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7

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 WESTERN DIVISION — LOS ANGELES

11 SECURITIES AND EXCHANGE  
12 COMMISSION,

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

13 Plaintiff,

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR ORDER  
APPROVING SETTLEMENTS  
WITH CERTAIN LIMITED  
PARTNERSHIPS AND LIMITED  
PARTNERS**

14 v.

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

Date: April 1, 2013

22 Defendants.

Time: 10:00 a.m.

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

Judge: Hon. Manuel L. Real

21

**MEMORANDUM OF POINTS AND AUTHORITIES**

22

**INTRODUCTION**

23  
24 Thomas C. Hebrank ("Receiver"), the court-appointed Permanent  
25 Receiver for Copeland Wealth Management, a Financial Advisory  
26 Corporation, Copeland Wealth Management, a Real Estate Corporation,  
27 and their subsidiaries and affiliates ("Receivership Entities") including,  
28 but not limited to, Copeland Properties Two, LP ("CP 2"), Copeland

1 **Properties Five, LP ("CP 5"), Copeland Properties Seven, LP ("CP 7"),**  
2 **Copeland Properties 16, LP ("CP 16") and Copeland Properties 17, LP**  
3 **("CP 17"), hereby submits the following Memorandum of Points and**  
4 **Authorities in support of the Motion for an Order approving the**  
5 **settlements proposed to be entered into by and between the Receiver**  
6 **and the Settling LPs and their limited partners.**

7 **II**

8 **PROCEDURAL BACKGROUND**

9 **On October 18, 2011, the Securities and Exchange Commission**  
10 **("SEC") filed its Complaint for Violations of The Federal Securities Law,**  
11 **and the Proposed Judgment of Permanent Injunction and Other Relief as**  
12 **to Defendants. Docket Nos. 1 and 2. On October 25, 2011, the Court**  
13 **entered the Judgment of Permanent Injunction and Other Relief,**  
14 **appointing Thomas C. Hebrank as Permanent Receiver for the**  
15 **Receivership Entities ("10/25/11 Order"). Docket No. 3.**

16 **On November 5, 2012, the Receiver's Motion for consolidation of**  
17 **all of the entities held under receivership was heard and denied for**  
18 **reasons enumerated by the Court. Docket No. 175. As a result of that**  
19 **denial, a number of limited partners of the Receivership entities entered**  
20 **into negotiations with the Receiver for the settlement and release of**  
21 **various entities, and their assets and liabilities, from the Receivership.**

22 **On December 28, 2012, pursuant to the Receiver's Motion, the**  
23 **Court entered an Order approving the settlement entered into by and**  
24 **between the Receiver and Flagstar Bank, F.S.B. relating to, *inter alia*,**  
25 **certain real property and assets owned by Copeland Properties Ten, LP**  
26 **("CP 10"). Docket No. 213. The settlement agreement that was the**  
27 **subject of the Court's December 28, 2012 Order is similar in many**  
28 **material respects to the settlement agreements that are the subject of**

1 this Motion. Additionally, the relief requested by the Receiver in this  
2 Motion is based on many of the same factors present in the previous  
3 Motion relating to CP 10.

4  
5 **STATEMENT OF FACTS**

6 CP 2, CP 5, CP 7, CP 16, and CP 17 (collectively "Settling LPs")  
7 are all California limited partnerships. (Declaration of Thomas C.  
8 Hebrank filed concurrently herewith ("Hebrank Declaration" ¶ 3.) This  
9 Court has ruled that the Settling LPs are part of the Receivership estate.  
10 (Id.) Subject to the Court's approval of the terms thereof, the Settling  
11 LPs have each entered into a separate Settlement Agreement and  
12 Mutual Release with the Receiver. ("Hebrank Declaration" ¶ 4.) The facts  
13 relating to each of the Settlement Agreements are set forth below.

14 **A. CP 2 Settlement Agreement and Mutual Release**

15 The General Partner of CP 2 is Copeland Wealth Management, a  
16 Real Estate Corporation.<sup>1</sup> (Hebrank Declaration ¶ 5.) The Limited  
17 Partners of CP 2 include the following: Dorothy Ziilch, Hu Tong Inc.,  
18 Perry J. Damiani, Rick Higdon, William & Janice Steele, Melvin Ross,  
19 Carole Lowe and John & Joann Kohut ("CP 2 Partners"). (Id.)

