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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

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

Defendants.

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

MOVANT NATIONAL CREDIT UNION ADMINISTRATION BOARD AS LIQUIDATING AGENT'S MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO BRUCE TABER, D.D.S.'S OPPOSITION TO MOTION FOR ORDER APPROVING AGREEMENT WITH RECEIVER FOR THE ABANDONMENT AND FORECLOSURE OF CERTAIN REAL PROPERTY.

Hearing Date: June 3, 2013
Hearing Time: 10:00 a.m.
Courtroom: 8, 2nd Floor
Judge: Hon. Manuel L. Real

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The National Credit Union Administration Board, acting in its capacity as Liquidating Agent for Telesis Community Credit Union (hereinafter "Movant LIQUIDATING AGENT"), submits this reply memorandum of law in reply to Bruce Taber, D.D.S.'s Opposition to Movant LIQUIDATING AGENT's Motion for an Order Approving Agreement between the Receiver, on the one hand, and Movant LIQUIDATING AGENT, on the other hand (the "Motion"; Dkt. 242-249).

ARGUMENT SUMMARY

The Property at issue has no value to Defendants' creditors, other than Movant LIQUIDATING AGENT. The property will only continue to be a burden on the receivership and a financial drain on the estate. Retention of the property would only cause the Receiver to incur time, administrative costs, expenses and fees, in maintaining the property and later effectuating liquidation. Movant LIQUIDATING AGENT's request is consistent with Movant LIQUIDATING AGENT's federal mandate to pursue credit union assets.

Bruce Taber, D.D.S.'s ("Taber") concerns have been asserted and litigated in the New York Foreclosure Action.[1] Taber opposed Telesis Community Credit Union's ("Telesis") motion for summary judgment in the New York Foreclosure Action, asserting the same arguments he has here. He subsequently withdrew his opposition.

Significantly, this Motion has no effect on Taber's rights under New York law in the New York Foreclosure Action. Taber will have any and all rights available to him under New York law throughout the remainder of that case. The New York Foreclosure Action has been stayed since October 2011. See, Houchen Decl. ¶¶13-15. If there is a deficiency in the New York Foreclosure Action, Taber will be able to assert any rights available to him under New York real property law.

[1] As set forth in the moving papers, Taber guaranteed a note secured by a mortgage on the property that is the subject of the Motion. The property is located in Oswego County, New York. Houchen Decl. The note and mortgage were executed by Copeland Properties Eight, L.P. *Id.* In October 2009, Telesis commenced a foreclosure proceeding to foreclose the mortgage. Houchen Decl. ¶ 4. The New York Foreclosure Action is captioned *Telesis Community Credit Union* v. *Copeland Properties Eight, L.P., et al.,* Index No. 09-1988, State of New York, County of Oswego.

Taber's opposition to the instant Motion is misplaced. He believes he was defrauded by the Copelands, but that issue is not before this Court. Taber's grievance is against Copeland, not the Movant LIQUIDATING AGENT, which is following its obligation under federal law to pursue credit union assets for the protection of its investors and depositors. The Motion does not prevent Taber from asserting his claims in any other forum, including the assertion of a claim in the Receivership estate, which Taber has done. Movant LIQUIDATING AGENT's motion should be granted and it should be permitted to continue the New York Foreclosure Action.

A. Movant LIQUIDATING AGENT's Federal Mandate is Furthered by the Relief Requested in the Motion

Movant LIQUIDATING AGENT (the NCUA) is the independent federal agency created by the United States Congress to regulate, charter, and supervise federal credit unions. Movant LIQUIDATING AGENT has a duty under federal law to pursue the assets of the Credit Union, Telesis here.

