

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

131A



FROM: Don Kent, Treasurer/Tax Collector

SUBMITTAL DATE:

SUBJECT: Recommendation for Distribution of Excess Proceeds for Tax Sale No. 179, Item 250. AUG 07 2012
Last assessed to: Emma Hilario & ADAD, LLC an Arkansas Limited Liability Co., each as to an undivided 1/2 interest as tenants in common.

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve the claim from United Pacific Assets, LLC, assignee for Columbus and Chester, General Partnership, for payment of excess proceeds resulting from the Tax Collector's public auction sale associated with parcel 812161029-0;
- 2) Deny the claim from Thomas M. Coleman, General Partner for Columbus and Chester, General Partnership;
- 3) Deny the claim from Emma Hilario, last assessee;

(Continued on page two)

BACKGROUND: (Continued on page two)

Don Kent, Treasurer-Tax Collector

FINANCIAL DATA

Current F.Y. Total Cost:	\$ 188,784.11	In Current Year Budget:	NO
Current F.Y. Net County Cost:	\$ 0.00	Budget Adjustment:	N/A
Annual Net County Cost:	\$ 0.00	For Fiscal Year:	2012-13

SOURCE OF FUNDS: Fund 65595 Excess Proceeds from Tax Sale

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Karen L. Johnson

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Stone, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: September 25, 2012
xc: Treasurer, Auditor

Kecia Harper-Ihem
Clerk of the Board
By:
Deputy

Prev. Agn. Ref.:

District: 4/4

Agenda Number:

9.18

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

FORM APPROVED COUNTY COUNSEL

BY: DALE A. GARDNER

DATE: 8/7/12

Departmental Concurrence

☒ Policy

☐ Consent

☒ Policy

☐ Consent

Dep't Recomm.:

Per Exec. Ofc.:

BOARD OF SUPERVISORS

Form 11:

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(continued)

- 4) Deny the claim from for ADAD, LLC, last assessee;
- 5) Deny the claim from Global Discoveries, Ltd, assignee for Ernest Oldham, trustee, for Investors of Capital Investment Fund, Inc. II;
- 6) Deny the claim from Ernest Oldham, trustee;
- 7) Deny the claim from Max J. Gradowitz and Martha Gradowitz;
- 8) Authorize and direct the Auditor-Controller to issue a warrant to United Pacific Assets, LLC, assignee for Columbus and Chester, General Partnership, in the amount of \$188,784.11, no sooner than ninety days from the date of this order, unless pursuant to the California Revenue and Taxation Code Section 4675, an appeal has been filled in Superior Court.

BACKGROUND: (Continued)

In accordance with Section 3691 et seq. of the California Revenue and Taxation Code, and with prior approval of the Board of Supervisors, the Tax Collector conducted the March 17, 2008 public auction sale. The deed conveying title to the purchasers at the auction was recorded May 12, 2008. Further, as required by Section 4676 of the California Revenue and Taxation Code, notice of the right to claim excess proceeds was given on June 9, 2008, to parties of interest as defined in Section 4675 of said code. Parties of interest have been determined by an examination of lot book reports as well as Assessor's and Recorder's records, and various research methods were used to obtain current mailing addresses for these parties of interest.

The Treasurer-Tax Collector has received seven claim(s) for excess proceeds:

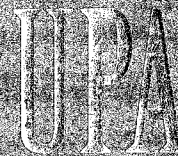
- 1) Claim from United Pacific Assets, LLC, assignee for Columbus and Chester, General Partnership based on an Assignment of Rights to Collect Excess Proceeds dated January 15, 2009; a Deed of Trust recorded August 25, 1994 as Instrument No. 331531 and an Order Approving Settlement recorded November 30, 2006 as Instrument No. 2006-0880067.
- 2) Claim from Thomas M. Coleman, General Partner for Columbus and Chester, General Partnership based on a Deed of Trust recorded August 25, 1994 as Instrument No. 2004-331531 and an Order Approving Settlement recorded November 30, 2006 as Instrument No. 2006-088067.
- 3) Claim from Emma Hilario based on a Quitclaim Deed recorded March 14, 2008 as Instrument No. 2008-0127473; a Quitclaim Deed recorded March 17, 2008 as Instrument No. 2008-0128112 and a Substitution of Trustee and Full Reconveyance recorded April 12, 2010 as Instrument No. 2010-0166323.
- 4) Claim from ADAD, LLC based on a Quitclaim Deed recorded March 14, 2008 as Instrument No. 2008-0127473; a Quitclaim Deed recorded March 17, 2008 as Instrument No. 2008-0128112 and a Substitution of Trustee and Full Reconveyance recorded April 12, 2010 as instrument No. 2010-0166323.
- 5) Claim from Global Discoveries, Ltd., assignee for Ernest Oldham, trustee for Investors of Capital Investment Fund, Inc. II, based on an Assignment of Right to Collect Excess Proceeds dated April 15, 2008 and a Grant Deed recorded November 25, 2002 as Instrument No. 2002-695157.
- 6) Claim from Ernest Oldham, Trustee based on Deed of Trust and Assignment of Rents recorded March 14, 2008 as Instrument No. 2008-0127474.
- 7) Claim from Max J. Gradowitz and Martha Gradowitz based on a check copy dated February 25, 2001.