20 CP 2 was established in 2007 for the purpose of acquiring a  
21 commercial building located at 13395 Beach Blvd., La Mirada, California  
22 ("CP 2 Property"). (Hebrank Declaration ¶ 6.) The CP 2 Property is  
23 presently leased to 24 Hour Fitness Corporation. (Id.) CP 2 transferred  
24 its interest in the CP 2 Property to CP 17, in exchange for a wrap  
25 promissory note in the approximate amount of \$6,886,388.00 ("Note"),  
26

27 <sup>1</sup>The Limited Partners of CP 2, CP 5, CP 7, CP 16, and CP 17 have conditionally elected Charles E  
28 Crookall of Shaw Properties as replacement General Partner, subject to court-approval of the subject  
Settlement Agreements.

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1 and retention of a minor interest in CP 17. (Hebrank Declaration li 7.)  
2 The Note encompasses a mortgage with One West Bank with a balance  
3 of approximately \$5,822,665.00. (Id.) Payments under the One West  
4 Bank mortgage are current. (Id.) CP 2's only other known asset is a  
5 \$265,200.00 receivable owed by Copeland Realty, Inc. to CP 2.  
6 (Hebrank Declaration li 8.) CP 2 has an outstanding rent guarantee  
7 obligation to CP 17 but, to the Receiver's knowledge and belief, no other  
8 obligations to any other Copeland Entity. (Id.)

9 Since his appointment as Receiver in this matter, the Receiver has  
10 managed the CP 2 Property, collected the rents from the CP 2 Property,  
11 and paid the mortgage payments due to One West Bank, as well as  
12 other expenses of the CP 2 Property, including real property taxes as  
13 due. (Hebrank Declaration lj 9.) As of January 31, 2013, the Receiver  
14 was holding the sum of \$325,744.21 relative to CP2's interest in the CP  
15 2 Property ("CP 2 Cash on Hand"). (Hebrank Declaration ¶ 10.)

16 Under the Limited Partnership Agreement pursuant to which CP 2  
17 was established, consent of 67% of the CP 2 Partners is required for any  
18 disposition of the CP 2 Property. (Hebrank Declaration ¶ 11.) The CP 2  
19 Partners wish to retain ownership and control of CP 2 and its assets. (Id.)  
20 The Receiver believes that the rents, issues and profits from the CP 2  
21 Property and the CP 2 Cash on Hand are property of the Receivership.  
22 (Hebrank Declaration ¶ 12.) The CP 2 Partners believe that the rents,  
23 issues, and profits from the CP 2 Property and the CP 2 Cash on Hand  
24 belong to CP 2 and the CP 2 Partners. (Id.)

25 The Receiver and the CP 2 Partners have agreed, subject to court  
26 approval, to settle their respective interests in CP 2 and the CP 2  
27 Property, including the related notes and receivables. (Hebrank  
28 Declaration ¶ 13.)

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1           The terms of the CP 2 Settlement Agreement and Mutual Release  
 2 ("CP 2 Settlement Agreement") include, but are not limited to, the  
 3 following: the Receiver will retain the total amount of \$44,349.00 of the  
 4 CP 2 Cash on Hand, representing compensation for the equity  
 5 investment of Copeland Realty, as General Partner in CP 2, and  
 6 compensation for the General Partner's rights to equity distributions and  
 7 rights to sale distributions of the CP 2 Property, pursuant to the CP 2  
 8 Partnership Agreement. (Hebrank Declaration ¶ 14.) CP 2 and the CP 2  
 9 Partners will waive and release any claim for, or in connection with, the  
 10 \$265,200.00 receivable owed by Copeland Realty, Inc. (Id.) The  
 11 Receiver will transfer by wire the remaining amount of CP 2 Cash on  
 12 Hand as of the date the CP 2 Settlement Agreement is approved by the  
 13 Court to the replacement general partner, Charles E. Crookall of Shaw  
 14 Properties. (Id.)

15           The complete terms of the agreement are set forth in the CP 2  
 16 Settlement Agreement, a true and correct copy of which is attached as  
 17 Exhibit "A" to the Hebrank Declaration, and is incorporated herein by  
 18 this reference as though set forth at length. (Hebrank Declaration ¶ 15.)  
 19 The CP 2 Settlement Agreement has been approved by more than 67%  
 20 of the CP 2 Partners as required by the CP 2 Partnership Agreement.  
 21 (Hebrank Declaration ¶ 16.)