The Federal Credit Union Act ("FCUA") is the source of authority for all federally chartered credit unions and governs the coverage and terms of insured accounts at all federally insured credit unions. 12 U.S.C. §§ 1751 *et seq.* The FCUA affords wide powers to Movant LIQUIDATING AGENT, including, among others, the power to prescribe rules and regulations for the administration of the Federal Credit Union Act, and the power to suspend or revoke the charter of any Federal credit union, or place the same in involuntary liquidation. §1766(b)(1).[2]

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[2] Movant LIQUIDATING AGENT has broad power and authority, including the rights to:
(A) to receive and take possession of the books, records, assets, and property of every description of the Federal credit union in liquidation, to sell, enforce collection of, and liquidate all such assets and property, to compound all bad or doubtful debts, and to sue in its own name or in the name of the Federal credit union in liquidation, and defend such actions as may be brought against it as liquidating agent or against the Federal credit union;
(B) to receive, examine, and pass upon all claims against the Federal credit union in liquidation, including claims of members on member accounts;
(c) to make distribution and payment to creditors and members as their interests may appear; and
(D) to execute such documents and papers and to do such other acts and things which it may deem necessary or desirable to discharge its duties hereunder.

Approval of the agreement with the Receiver for release of the asset and continuance of the New York Foreclosure Action is in furtherance of the discharge of the duties of the Movant LIQUIDATING AGENT under the FCUA. Movant LIQUIDATING AGENT has jurisdiction to protect its investors and depositors, and Movant LIQUIDATING AGENT should be permitted to exercise its rights as liquidating agent and to carry out its directives as authorized by the FCUA.

Further strengthening Movant LIQUIDATING AGENT's authority to pursue assets of federal credit unions in liquidation is the *D'Oench, Duhme* doctrine, which precludes certain defenses that could have been raised against the original institution. *See D'Oench, Duhme & Co. v Fed. Deposit Ins. Corp.*, 315 U.S. 447, 62 S. Ct. 676, 86 L. Ed. 956 (1942). *D'Oench, Duhme* protects bank authorities from suits founded on undisclosed conditions or deceptive documents. *See e.g., Brookside Assocs. v. Rifkin,* 49 F.3d 490, 493 (9th Cir. 1995); 12 U.S.C. §1823(e) (credit union liquidating agent is not bound by any agreements tending to diminish an asset of the NCUAB unless the agreement is, *inter alia*, in writing). Thus, even if a third party might otherwise claim to have a right to challenge the maker of a note, such a defense is not viable as against Movant LIQUIDATING AGENT. *E.g., Langley v. FDIC,* 484 U.S. 86, 108 S. Ct. 396 (1987) (maker of a note not entitled to use fraud as a defense against the FDIC under 12 U.S.C. §1823(e)).

B. Taber Should not be Permitted to Re-Litigate in this Forum

Taber fails to inform the Court that he already asserted his argument on the guaranty in the New York Foreclosure Action. *See,* Declaration of Victor L. Prial, Esq., Exhs. A, B, submitted herewith. Taber opposed Telesis's motion for summary judgment, asserting that he was defrauded by Copeland. *Id.* Telesis's motion for summary judgment was granted, but the New York court allowed Taber to undertake discovery in order to uncover evidence in support of his claims. Houchen Decl. ¶12 and Exh. B.

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After engaging in discovery, at about the time the injunction issued in the present matter, Taber withdrew his opposition to Telesis's summary judgment motion. Houchen Decl. Exh. C. In a letter to the Hon. Norman W. Seiter, Jr., Justice of the Supreme Court, Oswego County, New York, dated October 21, 2011, counsel for Taber stated: "We write to inform the Court that Taber will not be moving to re-open the Court's earlier finding of summary judgment against him." Houchen Decl., Exh. C. Taber asserted these claims, and then withdrew them in the New York action. Taber's Opposition neglected to inform the Court of these facts.

Moreover, Taber will have every right to pursue any rights available to him under New York's real property statutes. Taber should not be permitted to re-litigate this issue in this Court and thwart Movant LIQUIDATING AGENT from performing its statutory obligations; particularly when Taber asserted, and then expressly withdrew, the claims Taber seeks to resurrect before this Court.

