth Management, a Real Estate Corporation, and their subsidiaries and affiliates, hereby lodges the following:

///

///

///

(1) Order Approving Settlements with Certain Notes Receivable  
Account Debtors.

Dated: May 3, 2013

MULVANEY BARRY BEATTY LINN &  
MAYERS, LLP

By: /s/ Everett G. Barry, Jr.  
Attorneys for Thomas C. Hebrank,  
Receiver

HEBCO.100.482148.1

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

# Exhibit A

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION – LOS ANGELES

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-cv-08607-R-DTB

**[PROPOSED]**

**ORDER APPROVING  
SETTLEMENTS WITH CERTAIN  
NOTES RECEIVABLE ACCOUNT  
DEBTORS**

Date: April 1, 2013

Time: 10:00 a.m.

Ctrm: 8, 2<sup>nd</sup> Floor

Judge: Hon. Manuel L. Real

The Court, having considered the Motion for Order Approving Settlements with Certain Notes Receivable Account Debtors and supporting documentation by Mulvaney Barry Beatty Linn & Mayers, LLP (“Mulvaney Barry”), counsel for Thomas C. Hebrank (“Receiver”), the court-appointed Permanent Receiver for Copeland Wealth Management, a Financial Advisory Corporation, Copeland Wealth Management, a Real Estate Corporation, and their subsidiaries and affiliates, and any opposition thereto, and good cause appearing

**EXHIBIT A**



therefor,

IT IS HEREBY ORDERED as follows:

1. The following settlements are hereby approved by the Court:
  - a. The settlement between the Receiver, on the one hand, and Notes Receiveable Account Debtors Gina Spraggins, an individual, and Scott Spraggins, an individual (collectively the "Spraggins Debtors"), on the other hand (the "Spraggins Settlement"), regarding a secured obligation owed by the Spraggins Debtors to Copeland Fixed Income Three, L.P., a Receivership Entity;
  - b. The settlement between the Receiver, on the one hand, and Notes Receiveable Account Debtors SoCal Restaurants, LLC, a California limited liability company, Leroy Hansberger, an individual, Jeffrey Hansberger, an individual, and Michael Hansberger, an individual (collectively the "SoCal Debtors"), on the other hand (the "SoCal Settlement"), regarding an unsecured obligation owed by the SoCal Debtors to Copeland Fixed Income Two, L.P., a Receivership Entity; and
  - c. The settlement between the Receiver, on the one hand, and Notes Receiveable Account Debtors Advance Desert Sleep Center, LLC, a California limited liability company, Venkatasvara Rao, an individual, and Bobby Bhasker-Rao, an individual (collectively the "Advance Debtors"), on the other hand (the "Advance Settlement"), regarding an unsecured obligation owed by the Advance Debtors to Copeland Properties Fifteen, L.P., a Receivership Entity.

///

2. The following agreements evidencing the above settlements are hereby approved by the Court:

- a. The Forbearance Agreement attached as **Exhibit "A"** to the Declaration of the Receiver in Support of Motion for Order Approving Settlements With Certain Notes Receiveable Account Debtors;
- b. The Settlement Agreement and Mutual Release attached as **Exhibit "B"** to the Declaration of the Receiver in Support of Motion for Order Approving Settlements With Certain Notes Receiveable Account Debtors; and
- c. The Settlement Agreement and Mutual Release attached as **Exhibit "C"** to the Declaration of the Receiver in Support of Motion for Order Approving Settlements With Certain Notes Receiveable Account Debtors.

**IT IS SO ORDERED.**

**Dated:** \_\_\_\_\_ **Judge, United States District Court**

Submitted by:

MULVANEY BARRY BEATTY LINN & MAYERS LLP

By: /s/ Everett G. Barry, Jr.  
Attorneys for Thomas C. Hebrank, Permanent Receiver

HEBCO.100.482183.1

**EXHIBIT A**

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

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

13 SECURITIES AND EXCHANGE  
14 COMMISSION,

15 Plaintiff,

16 v.

17 CHARLES P. COPELAND, ET  
18 AL.,

19 Defendants.

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

**CERTIFICATE OF SERVICE**

DATE: June 3, 2013

TIME: 10:00 a.m.