22           **B. CP 5 Settlement Agreement and Mutual Release**

23           The General Partner of CP 5 is Copeland Realty, Inc. (see footnote  
 24 one). (Hebrank Declaration ¶ 17.) The Limited Partners of CP 5 include  
 25 the following: Melvin Ross, Donald and Elise Peterson, Trustees for the  
 26 Peterson Living Revocable Trust, Lillian Franklin, Rick & Blanche  
 27 Higdon, Trustees of The Higdon Revocable Trust, William & Janice  
 28 Steele, Dorothy Ziilch, Trustee of the Ziilch Family Trust, Steven & Kathy

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1 Weed, Barbara Stahr, John & Joann Kohut, Timothy Weed, Diana Weed,  
2 Khari Baker and Charles & Elaine Gray. (the "CP 5 Partners"). (Id.)

3 CP 5 was established in 2004 for the purpose of acquiring a  
4 commercial building located at 1399 Pacific Drive, Auburn Hills, Michigan  
5 ("CP 5 Property"). (Hebrank Declaration 11 18.) The Receiver  
6 understands that the cost of the building was \$15,410,000.00 and it  
7 secures a mortgage with Mound Investments of approximately  
8 \$10,412,000.00. (Id.) Assets of CP 5 include approximately \$201,500.00  
9 in notes receivable owed by Copeland Entities. (Hebrank Declaration IR  
10 19.) Those entities are: Copeland Realty, Inc. (\$144,000.00), Copeland  
11 Properties 9, LP (\$12,000.00), and Copeland Properties 18, LP  
12 (\$45,500.00). (Id.) Additional assets of CP 5 are investments in  
13 Copeland Properties 10, LP in the amount of \$95,065.56, and in  
14 Copeland Properties 18, LP in the amount of \$207,320.56. (Id.)

15 Since his appointment as Receiver in this matter, the Receiver has  
16 managed the CP 5 Property, collected the rents from the CP 5 Property,  
17 and paid the mortgage payments due to Mound Investments, as well as  
18 other expenses of the CP 5 Property, including real property taxes as  
19 due. (Hebrank Declaration li 20.) As of January 31, 2013, the Receiver  
20 was holding the sum of \$842,918.94 relative to the CP 5 Property ("CP 5  
21 Cash on Hand"). (Hebrank Declaration ¶ 21.)

22 Under the Limited Partnership Agreement pursuant to which CP 5  
23 was established, consent of 67% of the CP 5 Partners is required for any  
24 disposition of the CP 5 Property. (Hebrank Declaration ¶ 22.) The CP 5  
25 Partners wish to retain ownership and control of CP 5 and its assets,  
26 including the CP 5 Property. (Id.) The Receiver believes that the rents,  
27 issues and profits from the CP 5 Property and the CP 5 Cash on Hand  
28 are property of the Receivership. (Hebrank Declaration ¶ 23.) The CP 5



1 **Partners believe that the rents, issues, and profits from the CP 5**  
2 **Property and the CP 5 Cash on Hand belong to CP 5 and the CP 5**  
3 **Partners. (Id.)**

4 **The Receiver and the CP 5 Partners have agreed, subject to court**  
5 **approval, to settle their respective interests in CP 5 and the CP 5**  
6 **Property, including the related notes and receivables. (Hebrank**  
7 **Declaration ¶ 24.)**

8 **The terms of the CP 5 Settlement Agreement and Mutual Release**  
9 **("CP 5 Settlement Agreement") include, but are not limited to, the**  
10 **following: the Receiver will retain the total amount of \$105,988.00 of the**  
11 **CP 5 Cash on Hand, representing compensation for the equity**  
12 **investment of Copeland Realty, as General Partner in CP 5, and**  
13 **compensation for the General Partner's rights to equity distributions and**  
14 **rights to sale distributions of the CP 5 Property, pursuant to the CP 5**  
15 **Partnership Agreement. (Hebrank Declaration ¶ 25.) CP 5 and the CP 5**  
16 **Partners will transfer and assign to the Receiver the entire notes**  
17 **receivable owed by Copeland Realty, Inc. by CP 9, and by CP 18, as**  
18 **well as the investment in CP 18 described above. (Id.) CP 5 will retain**  
19 **the investment in CP 10 described above. (Id.) The Receiver will also**  
20 **retain all previously paid management fees for managing the CP 5**  
21 **Property since the inception of the Receivership. (Id.) The Receiver will**  
22 **transfer by wire the remaining amount of CP 5 Cash on Hand as of the**  
23 **date the CP 5 Settlement Agreement is approved by the Court to the**  
24 **replacement general partner, Charles E. Crookall of Shaw Properties.**  
25 **(Id.)**