Other doctrines also weigh against Taber's request to re-litigate here. The Rooker-Feldman doctrine, for example, holds that the United States Supreme Court is the only Court with jurisdiction to review a state-court decision. 18B Fed. Prac. & Proc. Juris. §4469.1 (2d Ed.). Federal subject-matter jurisdiction in the district courts does not extend to an "appeal" from state-court judgments. *Id.* Here, Taber's request is essentially an appeal of the grant of summary judgment in the New York Foreclosure Action. Taber has had a full opportunity to litigate in New York (indeed he has), and as yet will be able to assert any rights available to him under New York's Real Property Actions and Procedures Law, which Taber is clearly aware of by the citation in his Opposition. Opp. at FN2, citing N.Y. R.P.A.P.L §1371.

The doctrine of abstention also applies, whereby the federal courts, "exercising a wise discretion," restrain their authority because of "scrupulous regard for the rightful independence of the state governments" and for the smooth working of the federal judiciary. *Railroad Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 500

(1941). There is no reason here for the Court to disregard the independence of the New York State court to adjudicate claims properly before it.

The case law Taber cites is not helpful to his claim. Taber misrepresents the holding in *S.E.C. v. Capital Consultants, LLC, supra,* 397 F.3d at 738-739, stating that the court there "denied the receiver's motion to enforce a compromise agreement because the agreement was contrary to the interests of a defrauded investor the receiver had a duty to protect." Opp. at p. 10. The *Capital Consultants* case did not do that. It is inapposite. There, the court was dealing with approval of a receiver's plan for distribution. A plan for distribution is not at issue here. Moreover, the plan in *Capital Consultants,* which was approved by the court, involved offsets, whereby monies received through third-party recoveries would reduce distribution from the receiver. Again, there is no such plan before this Court.

Taber's citation to *S.E.C. v. Byers*, 637 F. Supp.2d 166, 183 (S.D.N.Y. 2009) suffers from similar defects. That case also dealt with the court's approval of a plan by the Receiver, which is not the case here. Moreover, the proposed plan in *Byers* precluded deficiency claims against the estate, which is not an issue here. Movant LIQUIDATING AGENT's Motion specifically states that it will not pursue Defendant entities.

Taber's misrepresentation of the holding in *S.E.C. v. Madison Real Estate Group, LLC,* 647 F. Supp. 2d 1271, 2:08-cv-00243-CW (D. Utah 2009) is more egregious. There, various creditors made motions for relief from stay. Separately, the SEC Receiver submitted motions to relinquish interests in various real property of the estate. *E.g.,* 2:08-cv-00243-CW, Dkt. 183. The SEC Receiver's motions requested to reserve certain claims for the estate and also that the lenders be free to take legal action, but not pursue deficiencies against individual investors. *Id.* These motions were granted. *Id.* Dkt. 193. The court's order in the opinion issued six months later (at 647 F.Supp.2d 1286), *inter alia*, denied the motions to lift stay as moot, directing that foreclosure proceedings may be initiated subject to the court's

previous order, which had granted the Receiver's request to relinquish assets. *Madison Real Estate Group*, 647 F.Supp.2d at 1286; 2:08-cv-00243-CW, Dkt. 183, 193. Taber tries to deceive the Court when he states that "all orders issued in connection with the case precluded secured creditor enforcement action against the investor creditors," (Opp. at 13) as if these orders were based on Taber's foregoing argument. They were not, and the Court should not countenance this blatant misrepresentation.

C. The Receivership and Creditors of the Estate will be Harmed if the Motion is Denied

Significantly, to the extent any claimants' rights are concerned, the Movant LIQUIDATING AGENT's request will save costs, court time, and attorneys' fees, thereby increasing the amount available in the receivership, as opposed to burdening the receivership estate, which would result if Movant LIQUIDATING AGENT's request is denied.

Taber's asserted reasoning falls far short of any equitable basis for preventing the SEC Receiver and the NCUA from carrying out each of their federal mandates. Denial of the Motion would be detrimental to the receivership estate and, according to Taber's logic, to Taber's own interests.