Crtrm: 8, 2nd Floor

Judge: Hon. Manuel L. Real

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

23 On May 3, 2013, I served the following documents:

24  
25  
26 **1. NOTICE OF MOTION AND MOTION FOR ORDER APPROVING**  
27 **SETTLEMENTS WITH CERTAIN NOTES RECEIVABLE**  
**ACCOUNT DEBTORS**

28 **2. NOTICE OF LODGMENT OF ORDER APPROVING**

**SETTLEMENTS WITH CERTAIN NOTES RECEIVABLE  
ACCOUNT DEBTORS**

**3. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT  
OF MOTION FOR ORDER APPROVING SETTLEMENTS WITH  
CERTAIN NOTES RECEIVABLE ACCOUNT DEBTORS**

**4. DECLARATION OF THOMAS C. HEBRANK IN SUPPORT OF  
MOTION FOR ORDER APPROVING SETTLEMENTS WITH  
CERTAIN NOTES RECEIVABLE ACCOUNT DEBTORS**

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

**[SEE ATTACHED SERVICE LIST]**

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

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

Executed on May 3, 2013, at San Diego, California.

/s/ Cindy Jennings  
Cindy Jennings



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

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

CHARLES P. COPELAND, ET  
AL.,

Defendants.

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

**CERTIFICATE OF SERVICE**

DATE: June 3, 2013

TIME: 10:00 a.m.

Crtrm: 8, 2nd Floor

Judge: Hon. Manuel L. Real

I, Catherine Nownes-Whitaker, declare that I am over the age of 18 years and not a party to the action. I am employed in the County of San Diego, California, within which county the subject service occurred. My business address is 5955 DeSoto Avenue, Suite 100, Woodland Hills, CA 91367.

On May 3, 2013, I served the following documents:

**1. NOTICE OF MOTION AND MOTION FOR ORDER APPROVING  
SETTLEMENTS WITH CERTAIN NOTES RECEIVABLE  
ACCOUNT DEBTORS**

**2. NOTICE OF LODGMENT OF ORDER APPROVING**

**SETTLEMENTS WITH CERTAIN NOTES RECEIVABLE  
ACCOUNT DEBTORS**

**3. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT  
OF MOTION FOR ORDER APPROVING SETTLEMENTS WITH  
CERTAIN NOTES RECEIVABLE ACCOUNT DEBTORS**

**4. DECLARATION OF THOMAS C. HEBRANK IN SUPPORT OF  
MOTION FOR ORDER APPROVING SETTLEMENTS WITH  
CERTAIN NOTES RECEIVABLE ACCOUNT DEBTORS**

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

**[SEE ATTACHED SERVICE LIST]**

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

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

Executed on   May 3, 2013  , at Woodland Hills, California.

  /s/ Catherine Nownes-Whitaker    
Catherine Nownes-Whitaker

United States District Court Central District of CA 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: 03/20/13