26 **The complete terms of the agreement are set forth in the CP 5**  
27 **Settlement Agreement, a true and correct copy of which is attached as**  
28 **Exhibit "B" to the Hebrank Declaration, and is incorporated herein by**

BY BARRY BEATTY LINN & MAYERS  
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1 this reference as though set forth at length. (Hebrank Declaration ¶ 26.)  
2 The CP 5 Settlement Agreement has been approved by more than 67%  
3 of the CP 5 Partners as required by the CP 5 Partnership Agreement.  
4 (Hebrank Declaration ¶ 27.)

5 C. CP 7 Settlement Agreement and Mutual Release

6 The General Partner of CP 7 is Copeland Realty, Inc. (see footnote  
7 one). (Hebrank Declaration ¶ 28.) The Limited Partners of CP 7 include  
8 the following: Roger & Jane Holden, Dorothy Ziilch, Barbara Stahr, and  
9 Rick & Blanche Higdon ("CP 7 Partners"). (Id.)

10 CP 7 was established in 2005 for the purpose of acquiring a  
11 building housing a radiation oncology company. (Hebrank Declaration  
12 29.) The property address is 6939 Palm Court, Riverside, California ("CP  
13 7 Property"). (Id.) The Receiver understands that the CP 7 Property was  
14 purchased for approximately \$3,500,000.00, and secures a mortgage  
15 with Keystone Mortgage with a balance of approximately \$1,520,000.00.  
16 (Id.) The only asset of CP 7 is the building and land. (Hebrank  
17 Declaration ¶ 30.) The Receiver believes there are no cross-investments  
18 in any other Copeland Entities, nor does CP 7 owe any money to any  
19 other Copeland Entities with the exception of one note payable to  
20 Copeland Realty, reflected on the books of the Receiver at \$15,932.00.  
21 (Id.)

22 Since his appointment as Receiver in this matter, the Receiver has  
23 managed the CP 7 Property, collected the rents from the CP 7 Property,  
24 and paid the mortgage payments due to Keystone Bank, as well as other  
25 expenses of the CP 7 Property, including real property taxes as due.  
26 (Hebrank Declaration ¶ 31.) As of January 31, 2013, the Receiver was  
27 holding the sum of \$123,522.66 relative to the CP 7 Property ("CP 7  
28 Cash on Hand"). (Hebrank Declaration ¶ 32.)

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1 Under the Limited Partnership Agreement pursuant to which CP 7  
 2 was established, consent of 67% the CP 7 Partners is required for any  
 3 disposition of the CP 7 Property. (Hebrank Declaration ¶ 33.) The CP 7  
 4 Partners wish to retain ownership and control of CP 7 and its assets,  
 5 including the CP 7 Property. (Id.) The Receiver believes that the rents,  
 6 issues and profits from the CP 7 Property and the CP 7 Cash on Hand  
 7 are property of the Receivership. (Hebrank Declaration ¶ 34.) The CP 7  
 8 Partners believe that the rents, issues, and profits from the CP 7  
 9 Property and the CP 7 Cash on Hand belong to CP 7 and the CP 7  
 10 Partners. (Id.)

11 The Receiver and the CP 7 Partners have agreed, subject to court  
 12 approval, to settle their respective interests in CP 7 and the CP 7  
 13 Property, including the related notes and receivables. (Hebrank  
 14 Declaration ¶ 35.)