Taber's argument about the Movant LIQUIDATING AGENT's "intentions" is unsupported and nonsensical. Taber describes no basis whatsoever for the proposition that the Movant LIQUIDATING AGENT's "intentions" in a separate action pending in another state before another court should require anything of Movant LIQUIDATING AGENT in this case and on this Motion. Nor does Taber provide any reasoning, much less legal support, for his assertion that the "terms" of the agreement between the Receiver and the Movant LIQUIDATING AGENT have any impact on Taber whatsoever. Taber is not a party to that agreement. In any event, the "terms" of the agreement are provided in the Motion. Furthermore, Taber admits that his apparent desire to know the precise appraisal value of the property that is the

subject of the New York foreclosure action has been fulfilled because he performed searches on the Property and calculated what he believes to be the value.

Finally, similar agreements between the Receiver and certain creditors have been approved by this Court, in this case. For example, the motion Taber mentions, opposed by creditor Kohut, was approved by the Court. Dkt. 195; Taber Opp. at FN1. The Court approved the motion of creditor U.S. Bank National Association for an Order approving the agreement reached with the Receiver appointed by the Court with respect to the release of certain commercial property. *Id.* None of Taber's reasoning rises to a level sufficient to overcome the equities in favor of the Movant LIQUIDATING AGENT and the Receiver.

CONCLUSION

Movant LIQUIDATING AGENT respectfully requests that the Court approve its agreement with the Receiver to abandon the property at issue. There is no value to the Receiver to retain the asset and it will be a drain on the estate, potentially engendering more litigation, all to the detriment of creditors of the estate. Movant LIQUIDATING AGENT should be permitted to carry out its federal mandate and continue the New York Foreclosure Action.

THE LAW OFFICE OF THOMAS CAUDILL

Dated: May 20, 2013

By: /s/Thomas Caudill
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California Society of
Certified Public Accountants

May 20, 2013

Real Asset Locators, Inc.
Thomas C. Hebrank, Court-Appointed Receiver
501 W. Broadway, Suite 800
San Diego, CA 92101

ENGAGEMENT LETTER

We are pleased to confirm our understanding of the arrangements for your income tax returns. We will prepare your 2012 Federal, California and/or any other State Corporation tax returns including tax projections and tax consulting as indicated by you (the client) in writing on this engagement letter from the information you provide us and will process the returns using our in-house computer software. We will not audit or otherwise verify the data you submit, although we may ask for clarification or for additional information regarding your tax returns. We are responsible for preparing the tax returns only for the corporation listed above.

Our fees do not include responding to future government inquiries, and you understand that we are not responsible for disallowance of deductions, or inadequately supported documentation, nor for resulting taxes, penalties, or interest. Our work in connection with the preparation of your income tax returns does not include any procedures designed to discover fraud, defalcations, or other irregularities, should they exist. We will render such accounting and bookkeeping assistance as we find necessary for the preparation of the income tax returns.

Your income tax returns can be electronically filed or mailed to the taxing authorities. If you desire not to e-file your returns, please notify our firm immediately as different procedures are used if the returns are to be mailed. Please note that unless you notify us of your desire not e-file your returns, we will prepare your returns for e-filing. While e-filing will require both you and our firm to complete additional steps, the same filing deadlines will apply. You must therefore ensure that you complete the additional requirements well before the due dates in order for our firm to be able to timely transmit your return electronically.

If your return is e-filed, our firm must electronically transmit your return to the taxing authorities (rather than you). We will provide you a copy of the income tax returns for your review prior to electronic transmission. After you have reviewed the returns, you must provide us a signed authorization indicating that you have reviewed the return and that, to the best of your knowledge, you believe it is correct. We cannot transmit the returns to the taxing authorities until we have the signed authorization. Therefore, if you have not provided our firm your signed authorization we will place your return on extension, even though it might already have been completed. In that event, you will be responsible for ensuring that any payment due with the extensions is timely sent to the appropriate taxing authorities. You will be responsible for any additional costs our firm incurs arising from the extension preparation.