Charles P. Copeland Copeland Group 25809 Business Center Dr., Ste B Redlands, CA 2374	Gregory J. Sherwin Esq. Fields Fehn & Sherwin 11755 Wilshire Blvd 5th Flr Los Angeles, CA 90025-1521	One West Bank 888 East Walnut St Pasadena, CA 91101
Michael T. O'Callaghan Esq. Mark J. Furuya Esq. Sabaitis O'Callaghan LLP 975 E. Green St Pasadena, CA 1106	Flagstar Bank Mail-Stop W-205-2 5151 Corporate Dr. Troy, MI 48098	Dana Leigh Ozols Esq. The Wolf Firm A Law Corporation Attys to Financial Services Industry 2955 Main St 2 <sup>nd</sup> Flr Irvine, CA 92614
Wells Fargo Commercial Mortgage Attn: Ken Murray 1901 Harrison St 7th Flr Oakland, CA 94612	LNR (loan servicer) Attn: Jorge Rodriguez 1601 Washington Ave 7th Flr Miami, FL 33139	C-III Asset Management LLC Attn: Kathy Patterson 5221 N. O'Connor Blvd Ste. 600 Irving, TX 75039
Home Savings & Loan Attn: Dan NY White 275 W. Federal St Youngstown, OH 44503	Wells Fargo Commercial Mortgage Servicing 1901 Harrison St 7 <sup>th</sup> Flr Oakland CA 94612	Andrew J. Haley, Esq. Greenwald Pauly Foster & Miller P.C. 1299 Ocean Ave. Ste 400 Santa Monica, CA 90401-1007
Pamela Wachter McAfee Nelson Mullins Riley & Scarborough LLP GlenLake One Ste 200 4140 Parklake Ave Raleigh, NC 27612	Anh T. Nong & Nhon Nguyen TTEE Pen 209 E. Sunset Dr South Redlands, CA 92373	Barbara Whan 33861 Plumtree Ln Yucaipa, CA 92399
Adele M. Hansen 6609 Summertrail Place Highland, CA 92346	Robert & Gladys Mitchell 11761 Almond Court Loma Linda, CA 92354	Betty Markwardt 1220 West 4th St Anaconda, MT 59711
Barbara Z. Stahr 667 Gull Dr. Bodega Bay, CA 94923	Carol P. Lowe 1837 Onda Dr. Camarillo, CA 93010	Charles Grey 63 Turnbury Ln. Irvine, CA 92620
Carol Docis Brokerage A/C 18028 W. Kenwood Ave. Devore, CA 92407	Richard Neal 7322 Starboard St. Carlsbad, CA 92011	Charles Schwab FBO Robert Howard IRA 502 Avenida La Costa San Clemente, CA 92672
Charles Schwab FBO Melvyn B. Roth IRA 5401 Lido Sands Dr Newport Beach, CA 92663-2204	Bonnie Kilmer 5120 Breckenridge Ave Banning, CA 92220	William F Davis Re: Floyd N. Andersen Highway 111 #9-472 La Quinta, CA 92253
Charles Schwab FBO Irena Sniecinski IRA P.O. Box 161680 Big Sky, MT 59716-1680	Maria Perez 1364 Aurora Ln San Bernardino, CA 92408	Geoffrey A. Gardiner 11535 Acacia St Loma Linda, CA 92354
Fred & Joyce Dimmitt 321 Myrtlewood Dr Calimesa, CA 92320	Charles Schwab FBO Melvyn Ross Roth IRA 5401 Lido Sands Dr Newport Beach, CA 92663	Charles Schwab FBO Janet Ihde IRA 35-800 Bob Hope Dr Ste 225 Rancho Mirage, CA 92270
Charles Schwab FBO Janet K. Ihde IRA P.O. Box 2131 Palm Springs, CA 92263	Charles Schwab FBO Kirk Howard Roth IRA 1648 Woodlands Rd Beaumont, CA 92223	Charles Schwab FBO Leonard F. Neumann IRA 30176 Live Oak Canyon Rd Redlands, CA 92373
Charles Schwab FBO Albert IRA 232 Anita Court Redlands, CA 92373	Charles Schwab FBO Angela Ellingson IRA 1155 Dysart Dr Banning, CA 92220	Charles Schwab FBO Harold Racine IRA 1408 S. Center St Redlands, CA 92373