(Continued on page three)

BOARD OF SUPERVISORS
FORM 11:
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(continued)

Pursuant to Section 4675 (a) & (b) & (e) of the California Revenue and Taxation Code, it is the recommendation of this office that United Pacific Assets, LLC, assignee for Columbus and Chester, General Partnership be awarded excess proceeds in the amount of \$188,784.11. The claim from Thomas M. Coleman, General Partner for Chester for Columbus, LP, be denied due to a Withdrawal of Claim for Excess Proceeds dated January 15, 2009. Since the claim from United Pacific Assets, LLC, assignee for Columbus and Chester, General Partnership exceeds the amount of excess proceeds available there are no monies available for consideration for the claims from Emma Hilario and ADAD, LLC. The claims from Global Discoveries, Ltd., assignee for Ernest Oldham, trustee for Investors of Capital Investment Fund, Inc. II and the claim from Max J. and Martha Gradowitz be denied since at the time of the sale the claimants were not parties of interest of said property. The Claim from Ernest Oldham, trustee be denied since the Deed of Trust has been paid in full and a Substitution of Trustee and Full Reconveyance was recorded April 12, 2010 as Instrument No. 2010-0166323. Supporting documentation has been provided. The Tax Collector requests approval of the above recommended motion. Notice of this recommendation was sent to the claimants by certified mail.



UNITED
PACIFIC
ASSETS, LLC

Sunday, February 22, 2009 3:15:46 PM

Riverside County Claim for Excess Proceeds

Date of Tax Sale: 3/17/2008 Assessors Parcel Number: 812-161-029

1722 H Street
Modesto, Ca 95354
T 866.505.4107
F 866.608.0547

info@corpasset.com
www.simpleproceeds.com

Summary of Documents Provided

1. Vesting Document 2006-0880067
 - i. Order Approving Settlement
 - ii. The above document assigns all beneficial interest in a Note and Deed of Trust please see Page 2 Line 14 thru end of document
2. Deed of Trust that was assigned to Columbus and Chester by way of item 1 in this summary
3. Assignment of Rights from Columbus and Chester, LP to United Pacific Assets, LLC
4. Declaration of Amount due and owing
5. Claim for Excess Proceeds by United Pacific Assets, LLC
6. Columbus and Chester Operating Agreement



Call the Better
Business Bureau at
1.800.948.4880 to
verify our perfect
record.

If you have any requests for additional information we are happy to provide that, you may contact us via phone, email, mail or facsimile.



UNITED
PACIFIC
ASSETS, LLC

Sunday, February 22, 2009

Riverside County Treasurer
Att: Excess Proceeds Processing
P.O. Box 12005
Riverside, CA 92502-2205

1722 H Street
Modesto, Ca 95354
T 866.505.4107
F 866.608.0547

info@corpasset.com
www.simpleproceeds.com

Re: Withdrawal of Claim

To whom this may concern:

For reasons that are known to United Pacific Assets, LLC and our Client Columbus and Chester, our office submits to you the attached document "Withdrawal - Claim for Excess Proceeds from Tax Defaulted Property"

Columbus and Chester has hired our firm to process a new claim for excess proceeds (included in this package) and wishes to withdrawal its previous claim.

Please provide our office copies of all claims submitted on this parcel.

Regards,

Paul D. Tunison
President



Call the Better
Business Bureau at
1.800.948.4880 to
verify our perfect
record.

Withdrawal- Claim for Excess Proceeds from Tax Defaulted Property

I, **Thomas Coleman**, an individual and in my capacity to and for Columbus and Chester, hereby withdrawal my/our claim for excess proceeds located in the county of Riverside, California on Assessors Parcel Number: 812-161-029 sold at Riverside County Tax Auction on or about 3/17/2008.

Date: 

Signature: 1.15.09

Name: Mr. Thomas Coleman, General Partner
Columbus and Chester, A California General Partnership
269 Las Entradas Dr
Santa Barbara, Ca 93108-2668

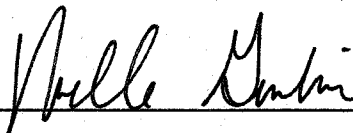
State of California
County of Santa Barbara

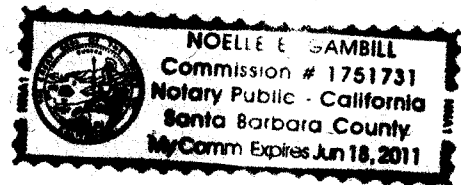
On 1.15.09 before me, Noelle E. Gambill, personally
appeared Thomas Coleman

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

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

WITNESS my hand and official seal.

Signature  (Seal)



DOC # 2006-0880067

11/30/2006 08:00A Fee:19.00

Page 1 of 5

Recorded in Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



PLEASE COMPLETE THIS INFORMATION
RECORDING REQUESTED BY:

Ronald D. Dessy, Esq.

AND WHEN RECORDED MAIL TO:
Ronald D. Dessy, Esq.
DESSY & DESSY
1301 L Street
Bakersfield, CA 93301

S	R	U	PAGE	SIZE	DA	MISC	LONG	RFD	COPY
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									006

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22

TRA:
DTT:

Title of Document

ORDER APPROVING SETTLEMENT

THIS AREA FOR
RECORDER'S
USE ONLY

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(\$3:00 Additional Recording Fee Applies)

1 RONALD D. DESSY, ESQ., SBN 96398
2 DESSY & DESSY
3 1301 "L" Street
4 Bakersfield, California 93301
5 (661) 322-3863

6 Attorneys for Lien Holder

FILED
KERN COUNTY

JUN 14 2004

TERP McNALLY CLERK
BY: *[Signature]*

7
8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN
9 METROPOLITAN DIVISION

10
11 ERNIE OLDHAM, etc.