Please note that while our firm will use our best efforts to ensure that your returns are successfully transmitted to the appropriate taxing authorities, we will not be financially responsible for electronic transmission or other errors arising after your return has been

successfully submitted from our office. We are not responsible for the length of time it takes the taxing authority to process your return including refunds.

All tax payment due dates remain the same even if your return is e-filed. You must ensure that your payment of any tax balance due is timely remitted on or before the due date. There are options to pay your balance due using a credit card or electronic funds withdrawal. If you instead choose to pay the balance due by mail, payment must be postmarked on or before the due date to avoid penalties and interest.

The IRS has provided that a taxpayer may authorize the IRS to discuss the taxpayer's tax return with the CPA who signed the taxpayer's return as the return preparer. The authorization is valid for one year after the due date for filing the tax return. Please note that our firm will not receive separate copies of government notices; therefore, you must provide our firm with copies of any notices you receive from the IRS or State taxing agency.

Federal law has extended the attorney-client privilege to some, but not all, communications between a client and the client's CPA. The privilege applies only to non-criminal tax matters that are before the IRS or brought by or against the U.S. Government in a federal court. The communications must be made in connection with tax advice. Communications solely concerning the preparation of a tax return will not be privileged. If we are asked to disclose any privileged communication, unless we are required to disclose the communication by law, we will not provide such disclosure until you have had an opportunity to argue that the communication is privileged. You agree to pay any and all reasonable expenses that we incur, including legal fees, that are a result of attempts to protect any communication as privileged.

In addition, your confidentiality privilege can be inadvertently waived if you discuss the contents of any privileged communication with a third party, such as a lending institution, a business associate, or a friend. We recommend that you contact us before releasing any privileged information to a third party.

Our fees are based on the number of hours we spend on your tax return, the sophistication and complexity of your return, and on the type of work performed (i.e. client interviews, tax preparation, review, tax planning, research, etc.) The amount of time we may spend on any given matter is inherently unpredictable; accordingly, "estimates" of fees are only that and not a guaranty or limitation. Our billings reflect both time and charges. Often, time is expended by accountants which is not visible to the client. **We estimate the fees for the tax return preparation will be $650.00** If you have any questions about the services listed on a particular bill, please contact us as soon as possible.

All fees and costs we incur are subject to approval by the United States District Court for the Southern District of California ("Court). At regular intervals and in coordination with fee applications filed by the Receiver and his counsel, we will prepare applications for approval of our fees and costs. The Receiver and his counsel will assist in having the fee applications filed with the Court. We will be responsible for attending any and all Court hearings on our fee applications, if such hearings take place. Only those fees and costs that are approved and authorized to be paid by the Court shall be paid. The assets of the receivership estate shall be the sole source of payment. We agree that neither Thomas Hebrank nor E3 Advisors has any responsibility to pay our fees and costs.

Unless you indicate otherwise, our firm may use third parties in order to facilitate delivering our services to you. To assist in preparing the tax returns, these third parties might include, but not be limited to, the use of an outside tax processing service, independent contractors and seasonal or part-time staff. We have secured confidentiality agreements with all our service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have the appropriate procedures in place to prevent the unauthorized release of confidential information to others. We will remain responsible for the work provided by any third-party service providers used under this agreement. By your signature below, you consent to our use of these third

parties. Please feel free to inquire if you would like additional information regarding our use of these third parties.

Any and all disputes arising from this agreement, the services provided, or the fees charged shall be governed by California law and subject to the exclusive jurisdiction of the United States District Court for the Southern District of California

Please note that any person or entity subject to the jurisdiction of the United States (includes individuals, corporations, partnerships, trusts, and estates) having a financial interest in, or signature or other authority over, bank accounts, securities, or other financial accounts having a value exceeding $10,000 in a foreign country, shall report such a relationship. Although there are some limited exceptions, filing requirements also apply to taxpayers that have direct or indirect control over a foreign or domestic entity with foreign financial accounts, even if the taxpayer does not have foreign account(s). For example, a corporate-owned foreign account would require filings by the corporation *and* by the individual corporate officers with signature authority. Failure to disclose the required information to the U.S. Department of the Treasury may result in substantial civil and/or criminal penalties.