15 The terms of the CP 7 Settlement Agreement and Mutual Release  
 16 ("CP 7 Settlement Agreement") include, but are not limited to, the  
 17 following: the Receiver will retain the total amount of \$9,090.00 of the CP  
 18 7 Cash on Hand, representing compensation for the equity investment of  
 19 Copeland Realty, as General Partner in CP 7, and compensation for the  
 20 General Partner's rights to equity distributions and rights to sale  
 21 distributions of the CP 7 Property, pursuant to the CP 7 Partnership  
 22 Agreement. (Hebrank Declaration ¶ 36.) The Receiver will also retain the  
 23 amount of \$15,932.00, representing payment in full of the note payable  
 24 to Copeland Realty, plus all previously paid management fees for  
 25 managing the CP 7 Property since the inception of the Receivership.  
 26 (Id.) The Receiver will transfer by wire the remaining amount of CP 7  
 27 Cash on Hand as of the date the CP 7 Settlement Agreement is  
 28 approved by the Court to the replacement general partner, Charles E.

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1 Crookall of Shaw Properties. (Id.)

2 The complete terms of the agreement are set forth in the CP 7  
3 Settlement Agreement, a true and correct copy of which is attached as  
4 **Exhibit "C"** to the Hebrank Declaration, and is incorporated herein by  
5 this reference as though set forth at length. (Hebrank Declaration Ij 37.)  
6 The CP 7 Settlement Agreement has been approved by more than 67%  
7 of the CP 7 Partners as required by the CP 7 Partnership Agreement.  
8 (Hebrank Declaration II 38.)

9 D. CP 16 Settlement Agreement and Mutual Release

10 The General Partner of CP 16 is Copeland Realty, Inc. (see  
11 footnote one). ("Hebrank Declaration" ¶ 39.) The Limited Partners of CP  
12 16 include the following: Rick Higdon, Trustee of the Higdon Revocable  
13 Trust, Blanche Higdon, Trustee of the Higdon Revocable Trust, Christine  
14 C. Higdon, Stewart Rex Wright, Trustee of the Wright Family Living  
15 Trust, and Emily Graham Wright, Trustee of the Wright Family Living  
16 Trust ("CP 16 Partners"). (Id.)

17 CP 16 was established in 2006 for the purpose of acquiring a  
18 commercial building located at 1702 Henn Parkway, Lordstown, Ohio, a  
19 single-story building with a manufacturing tenant ("CP 16 Property").  
20 (Hebrank Declaration ¶ 40.) The Receiver understands that the CP 16  
21 Property was acquired for approximately \$5,500,000.00 and secures a  
22 mortgage with Home Savings & Loan Company with a balance of  
23 approximately \$3,850,000.00. (Id.) The Receiver believes that CP 16  
24 holds a note receivable from Copeland Properties 9, LP for cash  
25 advances in the amount of approximately \$53,032.00 and negative  
26 equity in Copeland Realty, Inc. of \$103,926.54. (Hebrank Declaration IT  
27 41.) The Receiver believes that CP 16 has no investments in any other  
28 Copeland Entity nor does it owe money to any other Copeland Entity.

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1 (Id.)

2 Since his appointment as Receiver in this matter, the Receiver has  
3 managed the CP 16 Property, collected the rents from the CP 16  
4 Property, and paid the mortgage payments due to Home Savings & Loan  
5 Company, as well as other expenses of the CP 16 Property, including  
6 real property taxes as due. (Hebrank Declaration ¶ 42.) As of January  
7 31, 2013, the Receiver was holding the sum of \$238,187.86 relative to  
8 the CP 16 Property ("CP 16 Cash on Hand"). (Hebrank Declaration  
9 43.)

10 Under the Limited Partnership Agreement pursuant to which CP 16  
11 was established, consent of 67% the CP 16 Partners is required for any  
12 disposition of the CP 16 Property. (Hebrank Declaration ¶ 44.) The CP  
13 16 Partners wish to retain ownership and control of CP 16 and its assets,  
14 including the CP 16 Property. (Id.) The Receiver believes that the rents,  
15 issues and profits from the CP 16 Property and the CP 16 Cash on Hand  
16 are property of the Receivership. (Hebrank Declaration ¶ 45.) The CP 16  
17 Partners believe that the rents, issues, and profits from the CP 16  
18 Property and the CP 16 Cash on Hand belong to CP 16 and the CP 16  
19 Partners. (Id.)