Charles Schwab FBO Donald I. Peterson IRA Rollover 11075 Benton Street, Apt. 224 Loma Linda, CA 92354	Charles Schwab FBO Janet Ihde IRA P.O. Box 2131 Palm Springs, CA 92263	Charles Schwab FBO Kirk Howard IRA 1648 Woodlands Rd Beaumont, CA 92223
Charles Schwab FBO Janet Ihde 74-785 Hwy 111 Wall St W, Bldg #102 Indian Wells, CA 92210	Charles Schwab FBO Melvyn Ross Roth IRA 5401 Lido Sands Dr Newport Beach CA 92663	Charles Schwab FBO Richard Paul Blandford Roth IRA 7838 Valmont St Highland, CA 92346
Charles Schwab FBO Karl Phillips Roth IRA 27878 Via Sarasate Mission Viejo, CA 92692	Jacobson Trust 384 Mesa Verde Park Beaumont, CA 92223	Christi C. Higdon 11331 Sundance Lane Boca Raton, FL 33428
Robert & Enid McColloch 5520 Apple Orchard Ln. Riverside, CA 92506	J. Jay & Theresa Whan 30660 Susan Dr. Cathedral City, CA 92234	Clem M. McColloch Trust 5520 Apple Orchard Ln. Riverside, CA 92506
Christine Coffman 11331 Sundance Lane Boca Raton, FL 33428	Cinque Family Trust 36261 Chaparral Court Yucaipa, CA 92399	David Ziilch Trust 941 Kensington Dr Redlands, CA 92374
Cynthia Healy 2560 Gorden Rd. Ste 201-A Monterey, CA 93942	David Conston 417 Chino Canyon Palm Springs, CA 92262	Dusty Bricker 28 Ave At Port Imperial #220 West New York, NJ 07093
Diana M. Weed 1339 Wallach Place NW Washington, DC 20009	Dotan Family Trust 1618 Woodlands Beaumont, CA 92228	Elena Nizzia 1155 Dysart Dr. Banning, CA 92220
Earl R. Schamehorn Jr. 1721 Valley Falls Ave Redlands, CA 92374	Eddie & Jamie Dotan 20 Fairlee Terrace Waban, MA 02468	Gordon & Myra Peterson 118 Edgemont Dr. Redlands, CA 92373
Fred & Elaine Hollaus 1096 Deer Clover Way Castle Pines, CO 80108-8271	James Powell 12535 Redstone Circle Yucaipa, CA 92399	James R. Watson MD Inc. Profit Sharing Plan 259 Terracina Blvd Redlands, CA 92373
Henry W. Shelton 805 Nottingham Dr Redlands, CA 92373	Jessie Coleen Birch Revocable Trust 1948 Cave St Redlands, CA 92374	Jill A. Meader Revocable Trust 27250 Nicolas Rd Apt. A231 Temecula, CA 92591
Hu Tongs Inc. 16127 Kasota Rd Ste 105 Apple Valley, CA 92307	JRT Revocable Trust Jon Taylor Trustee P.O. Box 681 Calimesa, CA 92320	Kasota Group 279 Green Mountain Palm Desert, CA 92211
James P. Gerrard 1562 Lisa Ln. Redlands, CA 92374	Kathleen R. Wright 3605 Bonita Verde Dr Bonita CA 91902	Katie Hernandez P.O. Box 8874 Redlands CA 92375
Jean Seyda 168 Lakeshore Dr Rancho Mirage CA 92270	Robert Casady 14047 Pamlico Rd Apple Valley CA 92307	Jon J. Whan 30660 Susan Dr Cathedral City CA 92234
Joe Pinkner 279 Green Mountain Palm Desert CA 92211	Leonard F. Neumann 30176 Live Oak Canyon Rd Redlands CA 92373	Leslie G. Laybourne 11050 Bryant St Space 276 Yucaipa CA 92399
Joseph Dotan 1618 Woodlands Beaumont CA 92228	Louise Coffman 19291 Sabal Lake Dr Boca Raton FL 33434	Luckey Charitable Trust 8531 Glendale Rd Hesperia CA 92345
Kathi Seegraves 20521 Whitstone Circle Bend OR 97702	Margarita Estrada Perez P.O. Box 370 Chino CA 91708	Marjorie Hatfield Living Trust (Peggy Neumann) 30176 Live Oak Canyon Rd Redlands CA 92373
Khari Baker 27878 Via Sarasate Mission Viejo CA 92692	Mary Margaret Hasy Revocable Trust 6609 Summer Trail Place Highland CA 92346	Melvyn & Ruth Ross 5401 Lido Sands Dr. Newport Beach CA 92663
Smith Revocable Trust Lenna Smith 38367 Cherrywood Dr Murrieta CA 92562	Neal & Ruth Bricker Family Trust 985 S Orange Grove Blvd Unit 101 Pasadena CA 91105	Neal Living Trust 7322 Starboard St Carlsbad CA 92011