If you and/or your entity have a financial interest in any foreign accounts, you are responsible for providing our firm with all the information necessary to prepare Form TD-F-90-22.1 required by the U.S. Department of the Treasury in order for the form to be received by the Department on or before June 30th of each tax year. If you do not provide our firm with information regarding any interest you may have in a foreign account, we will not be able to prepare any of the required disclosure statements.

In addition, the Internal Revenue Service also requires information reporting under applicable Internal Revenue Code sections and related regulations, and the respective IRS tax forms are due when your income tax return is due, including extensions. The IRS reporting requirements are in addition to the U.S. Department of the Treasury reporting requirements stated above. Therefore, if you fall into one of the below categories, or if you have any direct or indirect foreign interests, you may be required to file applicable IRS forms.

- You are an individual or entity with ownership of foreign financial assets and meet the specified criteria (Form 8938);
- You are an officer, director or shareholder with respect to certain foreign corporations (Form 5471);
- You are a foreign-owned U.S. corporation or foreign corporation engaged in a U.S. trade or business (Form 5472);
- You are a U.S. transferor of property to a foreign corporation (Form 926);
- You are a U.S. person with an interest in a foreign trust (Forms 3520 and 3520-A); or
- You are a U.S. person with interests in a foreign partnership (Form 8865).

Failure to timely file the appropriate forms with the U.S. Department of the Treasury and the Internal Revenue Service may result in substantial monetary penalties. By your signature below, you accept responsibility for informing us if you believe that you may have foreign reporting requirements with the U.S. Department of the Treasury and/or Internal Revenue Service and you agree to timely provide us with the information necessary to prepare the appropriate form(s). We assume no liability for penalties associated with the failure or untimely filing of any of these forms.

By your signature below, client acknowledges and agrees that we are not required to continue work in the event of client's failure to court-approved fees and costs, if the client is unresponsive to our request for documents, doesn't provide the required information in a timely manner or exhibits behavior we deem unethical. Client further acknowledges and agrees that in the event we stop work or withdraw from this engagement due to the client's violation or failure of performance of client's responsibilities in this engagement letter, we shall not be liable for any damages that occur as a result of our ceasing to render services.

The law provides for a penalty to be imposed where taxpayers make a substantial understatement of their tax liability. A substantial understatement exists when the understatement for the year exceeds the greater of 10 percent of the tax required to be shown on the return, or $5,000. The penalty is 20 percent of the tax underpayment. Taxpayers may seek to avoid all or part of the penalty by showing (1) that they acted in good faith and there was reasonable cause for the understatement, (2) that the understatement was based on substantial authority, or (3) that the relevant facts affecting the item's tax treatment were adequately disclosed on the return. The penalty for substantial understatement of tax relating to S corporation items may be imposed on the shareholder.

By your signature below, you are confirming that you will furnish us with all the information required for preparing the tax returns. You are also confirming that unless we are otherwise advised, the travel, entertainment, gifts, and related expenses are supported by the necessary records required under Section 274 of the Internal Revenue Code. If you have any questions as to the type of records required, please ask us for advice in that regard.

It is our policy to keep records related to this engagement for seven years. However, Duffy, Kruspodin & Company, LLP does not keep any original client records, so we will return those to you at the completion of the services rendered under this engagement. When records are returned to you, it is your responsibility to retain and protect your records for possible future use, including potential examination by any government or regulatory agencies. By your signature below, you acknowledge and agree that upon the expiration of the seven-year period, Duffy, Kruspodin & Company, LLP shall be free to destroy our records related to the engagement.