20 The Receiver and the CP 16 Partners have agreed, subject to  
21 court approval, to settle their respective interests in CP 16 and the CP 16  
22 Property, including the related notes and receivables. (Hebrank  
23 Declaration ¶ 46.)

24 The terms of the CP 16 Settlement Agreement and Mutual Release  
25 ("CP 16 Settlement Agreement") include, but are not limited to, the  
26 following: the Receiver will retain the total amount of \$25,669.00 of the  
27 CP 16 Cash on Hand, representing compensation for the equity  
28 investment of Copeland Realty, as General Partner in CP 16, and

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1 compensation for the General Partner's rights to equity distributions and  
 2 rights to sale distributions of the CP 16 Property, pursuant to the CP 16  
 3 Partnership Agreement. (Hebrank Declaration ¶ 47.) CP 16 and the CP  
 4 16 Partners will transfer and assign to the Receiver the entire note  
 5 receivable from CP 9 and will waive and release any claim for, or in  
 6 connection with, the negative equity in Copeland Realty, Inc. described  
 7 above. (Id.) The Receiver will also retain all previously paid management  
 8 fees for managing the CP 16 Property since the inception of the  
 9 Receivership. (Id.) The Receiver will transfer by wire the remaining  
 10 amount of Cp 16 Cash on Hand as of the date the CP 16 Settlement  
 11 Agreement is approved by the Court to the replacement general partner,  
 12 Charles E. Crookall of Shaw Properties. (Id.)

13 The complete terms of the agreement are set forth in the CP 16  
 14 Settlement Agreement, a true and correct copy of which is attached as  
 15 **Exhibit "D"** to the Hebrank Declaration, and is incorporated herein by  
 16 this reference as though set forth at length. (Hebrank Declaration ¶ 48.)  
 17 The CP 16 Settlement Agreement has been approved by more than 67%  
 18 of the CP 16 Partners as required by the CP 16 Partnership Agreement.  
 19 (Hebrank Declaration ¶ 49.)

20 E. CP 17 Settlement Agreement and Mutual Release

21 The General Partner of CP 17 is Copeland Wealth Management, a  
 22 Real Estate Corporation (see footnote one). (Hebrank Declaration 11 50.)  
 23 The Limited Partners of CP 17 include the following: Rick Higdon,  
 24 Trustee of the Higdon Revocable Trust, Blanche Higdon, Trustee of the  
 25 Higdon Revocable Trust, Perry Damiani, Hu Tongs, Inc., William Steele,  
 26 Trustee, Janice Steele, Trustee, Melvyn B. Ross, Gordon Peterson, Myra  
 27 Peterson, Carol P. Lowe, Benton-Cole Properties, and Dusty P. Bricker  
 28 ("CP 17 Partners"). (Id.)

1 CP 17 was established in 2007 for the purpose of acquiring from  
2 CP 2 its interest in the CP 2 Property in La Mirada California. (Hebrank  
3 Declaration ¶ 51.) CP 17's only other assets are a \$356,300.00 rent  
4 guarantee on the CP 2 Property given it by CP 2 and a note receivable  
5 for \$20,700.00 owed by Copeland Properties 18, LP. (Id.) CP 17 has an  
6 outstanding note payable to Copeland Realty, Inc. for \$101,634.00 and a  
7 small note payable to Copeland Properties 8, LP for \$3,500.00. To the  
8 Receiver's knowledge, CP 17 has no other obligations to any other  
9 Copeland Entity. (Id.)

10 Since his appointment as Receiver in this matter, the Receiver has  
11 managed the CP 2 Property, collected the rents from the CP 2 Property,  
12 and paid the mortgage payments, as well as other expenses of the CP 2  
13 Property, including real property taxes as due. (Hebrank Declaration %  
14 52.) As of January 31, 2013, the Receiver was holding the sum of  
15 \$285,247.92 relative to CP 17's interest in the CP 2 Property ("CP 17  
16 Cash on Hand"). (Hebrank Declaration ¶ 53.)

17 Under the Limited Partnership Agreement pursuant to which CP 17  
18 was established, consent of 67% the CP 17 Partners is required for any  
19 disposition of the CP 2 Property. (Hebrank Declaration ¶ 54.) The CP 17  
20 Partners wish to retain ownership and control of CP 17 and its assets,  
21 including the CP 2 Property. (Id.) The Receiver believes that the rents,  
22 issues and profits from the CP 2 Property and the CP 17 Cash on Hand  
23 are property of the Receivership. (Hebrank Declaration ¶ 55.) The CP 17  
24 Partners believe that the rents, issues, and profits from the CP 2  
25 Property and the CP 17 Cash on Hand belong to CP 17 and the CP 17  
26 Partners. (Id.)