Lillian N. Franklin 740 E. Avery St San Bernardino CA 92404	Ngyuen & Nong Pension Plan 209 East Sunset Dr South Redlands CA 92373	Patrice A. Milkovich 3605 Bonita Verde Dr Bonita CA 91902
Manley J. Luckey 8531 Glendale Rd Hesperia CA 92345	Peggy Hatfield Neumann 30176 Live Oak Canyon Rd Redlands CA 92373	Perez Family Survivors Trust 13219 Pipeline Ave Chino CA 91710
Mark & Barbara Carpenter 35571 Sleepy Hollow Rd Yucaipa CA 92399	Peterson Revocable Living Trust 11075 Benton Street, Apt. 224 Loma Linda CA 92354	Pinkner Family Trust 279 Green Mountain Palm Desert CA 92211
Neonatology Medical Group Inc. Retirement Plan 731 Buckingham Dr Redlands CA 92374	Ron Mitchell 12033 Fourth St Yucaipa CA 92399	Samuel D. Gregory 4432 Strong St Riverside CA 92501
Paul Family Trust P.O. Box 7357 Redlands CA 92375	Schachtel Family Trust 6 Strauss Terrace Rancho Mirage CA 92270	Steele Family Trust 26858 Calle Real Capistrano Beach CA 92624
Perry Damiani 16127 Kasota Rd Ste 105 Apple Valley CA 92307	Taber Family Trust 1475 Crestview Rd Redlands CA 92374	TD Ameritrade FBO Steven IRA 14424 Greenpoint Ln Huntersville NC 28078
Rhonda Dean 1705 Antho NY Ave Cottage Grove OR 97424	Donna Wooley 12721 Columbia Ave Yucaipa CA 92399	TD Ameritrade FBO Betty Markwardt IRA 1220 West 4th St Anaconda MT 59711
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Sandra And Perry Hayes 111 E. Sunset Dr South Redlands CA 92373	Jennifer Smith 38367 Cherrywood Dr Murrieta CA 92562	TD Ameritrade FBO Eddie Dotan Rollover IRA 20 Fairlee Terrace Waban MA 02468
Stahr Living Trust 667 Gull Dr Bodega Bay CA 94923	TD Ameritrade FBO Joseph Dotan IRA 1618 Woodlands Rd Beaumont CA 92223	The Bork Family Trust 24968 Lawton Ave Loma Linda CA 92357
TD Ameritrade FBO Charles Grey IRA 63 Turnbury Ln Irvine CA 92620	Ziilch Family Trust 667 Gull Dr Bodega Bay CA 94923	Thomas Phillips 1582 Huckleberry Ln San Luis Obispo CA 93401
TD Ameritrade FBO Jill Meader IRA 27250 Nicolas Rd Apt. A231 Temecula CA 92591	William & Marion Conley 376 Franklin Ave Redlands CA 92373	Ziilch Bypass Trust 667 Gull Dr Bodega Bay CA 94923
TD Ameritrade FBO Stephen Weiss IRA Rollover 109 Midland Rd. Charlestown RI 02813	Louis G. Fournier III The Sutton Companies 525 Plum St., Ste 100 Syracuse NY 13204	Debra B. Gervais Law Office of Debra B. Gervais 302 West South Ave Redlands CA 92373
TD Ameritrade FBO Ehud Dotan IRA 20 Fairlee Terrace Waban WA 02468	Michael S. Leib Maddin Hauser Wartell Roth & Heller PC Third Flr Essex Centre 28400 Northwestern Highway Southfield MI 48034-8004	Rollie A. Peterson Esq. Peterson & Kell 2377 Gold Meadow Way Ste 280 Gold River, CA 95670
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The Peterson Revocable Living Trust 11075 Benton Street, Apt. 224 Loma Linda, CA 92354	Judy Racine 1408 S. Center St Redlands CA 92373	William & Dolores McDonald 1354 Rhonda Ln Redlands, CA 92373
Timothy C. Weed 133 E. Palm Ln Redlands, CA 92373	Norman & Lois Smith 36135 Golden Gate Dr. Yucaipa CA 92399	Brian & Sheri Branson 302 W. South Ave Redlands, CA 92373