We will use our judgment to resolve questions in your favor where a tax law is unclear if there is a reasonable justification for doing so. Whenever we are aware that a possibly applicable tax law is unclear or that there are conflicting interpretations of the law by authorities (e.g., tax agencies and courts), we will explain the possible positions that may be taken on your return. We will follow whatever position you request, so long as it is consistent with the codes and regulations and interpretations that have been promulgated. If a tax agency such as the IRS should later contest the position taken, there may be an assessment of additional tax plus interest and penalties. We assume no liability for any such additional penalties or assessments. In the event, however, that you ask us to take a tax position that in our professional judgment will not meet the applicable laws and standards as promulgated, we reserve the right to stop work and shall not be liable for any damages that occur as a result of ceasing to render services.

You have the final responsibility for the income tax returns and, therefore, you should carefully examine your completed tax returns before either providing us with a signed authorization to electronically transmit your returns to the tax authorities or before you sign and mail them to the tax authorities. We will not be responsible for advising you with respect to independent contractor status in your business related activities as part of our services. If you have any questions regarding the classification of employees versus independent contractors, we strongly encourage you to consult with legal counsel.

Your returns are subject to review by taxing authorities. In the event of an examination or other contact by government agencies, we are available to represent you. You may appeal any adjustments proposed by an examining agent. Fees for these additional services will be addressed in a separate engagement letter.

We appreciate this opportunity to work with you.

Thane F. Kelton, CPA

DUFFY, KRUSPODIN & COMPANY, LLP

If this letter correctly expresses your understanding of our services, please sign and date where indicated and return it to us.

ACCEPTED BY:

SIGNATURE:_____

PRINT NAME:_____

DATE:_____

U.S. Bank SinglePoint®
System Administrator Authorization Form

The purpose of this form is to create or update system administrators. The U.S. Bank SinglePoint Account Questionnaire may also be required to complete the initial product setup. Please complete, sign and return this form to the fax number or email address provided below.

Customer Information

Customer Name: E3 Realty Advisors

Address: 501 W Broadway, Suite 800

San Diego, CA 92101

Contact Name: Lisa Ryan Phone: 619-203-5444

Email Address: Lryan@ethreeadvisors.com Fax:

Customer ID

SinglePoint interacts with other U.S. Bank applications to offer one point of access, called Single Sign-on. For Single Sign-on your Customer ID must match between the Single Sign-on applications.

Please indicate if you are using any of the following applications by selecting the checkboxes next to the product name. If you have a current Customer ID from one of these applications you would like to use, or if you are an existing SinglePoint customer, please enter the Customer ID in the field provided.

If you do not use any of these products please leave this section blank, a Customer ID will be assigned.

U.S. Bank Single Sign-on Products ☐ FX Web ☐ Global Trade ☐ Image Look ☒ SinglePoint

Customer ID: e3advisors

U.S. Bank SinglePoint System Administration helps you achieve new levels of efficiency by providing the ability to perform user setup and maintenance tasks online without U.S. Bank assistance. This service is a fast, efficient and secure way to immediately update user information. For security purposes and risk mitigation, U.S. Bank recommends that customers periodically review all SinglePoint system administrators, users and their assigned services.

System Administration Security

U.S. Bank recommends maintaining Dual Authorization for System Administration functions with a minimum of three system administrators for each Customer ID.

User Maintenance

Allows system administrators to create new and modify existing user profiles including payment transaction limits. With dual authorization enabled, changes made by one system administrator require an approval by another system administrator before the change is implemented. System administrators can elect to receive a LaunchPoint message when a change has been made and is pending approval.

Require Dual Authorization for user changes in the following services: ☐ For All Services ☒ For ACH, Bill Pay, Book Transfer, Investments and Wire Transfer only

Global Approvals

Global Approvals allows system administrators to establish rules regarding approval requirements in all service areas where actions require approvals. System administrators can manage approval levels on many transaction types including ACH and Wire Transfer. With dual authorization enabled, changes made by one system administrator require an approval by another system administrator before the change is implemented. System administrators can elect to receive a LaunchPoint message when a change has been made and is pending approval.