12 Plaintiff,

13 vs.

14 CALIFORNIA CAPITAL FUND, INC.,
15 etc., et al.

16 Defendants,

17 COLUMBUS AND CHESTER, a general
18 partnership

19 Lien Holder.

CASE NO.: 243461 SPC

ORDER APPROVING SETTLEMENT

20
21 Pursuant to the Appellate Opinion in this case, the Stipulation Re Settlement providing for
22 this court to modify the prior settlement, and good cause appearing:

23 THIS COURT FINDS:

24 A. The settlement previously approved by this court, but disapproved on appeal,
25 involved the reconveyance of a deed of trust ("Reconveyance") which constituted
26 a lien against real property in Riverside County, California, owned by Ernest
27 Oldham, trustee for the investors of Capital Investment Fund, Inc. II ("Trust").

28 B. Columbus and Chester, a general partnership (Lien Holder) has a lien against any

2 recovery in this action by Plaintiff, Ernie Oldham ("Lien").

- 3 C. There is insufficient evidence to prove that the Trust existed, that the Trust had
4 valid claims to the property benefitted by the Reconveyance, or that it would be
5 equitable to deprive Lien Holder of the interest encompassed by the
6 Reconveyance, even if the Trust existed. Further, the evidence shows that Capital
7 Investment Fund, Inc. was a suspended corporation at the time the Reconveyance.
- 8 D. It is equitable within the meaning of California Code of Civil Procedure, Section
9 708.440 (b) to approve the settlement, only if there is no Reconveyance, and the
10 Deed of Trust is assigned to Lien Holder, but without recourse against the
11 Defendants for any timely asserted third party equitable lien claims against said
12 Deed of Trust.

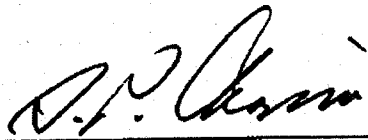
13
14 **IT IS HEREBY ORDERED AS FOLLOWS:**

- 15
- 16 1. The entire beneficial interest of California Capital Fund, Inc under the Deed of
17 Trust recorded on August 25, 1994, as Instrument No.331531, in Riverside County,
18 California, in favor of Capital Investment Fund, Inc, is hereby assigned to
19 Columbus and Chester, a general partnership, subject to any prior third party
20 equitable lien claims that may be timely asserted in the future.
- 21 2. In the event that the Defendants are unable to produce the original Deed of the
22 Trust and the original related note, the Defendants shall take all actions necessary
23 to accommodate all reasonably related requests of any entity coordinating a non-
24 judicial foreclosure, in connection with any lost documents related to the
25 enforcement of the rights under the Deed of Trust, except posting a related bond.
- 26 3. This action is dismissed ^{WITHOUT} ~~with~~ prejudice, subject to the right of any party to vacate
27 the dismissal, in connection with obtaining any further orders to enforce the terms
28 of this Stipulation. The prevailing party in any enforcement action shall be entitled

1 Oldham v. Gradowitz, et al., KCSC Case No. 243461-SPC

2 to attorney fees.

3
4 DATED: 6/14/04



Sidney P. Chapin
Judge of the Superior Court

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**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF KERN, METROPOLITAN DIVISION**

THIS IS TO CERTIFY THAT THE ABOVE IS A TRUE AND
CORRECT COPY OF THE ORIGINAL DOCUMENT ON
FILE IN THE OFFICE OF THE CLERK OF THIS COURT.

DATED: 9/8/05

BY: TERRY McNALLY DEPUTY

331531

RECORDING REQUESTED BY
COMMONWEALTH LAND TITLE
TITLE FINANCIAL SERVICES

WHEN RECORDED MAIL TO

BANKERS FINANCIAL GROUP
318 CHESTER AVE.
BAKERSFIELD, CA 93301

Title Order No. 194803-5

RECEIVED FOR RECORD
AT 800 OCLOCK

AUG 25 1994

Recorded in Clerk's Office
of Recorder's Office, California

Recorder

Fees \$

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RECORDER: INDEX FOR SPECIAL NOTICE

DEED OF TRUST

Loan No. 004383

This Deed of Trust, made this 17th day of August, 1994, among the Trustor,
CALIFORNIA CAPITAL FUND, INC.

(herein "Borrower"),

TITLE FINANCIAL SERVICES, a California corporation (herein "Trustee"), and the Beneficiary,
CAPITAL INVESTMENT FUND, INC.

(herein "Lender").