27 The Receiver and the CP 17 Partners have agreed, subject to  
28 court approval, to settle their respective interests in CP 17 and the CP 2

1 Property, including the related notes and receivables. (Hebrank  
2 Declaration ¶ 56.)

3 The terms of the CP 17 Settlement Agreement and Mutual Release  
4 ("CP 17 Settlement Agreement") include, but are not limited to, the  
5 following: the Receiver will retain the total amount of \$38,740.00 of the  
6 CP 17 Cash on Hand, representing compensation for the equity  
7 investment of Copeland Realty, as General Partner in CP 17, and  
8 compensation for the General Partner's rights to equity distributions and  
9 rights to sale distributions of the CP 17 Property, pursuant to the CP 17  
10 Partnership Agreement. (Hebrank Declaration ¶ 57.) The Receiver will  
11 also retain the amounts of \$101,634.00 and \$3,500.00, representing  
12 payment in full of the notes payable to Copeland Realty and Copeland  
13 Properties 8, LP, respectively, and all previously paid management fees  
14 for managing the Property since the inception of the Receivership. (Id.)  
15 CP 17 and the CP 17 Partners will transfer and assign to the Receiver  
16 the entire note receivable from CP 18 described above. (Id.) The  
17 Receiver will transfer by wire the remaining amount of CP 17 Cash on  
18 Hand as of the date the CP 17 Settlement Agreement is approved by the  
19 Court to the replacement general partner, Charles E. Crookall of Shaw  
20 Properties. (Id.)

21 The complete terms of the agreement are set forth in the CP 17  
22 Settlement Agreement, a true and correct copy of which is attached as  
23 **Exhibit "E"** to the Hebrank Declaration, and is incorporated herein by  
24 this reference as though set forth at length. (Hebrank Declaration ¶ 58.)  
25 The CP 17 Settlement Agreement has been approved by more than 67%  
26 of the CP 17 Partners as required by the CP 17 Partnership Agreement.  
27 (Hebrank Declaration ¶ 59.)

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1 **Iv.**

2 **ARGUMENT**

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

14 District courts have the broad power of a court of equity to  
15 determine the appropriate action in the administration and supervision of  
16 an equity receivership. See *S.E.C. v. Capital Consultants, LLC*, 397 F.  
17 3d 733, 738 (9<sup>th</sup> Cir. 2005). The *Capital Consultants* Court directed:

18 A district court's power to supervise an equity  
19 receivership and to determine the appropriate  
20 action to be taken in the administration of the  
21 receivership is extremely broad. The district  
22 court has broad powers and wide discretion to  
23 determine the appropriate relief in an equity  
24 receivership. The basis for this broad deference  
25 to the district court's supervisory role in equity  
26 receiverships arises out of the fact that most  
27 receiverships involve multiple parties and complex  
28 transactions. A district court's decision concerning  
the supervision of an equitable receivership is  
reviewed for abuse of discretion.

25 *Id.* (citations omitted); see also *Commodities Futures Trading Comm'n. v.*  
26 *Topworth Intl, Ltd.*, 205 F.3d 1107, 1115 (9<sup>th</sup> Cir. 1999) ("This court  
27 affords 'broad deference' to the court's supervisory role, and 'we  
28 generally uphold reasonable procedures instituted by the district court

1 that serve th[e] purpose' of orderly and efficient administration of the  
2 receivership for the benefit of creditors." ).Accordingly, the Court has  
3 broad equitable powers and discretion in formulating procedures,  
4 schedules, and guidelines for administration of the receivership estate  
5 and disposition of receivership assets.