David Holden 555 W. Redlands Blvd Redlands, CA 92373	Chris Condon 1334 Susan Ave Redlands, CA 92374	Mark Edwards P.O. Box 9058 Redlands, CA 92346
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Harold Raune Richard D. McCune Jr. McCune Wright LLP 2068 Orange Tree Ln., Ste 216 Redlands, CA 92374	Karl Schamehorn 1005 Hamlin Place Redlands, CA 92373	John Coombe 5 First American Way 4 <sup>th</sup> Flr Santa Ana, CA 92707
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Suzane L. Bricker 1444 W. 11th St Upland CA 91786	Dusty Bricker 241 W. 97 <sup>th</sup> St #14M New York NY 10025	Klaus K.A. Kuehn 3404 Beverly Dr San Bernardino CA 92405
Wright Family Living Trust 111 Sierra Vista Dr Redlands CA 92373	Stewart R. Wright 111 Sierra Vista Dr Redlands CA 92373	Higdon Revocable Trust 29107 Guava Ln Big Pine Key FL 33043
Weed Family Living Trust c/o Cathy or Stephen Weed 62 Rue Jean Baptiste Pigalle Paris FC 75010	Susan Wright 111 Sierra Vista Dr Redlands CA 92373	Vellore G. Muraligopal, Muraligopal Living Trust c/o Alfonso L. Poiré, Gaw Van Male 1261 Travis Blvd., Ste 350 Fairfield CA 94533-4825
TD Ameritrade FBO Don L. Higdon IRA 1600 Rhododendron #412 Florence OR 97439	Rick Higdon 29107 Guava Ln Big Pine Key FL 33043	Klaus & Linda Kuehn 13138 Oak Crest Dr Yucaipa CA 92399
Dr John Kohut /Mrs. Joann Kohut / Kohut Family Trust / John J. Kohut / FBO John Kohut IRA c/o Lisa Torres Esq. Gates O'Doherty Gonter & Guy LLP 15373 Innovation Dr., Ste 170 San Diego CA 92128	Wayland W. Eure Jr. MD / FBO W.W. Eure Jr. MD Inc. IRA c/o David G. Moore Esq. Reid & Hellyer APC 3880 Lemon St Fifth Flr P.O. Box 1300 Riverside CA 92502-1300	Lynch Bypass Trust Lynch Lifetime Trust c/o David R. Moore Moore & Skiljan 7700 El Camino Real, Ste 207 Carlsbad CA 92009
George L. Fletcher/Janet G. Fletcher c/o Christopher A. Shumate Albrektson Law Offices 1801 Orange Tree Ln Ste 230 Redlands, CA 92374-4587	George L. Fletcher Janet G. Fletcher 1910 Country Club Ln Redlands, CA 92373	George L. Fletcher/Janet G. Fletcher Trustees of the Fletcher Trust dated February 26 2010 1910 Country Club Ln Redlands, CA 92373
Charles Schwab FBO W.W. Eure Jr. MD Inc. IRA P.O. Box 10065 San Bernardino, CA 92423	W.W. Eure Jr. MD Inc. Donald Mason Registered Agent 8275 Deadwood Ct Redlands, CA 92373	Muraligopal Living Trust 731 Buckingham Dr Redlands, CA 92374
Vellore G. Muraligopal 731 Buckingham Dr Redlands, CA 92374	John J. Kohut 6946 Orozco Dr Riverside, CA 92506	Kohut Family Trust 6946 Orozco Dr Riverside, CA 92506
TD Ameritrade FBO John Kohut IRA 6946 Orozco Dr Riverside, CA 92506	Robert M. Shaughnessy Esq. DUCKOR SPRADLING 3043 4th Ave San Diego, CA 92103	Dan Baker c/o Jonathan L. Geballe Esq. 11 Broadway Ste 615 New York, NY 10004
Glenn Goodwin Trust PO Box 735 Skyforest, CA 92385	Benton-Cole Properties Inc. 11761 Almond Court Loma Linda, CA 92354	Robert H. Ziprick Esq. Ziprick & Cramer LLP 707 Brookside Ave Redlands, CA 92373
Ben Perez, Philip Perez and Michael Perez 13245 Victoria Street Rancho Cucamonga, CA 91739	Bilzin Sumberg Baena Price Axelrod LLP 1450 Brickell Avenue, Suite 2300 Miami, FL 33131-3456	Dill & Showler 400 Brookside Avenue Redlands, CA 92373