GRANT IN TRUST

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with power of sale, the following described property located in the county of RIVERSIDE, State of California:

SEE ADDENDUM "A" ATTACHED AND MADE A PART HEREOF.

which has the address of 918 ACRES, JOJOBA PLANTATIONS,

(herein "Property Address");

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, and water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are herein referred to as the "Property";

THIS DEED OF TRUST IS MADE TO SECURE TO LENDER:

(a) the repayment of the indebtedness evidenced by Borrower's note (herein "Note") dated August 17, 1994, in the principal sum of U.S. \$ 300,000.00, with payment of interest thereon, the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; the performance of the covenants and agreements of Borrower herein contained; and (b) repayment of any future advances, with interest thereon, made to the Borrower by Lender pursuant to paragraph 19 hereof (herein "Future Advances"); and in addition (c) this Deed of Trust shall provide the same security on behalf of the Lender, to cover extensions, modifications or renewals, including without limitation, extensions, modifications or renewals of the Note at a different rate of interest; and the performance of the covenants and agreements of Borrower herein contained.

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property, that the Property is unencumbered except for encumbrances of record, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

THIS MICROFILM COPYRIGHTED 1994
BY SECURITY UNION TITLE INSURANCE COMPANY, ORANGE MICROGRAPHICS DIVISION.

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194803-5

194803-5

ADDENDUM "A"

219345

PARCEL 1:

THE WEST HALF OF SECTION 16 AND THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 5 SOUTH, RANGE 22 EAST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

029
EXCEPT ALL OIL AND GAS, OR GAS, OIL, SHALE, COAL, PHOSPHATE, SODIUM, GOLD, SILVER AND ALL OTHER MINERAL DEPOSITS CONTAINED IN SAID LANDS, AND FURTHER EXCEPTING THE RIGHT TO DRILL FOR AND EXTRACT SUCH DEPOSITS OF OIL AND GAS, AND TO PROSPECT FOR, MINE AND REMOVE SUCH DEPOSITS OF OTHER MINERALS FROM SAID LANDS AND TO OCCUPY AND USE AS MUCH OF THE SURFACE OF SAID LANDS AS MAY BE REQUIRED THEREFOR AS RESERVED TO THE STATE OF CALIFORNIA IN PATENT RECORDED JULY 1, 1969 AS INSTRUMENT NO. 66727, OFFICIAL RECORDS.

PARCEL 2:

THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 22 EAST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL 3:

AN EASEMENT 20.00 FEET IN WIDTH FOR INGRESS, EGRESS AND UTILITY PURPOSES ALONG THE NORTHERLY BOUNDARY LINE OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 5 SOUTH, RANGE 22 EAST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL 4:

THE SOUTHEAST QUARTER OF SECTION 27 LYING NORTHERLY OF THE ATCHISON, TOPEKA AND SANTA FE RAILROAD AS IT NOW EXISTS, TOWNSHIP 5 SOUTH, RANGE 22 EAST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT ALL OIL, GAS, HYDROCARBON SUBSTANCES AND MINERALS LYING IN OR UNDER SAID LAND.

PARCEL 5:

THE NORTHWEST QUARTER OF SECTION 28, LYING SOUTHERLY OF THE ATCHISON, TOPEKA AND SANTA FE RAILROAD AS IT NOW EXISTS, TOWNSHIP 5 SOUTH, RANGE 22 EAST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

777-5777

8 25 94

THIS MICROFILM COPYRIGHTED 1994
BY SECURITY UNION TITLE INSURANCE COMPANY, ORANGE MICRO-GRAPHICS DIVISION.

219345

PARCEL 6:

THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 5 SOUTH, RANGE 22 EAST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT A STRIP OF LAND WITH A WIDTH OF 100.00 FEET LYING 50.00 FEET ON EACH SIDE OF THE CENTER LINE OF THE MAIN TRACK OF THE CALIFORNIA SOUTHERN RAILROAD (NOW ATCHISON, TOPEKA AND SANTA FE RAILROAD) AS ACQUIRED BY DECREE RECORDED IN BOOK 29, PAGE 501, OF JUDGMENT RECORDS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 7:

THAT PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 5 SOUTH, RANGE 22 EAST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE WEST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 35;
THENCE SOUTH 100.00 FEET;
THENCE WEST 100.00 FEET;
THENCE NORTH 100.00 FEET;
THENCE EAST 100.00 FEET TO THE POINT OF BEGINNING.

PARCEL 8:

A NON-EXCLUSIVE EASEMENT FOR ROAD PURPOSES FOR INGRESS AND EGRESS OVER THE SOUTHERLY 30.00 FEET OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 5 SOUTH, RANGE 22 EAST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

THIS MICROFILM COPIED 1994
BY SECURITY UNION TITLE INSUR-
ANCE COMPANY, ORANGE MICRO-
GRAPHICS DIVISION.

UNIFORM COVENANTS, BORROWER AND LENDER COVENANT AND AGREE AS FOLLOWS:

1. Payments of Principal and/or Interest. Borrower shall promptly pay, when due, the principal of and/or interest on the indebtedness evidenced by the Note, prepayment and late charges as provided in the Note, and the principal of and/or interest on any Future Advances secured by the Deed of Trust.

2. Funds for Taxes and Insurance (Impounds). Subject to applicable law, and if required by the Lender, Borrower shall pay to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments (including condominium and planned unit development assessments, if any) which may attain priority over this Deed of Trust, and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that Borrower makes such payments to the holder of a prior mortgage or deed of trust if such holder is an institutional Lender.

If Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Deed of Trust that interest on the Funds shall be paid to Borrower, and unless such an agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Deed of Trust.