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

- 8 (f) to make such payments and disbursements from the funds  
9 and assets taken into custody, control and possession or  
10 thereafter received by him or her, and to incur, or authorize  
11 the making of, such agreements as may be necessary and  
12 advisable in discharging his or her duties as permanent  
13 receiver;
- 14 (j) to exercise all the lawful powers of Defendants CWM and  
15 Copeland Realty and their subsidiaries and affiliates, and  
16 their officers, directors, employees, representatives, or  
17 persons who exercise similar powers and perform similar  
18 duties.  
19

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

21 The Settlement Agreements entered into between the Receiver  
22 and the Settling LPs accomplish a fair, equitable, orderly and efficient  
23 administration of the Receivership estate. Pursuant to the terms of the  
24 Settlement Agreements, the Receiver will retain a fair and reasonable  
25 portion of the cash on hand from each of the Settling LPs. In addition,  
26 the Receiver will also retain and/or receive an assignment of the Settling  
27 LP's obligations to the remaining Receivership Entities, in particular  
28 Copeland Properties 18, L.P., which is a solvent partnership. (Hebrank

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1 Declaration, ¶ 25, fn. 2; ¶ 57, fn. 3.)

2 Further, as a result of the settlement of the Receiver's and the  
3 Settling LPs' respective interests in the CP 2 Property, CP 5 Property,  
4 CP 7 Property, and CP 16 Property (collectively the "Properties"), the  
5 Settling LPs, and the limited partners thereof, will have no claims against  
6 the Receiver or the Receivership estate, except to a limited extent as  
7 more specifically provided in the Settlement Agreements.<sup>2</sup> (Hebrank  
8 Declaration ¶ 60.) Moreover, the Settling LPs and the limited partners  
9 thereof will have no claims against the funds the Receiver will be  
10 retaining pursuant to the Settlement Agreements. (Hebrank Declaration,  
11 ¶ 61). Additionally, The limited partners are retaining their claims as  
12 investors to the extent that such limited partners are, or were, investors  
13 in Receivership Entities other than the Settling LPs. (Hebrank  
14 Declaration ¶ 62).

15 Further, as set forth in the Receiver's Declaration, based on his  
16 analysis of the possible distributions to Copeland Wealth Management,  
17 as the General Partner of each of the Settling LPs as provided in each  
18 respective partnership agreement, in connection with the operation, sale  
19 or disposition of the real properties owned by the Settling LPs, and in his  
20 business judgment, the amounts of funds, and the claims and  
21 investments he is receiving, are fair and adequate consideration for the  
22 claims that are being released. (Hebrank Declaration ¶ 64). Also, in  
23 addition to the funds to be retained and to be received by the  
24 settlements, the settlements will result in an agreed-upon satisfaction of  
25

26 <sup>2</sup> The Settlement Agreements provide that the limited partners of the Settling LPs will have no claims  
27 against the Receiver or the Receivership Estate except for the claims of the limited partners as  
28 individual investors in the Settling LPs in connection with a distribution on investor claims in the SEC  
action. (See Exhibit A, paragraph 3(g); Exhibit B, paragraph 3(g); Exhibit C, paragraph 3(f); Exhibit D,  
paragraph 3(g); Exhibit E, paragraph 3(g)).

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1 a significant amount of the investor claims against the Receivership  
2 Estate. (Hebrank Declaration ¶¶ 65).

3 Finally, except as specifically provided by the Settlement  
4 Agreements, the Settling LPs and the limited partners thereof on the one  
5 hand, and the respective mortgage holder on each of the Properties on  
6 the other hand, shall each retain their respective rights and obligations  
7 with respect to one another arising out of their respective mortgages.  
8 (Hebrank Declaration, ¶ 63). This makes the settlement a fair, equitable,  
9 orderly and efficient administration of the Receivership estate, especially  
10 considering the Receiver's powers enumerated in the 10/25/11 Order  
11 and the desire of the limited partners of the Settling LPs to retain their  
12 interests in the Properties.

13 **IV.**  
14 **CONCLUSION**

15 Based upon the foregoing, all pleadings on file herein, as well as  
16 such argument and evidence as may be admitted during the hearing, the  
17 Receiver requests entry of an order approving the Settlement  
18 Agreements proposed to be entered into by and between the Receiver  
19 and CP 2, CP 5, CP 7, CP 16 and CP 17.

20  
21 Dated: February 28, 2013

MULVANEY BARRY BEATTY LINN &  
MAYERS, LLP

22  
23 By: /s/ Everett G. Barry, Jr.  
24 Attorneys for Thomas C. Hebrank,  
25 Receiver  
26  
27  
28

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