Is Dual Authorization required for System Administration Global Approvals? ☐ **Yes** ☒ **No**

Password Resets

User passwords can be reset by system administrators and sub-system administrators. With dual authorization enabled, password resets by one system administrator require an approval by another system administrator before the password is reset. System administrators can elect to receive a LaunchPoint message when a user password has been reset by a system administrator and is pending approval.

Is Dual Authorization required for System Administration Password Resets? ☐ **Yes** ☒ **No**

System Administration Tokens

Require that system (or sub-system) administrators have a token to access the System Administration service.

Require token to access system administration functions? ☐ **Yes** ☒ **No**

U.S. Bank SinglePoint System Administrator Authorization Form

System Administrator Information - Provide user information for each system administrator below, all fields required

Set up system administrators with all services? ☒ **Yes** ☐ **No** (If No, the system administrators will have administrative functions only.)

First Administrator Name: Thomas Hebrank Phone Number: 619-400-4922

System administrator user maintenance entitlements: ☒ **Approve Users** ☐ **Manage Users** ☐ **Both (default)**

(Applicable only when dual authorization for user maintenance is maintained.)

Email Address: thebrank@ethreeadvisors.com Fax Number:

User ID: (limit 3-10 characters)

Second Administrator Name: Lisa Ryan Phone Number: 619-203-5444

System administrator user maintenance entitlements: ☐ **Approve Users** ☐ **Manage Users** ☒ **Both (default)**

(Applicable only when dual authorization for user maintenance is maintained.)

Email Address: Lryan@ethreeadvisors.com Fax Number:

User ID: Lryan (limit 3-10 characters)

Third Administrator Name: Krista Freitag Phone Number: 619-316-9911

System administrator user maintenance entitlements: ☐ **Approve Users** ☐ **Manage Users** ☒ **Both (default)**

(Applicable only when dual authorization for user maintenance is maintained.)

Email Address: kfreitag@ethreeadvisors.com Fax Number:

User ID: kfreitag (limit 3-10 characters)

☐ If additional space is needed a spreadsheet may be attached to this signed document. Each page of the spreadsheet must be initialed by the signer of this form. Please check this box and attach spreadsheet.

Request to Waive Dual Authorization for User Maintenance

U.S. Bank recommends maintaining Dual Authorization for System Administration user maintenance with a minimum of three system administrators for each Customer ID. Customer has analyzed its own internal procedures and business needs and has chosen to decline the use of Dual Authorization for System Administration user maintenance. Customer understands that not utilizing Dual Authorization of System Administration user maintenance may increase the exposure for unauthorized activity and agrees to assume any associated risks. By checking the box below, Customer authorizes U.S. Bank to remove Dual Authorization for System Administration User Maintenance.

☐ Waive Dual Authorization for System Administration User Maintenance

Customer Approval

By signing this Authorization Form, Customer represents and warrants that all selections, designations, and/or other instructions contained herein are accurate and have been authorized by Customer, that the Services requested herein shall be governed by the U.S. Bank Services Terms and Conditions or other contract governing the provision of Treasury Management services approved in writing by the Bank, and that the signer listed below is an authorized signer. Bank may rely on the information contained in this Authorization Form until it has been revoked in writing by Customer and Bank has had a reasonable opportunity to act on any such revocation.

Authorized Signer: (please print) Thomas Hebrank Title: Secretary

Signature: Date: 05/22/2013 Phone 619-400-4922

Treasury Management Contact Information

Please return the completed and signed form, via fax or email, to:

Contact Name: Fax Number: ( ) -

Phone: ( ) - Email Address: @usbank.com

For U.S. Bank Internal Use Only

Relationship Manager or Account Officer completes this section if a contract is not currently on file for the customer or the Authorized Signer above is not listed on the contract. I hereby verify that the above signer is authorized to approve services on behalf of the customer.

Account Officer: (please print) Title:

Signature: Date: / / Phone: ( ) -