If the amount of Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of all sums secured by this Deed of Trust, Lender shall promptly refund to Borrower any Funds held by Lender. If under Paragraph 18 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Deed of Trust.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, if applicable, then to interest payable on the Note, then to the principal of the Note, and then to interest and principal on any Future Advances.

4. Prior Mortgages and Deeds of Trust; Liens. Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid, at least 10 days before delinquency, all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any.

5. Hazard Insurance. Borrower agrees to provide, maintain and deliver to Lender fire insurance satisfactory and with loss payable to Lender. The amount collected under any fire or other insurance policy may be applied by Lender upon any indebtedness secured hereby and in such order as Lender may determine, or at option of Lender the entire amount so collected or any part thereof may be released to the Borrower. Such application or release shall not cure or waive any Default or Notice of Default hereunder or invalidate any act done pursuant to such notice.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

In the event of a loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply their insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

6. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments. Borrowers shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration of covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

7. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which affects Lender's interest in the Property, including but not limited to proceedings by the Lender to obtain relief from stay in any bankruptcy proceeding which would prohibit Lender enforcing its rights under the Deed of Trust, then Lender, at Lender's option, may make such appearances, disburse such sums, including reasonable attorney's fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, including but not limited to payment of delinquent taxes and assessments, insurance premiums due, and delinquent amounts owed to prior lien holders, shall become additional indebtedness of Borrower secured by this Deed of Trust. Such amounts as are disbursed by Lender shall be payable, upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable on the Note. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. Inspection. Lender may make or cause to be made reasonable entries upon and inspection of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender's interest in the Property.

9. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in conjunction with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

10. Borrower Not Released. At any time or from time to time, without liability therefore and without notice upon written request of Lender and presentation of this Deed and said Note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge thereof. Trustee may, but shall be under no obligation or duty to, appear in or defend any action or proceeding purporting to affect said property or the title thereto, or purporting to affect the security hereof or the rights or powers of Lender or Trustee.

11. Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness

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ANCE COMPANY, GRANDE MICRO-
GRAPHICS DIVISION.

12. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

13. Successors and Assigns Bound; Joint and Several Liability; Co-obligors. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 18 hereof. All covenants and agreements of Borrower shall be joint and several.

14. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower or the Property at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender, in care of Lender's Servicing Agent ("Agent"),

Bankers Financial Group
318 Chester Ave.
Bakersfield, CA 93301,

or to such other address as Lender or Agent may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

15. This Deed of Trust shall be governed by the Laws of the State of California. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not effect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust are declared to be severable.

16. Lender's Right to Require The Loan to be Paid Off Immediately. If the Borrower shall sell, enter into a contract of sale, lease for a term of more than 6-years (including options to renew), lease with an option to purchase for any term, or transfer all or any part of the Property or an interest therein, excluding (a) the creation of a lien or encumbrance subordinate to this Deed of Trust, (b) or a transfer by devise, descent, or by operation of law upon the death of a joint tenant, the Lender may, at its option declare the Note and any other obligations secured by this Deed of Trust, together with accrued interest thereon, immediately due and payable, in full. No waiver or the Lender's right to accelerate shall be effective unless it is in writing.

If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph 14 hereof. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph 17 hereof.

BORROWER AND LENDER FURTHER COVENANT AND AGREE AS FOLLOWS:

17. Assignment of Rents; Appointment of Receiver; Lender in Possession. As additional security hereunder, and without regard to the adequacy of any security for the indebtedness hereby secured, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 18 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 18 hereof or abandonment of the Property, Lender, in person, by Agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

18. Upon default by Borrower in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Lender may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written Notice of Default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Trustee shall be entitled to rely upon the correctness of such notice. Lender also shall deposit with Trustee this Deed, said Note and all documents evidencing expenditures secured hereby.

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

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

19. Future Advances. Upon request of Borrower, Lender, at Lender's option prior to full reconveyance of the Property by Trustee to Borrower, may make Future Advances to Borrower. Such advances with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby.

20. Reconveyance. Upon written request of Lender stating that all sums secured hereby have been paid, and upon surrender of this Deed and said Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." The Trustee may destroy said Note, this Deed or Trust (and any other documents related thereto) upon the first to occur of the following: 5 years after issuance of a full reconveyance; or, recordation of the Note and Deed of Trust in a form or medium which permits their reproduction for 5 years following issuance of a full reconveyance.

21. Substitution of Trustee. Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

22. Request for Notices. Borrower requests that copies of the notice of sale and notice of default be sent to Borrower's address which is the Property Address.

23. Statement of Obligation. Lender may collect a fee, not to exceed the maximum amount permitted by law, for furnishing the statement of obligations as provided by Section 2943 of the Civil Code of California.

MISCELLANEOUS PROVISIONS

24. Construction or Home Improvement Loan. If the loan secured by this Deed of Trust is a construction or home improvement loan, Borrower is required to perform according to the terms and conditions of each agreement contained in any building, home improvement or similar agreement between the Borrower and Lender.

25. Acceptance by Lender of a Partial Payment After Notice of Default. By accepting partial payment (payments which do not satisfy a default or delinquency in full) of any sums secured by this Deed of Trust after a Notice of Default has been recorded, or by accepting late performance of any obligation secured by this Deed of Trust, or by adding any payment so made to the loan secured by this Deed of Trust, whether or not such payments are made pursuant to a court order, the Lender does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure to make any such prompt payment or to perform any such act. No exercise of any right or remedy of the Lender or Trustee under this Deed of Trust shall constitute a waiver of any other right or remedy contained in this Deed of Trust or provided by law.