Federal Express P.O. Box 7221 Pasadena, CA 91109-7321	Franchise Tax Board P.O. Box 942857 Sacramento, CA 94257-0601	Goodwin & Associates 1175 Idaho St., Suite 201 Redlands, CA 92374
LandAmerica Assessment Corporation P.O. Box 27567 Richmond, VA 23261	Midland Loan Services PNC Bank Lockbox Lockbox Number 771223 1223 Solutions Center Chicago, IL 60677-1002	North Carolina Department of Revenue P.O. Box 25000 Raleigh, NC 27640-0645
Paracorp dba Parasec P.O. Box 160568 Sacramento, CA 95816-0568	Premium Assignment Corporation P.O. Box 3100 Tallahassee, FL 32315-3100	Scott Showler, Attorney at Law 1839 Commercenter West San Bernardino, CA 92408
Spilman Thomas & Battle, PLLC 110 Oakwood Drive, Suite 500 Winston-Salem, NC 27103	The Goodwin Insurance Agency P.O. Box 1897 Redlands, CA 92373	United States Treasury 290 North D Street San Bernardino, CA 92401-9964
Waterstone Asset Management 8720 Red Oak Blvd., Suite 300 Charlotte, NC 28217	Higgs Benjamin 101 West Friendly Ave., Suite 500 Greensboro, NC 27401	David Rapp, President Desert Commercial Property Management P.O. Box 2367 Rancho Mirage, CA 92270
Alfonso L. Poiré, Esq. Gaw, Van Male, APC 1261 Travis Blvd., Suite 350 Fairfield, CA 94533	James R. Forbes, Esq. Gaw, Van Male, APC 1261 Travis Blvd., Suite 350 Fairfield, CA 94533	American West Properties, Inc. P.O. Box 1299 Lake Forest, CA 92609
Brunick, McElhaney & Beckett P.O. Box 6425 San Bernardino, CA 92412	JG Service Company 15632 El Prado Road Chino, CA 91710	Linda Key MNJ Key Corporation P.O. Box 3655 San Diego, CA 92163-3655
MNJ Key Corporation P.O. Box 3655 San Diego CA 92163-3655	Charles & Mildred Grey 63 Turnbury Lane Irvine, CA 92620-0244	Mound Investments Attn: Rhonda Welday 34124 Freedom Road Farmington, MI 48335
OneWest Bank 390 West Valley Parkway Escondido, CA 92025-2635	SimplexGrinnell Dept CH 10320 Palatine, IL 60055-0320	Watertight Plumbing, Inc. 16462 Gothard St., Suite 202 Huntington Beach, CA 92647
Wesseling & Brackermann 6439 28 <sup>th</sup> Avenue Hudsonville, MI 49426	Ace Restoration & Waterproofing Inc. 620 E. Walnut Avenue Fullerton, CA 92831	Champion Roof Company 2233 Martin St. Suite 202 Irvine, CA 92612
Club Resource Group 25520 Schulte Court Tracy, CA 95377	Elizabeth Branson P.O. Box 911 Loma Linda, CA 92354	Michigan Department of Treasury P.O. Box 30113 Lansing, MI 48909
Michigan Dept of Treasury P.O. Box 30774 Lansing, MI 48909-8274	State of Michigan c/o Michigan Dept. of Treasury Dept. 77003 Detroit, MI 48277-0003	Cornerstone Lane Surveying Company 958 Temescal Circle Corona, CA 92879
Don Kent Riverside County Treasurer P.O. Box 12010 Riverside, CA 92502-2210	Elrod Fence Company 6459 Mission Blvd. Riverside, CA 92509	EMC Insurance Companies P.O. Box 219225 Kansas City, MO 64121-9225
FATCO National Commercial Services Attn: Accounts Receivable Dept. 5 First American Way Santa Ana, CA 92707	Innovative Electric & Consulting Inc. 18355 Hibiscus Avenue Riverside, CA 92508	Keystone Mortgage Corporation Attn: Loan Servicing Dept. 360 N. Sepulveda Blvd., Suite El Segundo, CA 90245