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REQUEST FOR SPECIAL NOTICE OF DEFAULT AND FORECLOSURE
UNDER SUPERIOR MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Deed of Trust to give Notice to Lender care of Lender's Servicing Agent, at its address set forth on page one of this Deed of Trust, of any default under the superior encumbrances and of any sale or other foreclosure action.

IN WITNESS WHEREOF, BORROWER HAS EXECUTED THIS DEED OF TRUST

Borrower CALIFORNIA CAPITAL FUND, INC
[Signature]
Borrower Max J. Gradovitz, President

Borrower
Borrower

State of California
County of Kern
On August 17, 1994 before me, Robin White, personally appeared
Max J. Gradovitz
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity(ies), and that by his signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature: Robin White]
Signature



(Seal)

REQUEST FOR FULL RECONVEYANCE

TITLE FINANCIAL SERVICES, TRUSTEE:

The undersigned is the holder of the note or notes secured by this Deed of Trust. Said note or notes, together with all other indebtedness secured by this Deed of Trust, have been paid in full. You are hereby directed to cancel said note or notes and this Deed of Trust, which are delivered hereby, and to reconvey, without warranty, all the estate now held by you under this Deed of Trust to the person or persons legally entitled thereto.

Dated _____
Signature of Beneficiary (the "LENDER")

Signature of Beneficiary (the "LENDER")

Signature of Beneficiary (the "LENDER")

When recorded, mail to BANKERS FINANCIAL GROUP, 318 CHESTER AVE, BAKERSFIELD, CA 93301

Att: _____

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ASSIGNMENT OF RIGHTS TO COLLECT EXCESS PROCEEDS

To expedite processing of this claim, we would strongly suggest you use this form. For this form to be valid it must be completed in its entirety and documentation establishing the assignors claim as a "party of interest" must be provided at the time this document is filed with the Treasurer-Tax Collector. **PLEASE SEE REVERSE SIDE OF THIS DOCUMENT FOR FURTHER INSTRUCTIONS.**

As a party of interest (defined in section 4675 of the California Revenue and Taxation Code), I, the undersigned, do hereby assign to **UNITED PACIFIC ASSETS, LLC**, my right to apply for and collect excess proceeds which you are holding and to which I am entitled from the sale of assessment number **812-161-029** sold at public auction on **3/17/2008**. I understand that the total excess proceeds available for refund is **\$189,273.00** and that I AM GIVING UP MY RIGHT TO FILE A CLAIM FOR THEM. FOR VALUABLE CONSIDERATION RECEIVED I HAVE SOLD THIS RIGHT OF COLLECTION (assignment) TO THE ASSIGNEE. I certify under penalty of perjury that I have disclosed to the assignee all facts of which I am aware relating to the value of this right I am Assigning.

(Signature of Party of Interest/Assignor)

Thomas Coleman an Individual and or General Partner of Columbus and Chester, A California General Partnership
269 Las Entradas Dr
Santa Barbara, Ca 93108-2668

STATE OF CALIFORNIA

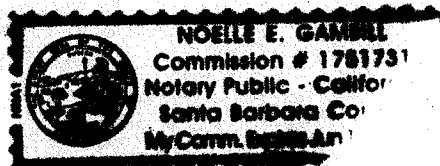
COUNTY OF Santa Barbara

On January 15, 2009 before me, Noelle E Gambill (Notary name), personally appeared Thomas Coleman, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Noelle Gambill (Seal)



I, the undersigned, certify under penalty of perjury that I have disclosed to the party of interest (assignor), pursuant to Section 4675 of the California Revenue and Taxation Code, all facts of which I am aware relating to the value of the right he is assigning, that I have disclosed to him the full amount of excess proceeds available, and that I HAVE ADVISED HIM OF HIS RIGHT TO FILE A CLAIM ON HIS OWN WITHOUT ASSIGNING THAT RIGHT.

(Signature of Assignee)

United Pacific Assets, LLC
PAUL D. TUNISON, President
1722 H St, Modesto, Ca 95354

STATE OF CALIFORNIA

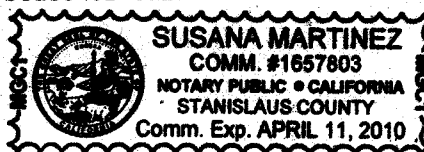
COUNTY OF Stanislaus

On 3/9/09 before me, Susana Martinez A Notary Public (Notary name), personally appeared Paul D. Tunison, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Susana Martinez (Seal)



Declaration of Amount Due and Owing

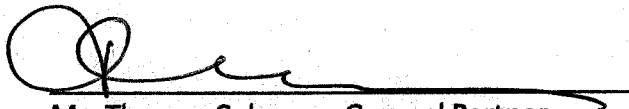
The undersigned declares the following to be true and correct:

1. I, Thomas Coleman, General Partner for Columbus and Chester, A California General Partnership declare that we are the beneficiary of a Note which is evidenced by recordation of a Deed of Trust recorded as an official document in Riverside County California on August 25, 1994 as document number 331531.
2. The abovementioned Note and Deed of Trust were assigned to us by way of court action. Evidence of such assignment is provided in the "Order Approving Settlement" has been recorded in Riverside County as official document 2006-0880067 and is hereby attached.
3. The debtor is California Capital Fund, INC
4. The Initial lien amount was \$300,000.00; of which we are entitled to 100%
5. The principle amount due and owing on the date of the tax sale was \$300,000.00;
6. The undersigned is entitled to 100% of the full amount due and owing, plus interest.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

1.15.09

Date



Mr. Thomas Coleman, General Partner
Columbus and Chester, A California General Partnership
269 Las Entradas Dr
Santa Barbara, Ca 93108-2668

State of California

County of Santa Barbara

On 1.15.09 before me, Noelle E. Gambill, personally
appeared Thomas M. Coleman

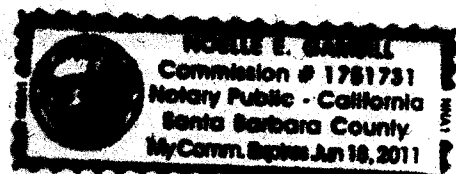
_____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the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

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

WITNESS my hand and official seal.

Signature

Noelle E. Gambill (Seal)



TAX DEFALTED PROPERTY CLAIM FOR EXCESS PROCEEDS

Sale Date: 3/17/2008 APN: 812-161-029

Riverside County Tax Collector

We the undersigned claim about 100% of the share of the excess that has been assigned to **UNITED PACIFIC ASSETS, LLC**, 1722 H Street, Modesto, CA 95354

We claim status as a party of interest pursuant to Section 4675 of the California Revenue and Taxation Code based upon the attached documentation:

We affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 9 day of MARCH, 2009 at Modesto, CA.
City State

Signature [Signature]
United Pacific Assets, LLC
Paul D Tunison, Managing Member
1722 H Street
Modesto CA 95354

State of California

County of Stanislaus

On 3/9/09 before me, Susana Martinez-A Notary Public (Notary name), personally appeared Paul D. Tunison, who proved to me on the basis of satisfactory evidence to be the person (s) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity (s), and that by his/~~her/their~~ signature (s) on the instrument the person (s), or the entity upon behalf of which the person (s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature [Signature] (Seal)



COPY

GENERAL
PARTNERSHIP
AGREEMENT
OF

~~CHESTER AND COLUMBUS PARTNERSHIP~~

BETWEEN

THOMAS M. COLEMAN

and

AMERICAN WEST LANDS COMPANY
A California Corporation

as General Partners

Dated: March 21st, 1985

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Project Plan
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Reduced Site
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Transfer
UPA

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GENERAL PARTNERSHIP AGREEMENT

OF

COLUMBUS AND CHESTER PARTNERSHIP

THIS AGREEMENT (the "Agreement") is made and entered into as of the 21st day of March, 1985, by and between THOMAS M. COLEMAN (herein referred to as "Managing Partner") and AMERICAN WEST LANDS COMPANY, a California corporation (herein referred to as "AWLC").

RECITALS

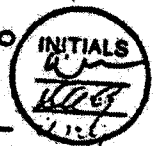
The parties hereto, for their mutual advantage, desire to form a general partnership under the laws of the State of California in order (a) to acquire fee title with respect to a parcel or parcels of land in the City of Bakersfield, California, (b) to construct on the Land (as defined in Section 2.2(a)) certain improvements (the "Improvements") and (c) after completion of construction, to operate said facilities in accordance with the purposes, terms and conditions hereof. The parties currently contemplate that the Land and the Improvements (collectively, the "Property") will be developed in accordance with the Project Plan or Plans (as defined in Section 6.5) to be prepared and implemented by the Managing Partner hereunder.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto do hereby mutually covenant and agree as follows:

ARTICLE I

ORGANIZATION

SECTION 1.1. Formation. (a) The parties hereto do hereby form, pursuant to the California Uniform ~~Partnership~~ Partnership Act (the "UPA"), and all other pertinent laws of the State of California (the "Laws"), a general partnership (the "Partnership") for the purposes and upon the terms and conditions hereinafter set forth. Each of the parties hereto and any Substituted Partners admitted to



the Partnership in accordance with Article IX shall sometimes be referred to individually as a "Partner" and collectively as the "Partners."

(b) The term "Partnership Act" shall mean the UPA or such other Laws as shall govern the Partnership, as in effect at the time in question.

SECTION 1.2. Name. The name of the Partnership shall be "Columbus and Chester Partnership." All business of the Partnership shall be conducted under such name.

SECTION 1.3. Principal Place of Business. The principal place of business and office of the Partnership shall be at Suite 250, 1001 Tower Way, Bakersfield, California 93389, or at such other place or places as the Managing Partner shall from time to time determine.

SECTION 1.4. Purpose. (a) The purpose of the Partnership shall be to acquire the Land, to construct thereon the Improvements, to hold, maintain, operate, finance, lease and mortgage the Property or portions thereof and to engage in any and all general business activities related or incidental thereto, all consistent with the terms and conditions herein set forth.

(b) The Partnership shall not engage in any other business or activity without the prior written approval of all the Partners.

SECTION 1.5. Term. The term of the Partnership shall commence on the date of execution of this Agreement and shall continue until dissolved, liquidated and terminated pursuant to Article XI.