Mirage Developers, Inc. 121 S. Palm Canyon Dr., #208 Palm Springs, CA 92262	REP – Real Estate Partners 2569 McCabe Way, 2 <sup>nd</sup> Floor Irvine, CA 92614	Riverside Public Utilities 3900 Main Street Riverside, CA 92522-0144
The Mattacola Law Firm 217 N. Washington Street P.O. Box 725 Rome, NY 13442-0725	A J Horne Electric Company c/o Goldberg & Bloom, Inc. Attn: Robin Bloom 4750 N. Hiatus Rd. Fort Lauderdale, FL 33351	AJ Horne Electric Company 1200 South Broadway, Suite 105 Lexington, KY 40504
ADT Security Services Inc. P.O. Box 371967 Pittsburgh, PA 15250-7967	Aetna Building Maintenance P.O. Box 636290 Cincinnati, OH 45263-6290	Allied Waste Services #922 Sacramento P.O. Box 78030 Phoenix, AZ 85062-8030
Isaac Commercial Properties 771 Corporate Drive, Suite 30 Lexington, KY 40555-5066	B.B.D. Cleaning Service & Solutions P.O. Box 817 Lawrenceburg, KY 40342	Ben-Tel Service P.O. Box 55066 Lexington, KY 40555-5066
C & R Asphalt P.O. Box 8201 Lexington, KY 40533-8201	Cathy Burgess Interiors 155 East Main Street, Suite 102 Lexington, KY 40507	Columbia Gas of Kentucky P.O. Box 742523 Cincinnati, OH 45274-2523
Commonwealth of Kentucky Office of Housing, Building & Const. 101 Sea Hero Road, Suite 200 Frankfort, KY 40601-5405	Davis H. Elliot Construction Co., Inc. P.O. Box 37251 Baltimore, MD 21297-3251	Derek Roscoe c/o NAI Isaac Commercial Prop. 771 Corporate Dr., Suite 300 Lexington, KY 40503
Division of Revenue Lexington-Fayette Urban Cnty Govt P.O. Box 14058 Lexington, KY 40512	Golden Eagle Insurance P.O. Box 84834 San Diego, CA 92186-5834	Home Savings & Loan Company Commercial Loan Dpt. P.O. Box 1111 Youngstown, OH 44501
Ohio Department of Taxation P.O. Box 182101 Columbus, OH 43218-2101	Ohio Treasurer of State P.O. Box 181140 Columbus, OH 43218-1140	Spillman Thomaos & Battle 300 Kanawha Blvd. East P.O. Box 273 Charleston, WV 25321-00273
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Thomas C. Hebrank

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

CHARLES P. COPELAND, ET  
AL.,

Defendants.

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

**SUPPLEMENTAL CERTIFICATE  
OF SERVICE**

DATE: June 3, 2013

TIME: 10:00 a.m.

Crtrm: 8, 2nd Floor

Judge: Hon. Manuel L. Real

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

On May 3, 2013, I served the following documents:

- 1. NOTICE OF MOTION AND MOTION FOR ORDER APPROVING SETTLEMENTS WITH CERTAIN NOTES RECEIVABLE ACCOUNT DEBTORS**

#### 4. DECLARATION OF THOMAS C. HEBRANK IN SUPPORT OF MOTION FOR ORDER APPROVING SETTLEMENTS WITH CERTAIN NOTES RECEIVABLE ACCOUNT DEBTORS

**[SEE ATTACHED SERVICE LIST]**

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

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

Executed on May 3, 2013, at San Diego, California.

/s/ Cindy Jennings  
Cindy Jennings

## Service List

Mashall Brubacher Mundell, Odlum & Haws, LLP 650 E. Hospitality Lane, Suite 470 San Bernardino, CA 92408-3240	Counsel for: Advance Desert Sleep Center, LLC Venkatasvara Rao Dr. Bobby Bhasker-Rao
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Mark Lobb Lobb & Cliff, LLP 25240 Hancock Avenue, Suite 315 Murrieta, CA 92562	Counsel for: Scott Spraggins Gina Spraggins