SECTION 1.6. Partners. Unless and until Substituted Partners are admitted pursuant to the terms of Article IX, Managing Partner and AWLC shall be the general partners of the Partnership (within the meaning of the UPA) and the only partners of the Partnership. Except as otherwise expressly provided herein, no Partner may be removed as a Partner of the Partnership without such Partner's approval.

ARTICLE II

FUNDING OF PARTNERSHIP

SECTION 2.1. Project Financing. The Managing Partner shall obtain, for and in the name of the Partnership, construction loans, gap or interim loans, permanent financing and the other loans from one or more lenders to carry out the purposes of this Agreement, to the maximum extent practicable in accordance with prudent real estate practice, at prevailing rates and on prevailing terms, and in aggregate amounts sufficient to meet the expenses and requirements of the Partnership.

SECTION 2.2. Capital Contributions. (a) AWLC shall contribute its entire interest in the certain parcels of land more particularly described in Exhibit A hereto, free and clear of any and all liens, debts, claims and encumbrances of any kind (and AWLC shall indemnify and hold harmless the Partnership and Managing Partner from and against any such obligations), except for those certain deeds of trust dated June 6, 1979, in favor of Wayne J. Peacock and Wayne Investment and Development Co. and aggregate indebtedness in the amount of \$284,747.73 secured thereby. Such parcel is being contributed to the Partnership in contemplation of the development and construction of a shopping center having as its anchor tenant the Flemming Companies, Inc. In the event the Flemming Companies, Inc., decline to sign an acceptable lease as such within a reasonable time, then the Partners shall proceed to develop, under the procedures outlines in Section 6.5, a new development plan for the site; provided, however that any such new development plan shall deal only with the westerly 3.32 acres (the "Reduced Site"), and the remainder of the parcel described in Exhibit A hereto shall be reconveyed to AWLC and treated as a distribution of Net Cash Flow under Section 4.1(b)(i). For purposes of this Agreement, the term "Land" shall refer to the entire property described in Exhibit A or the Reduced Site, as the case may be. The parties agree that, for purposes of this Agreement, the entire property described in Exhibit A shall have a fair market value of \$1,000,000 and the Reduced Site has a value of \$695,000.

(b) The Partners intend that all funds required for acquisition, development and construction of the Property as contemplated by this Agreement will be provided pursuant to Sections 2.1 and 2.2(a). In the

event that expenditures are incurred by the Partnership from time to time (e.g., for capital improvements to the Property, tenant inducements and operating deficits), which expenditures are not funded by such sources, from the equity contributions of new partners admitted to the Partnership, from the Reserve or from Partnership revenues, then the Partners shall contribute, pro rata in accordance with their Partnership Interests (as defined in Section 3.1), the amounts needed from time to time to meet any such shortfall.

(c) The aggregate fair market value of each property and amount of cash contributed by a Partner as set forth in Section 2.2(a) or (b), as the case may be, shall be referred to herein as said Partner's "Capital Contribution".

(d) Capital Contributions shall be entitled to a special, preferred return out of the Net Income (if any) of the Partnership from the date such amounts are contributed until returned in full at a rate equal to thirteen percent (13%) per annum simple, distribution to be made as provided in Section 4.1(b)(i). Such special, preferred return shall accrue out of the Net Income (if any) of the Partnership and, to the extent unpaid in any fiscal year, it shall carry over into any subsequent fiscal year.

ARTICLE III

PARTNERSHIP INTERESTS

SECTION 3.1. Partnership Interests. The interest of each Partner in the Partnership (a "Partnership Interest") shall be:

Managing Partner	50%
AWLC	50%

SECTION 3.2. Capital Accounts. (a) A separate capital account shall be maintained in respect of each Partner.

(b) Each Partner's capital account shall be credited with:

(i) the excess of the cash and/or the adjusted basis for Federal income tax purposes of any capital contribution made by such Partner pursuant to Article II over the liabilities assumed by the Partnership in connection therewith; and

(ii) the amount of any Net Income (as defined in Section 5.1(e)(i)) allocated to such Partner pursuant to Article V;

and there shall be charged against such Partner's capital account:

(x) the amount of any Net Losses and as defined in subsection 5.1(e)(ii)) allocated to such Partner pursuant to Article V; and

(y) the cash and/or adjusted basis for Federal income tax purposes of any property paid or distributed to such Partner (other than principal of or interest on a loan or advance) pursuant to Article IV and Article XI.

The determination by the Accountant (as defined in Section 7.3) of Net Income and Net Losses shall be binding and conclusive on all Partners, subject to such adjustments as may be made pursuant to an audit of the Internal Revenue Service (whether by agreement, court decision or otherwise).

(c) Net Income and Net Losses shall be computed in the same manner as the Partnership reports its income for Federal income tax purposes, except that:

(i) the computations shall be made without regard to any adjustments made pursuant to any election under Section 754 of the Internal Revenue Code of 1954, as amended (the "Code"); and

(ii) unrealized appreciation or depreciation of Partnership assets shall be taken into account to the extent provided in Section 11.3(c).

SECTION 3.3. Return of Capital. No Partner shall be liable for the return of the capital contributions (or any portion thereof) of any other Partner, it being expressly understood that any such return shall be made solely from the assets of the Partnership. No Partner shall be required to pay to the Partnership, except as

provided in Section 11.6, or to any other Partner any deficit in its capital account, and no Partner shall be entitled to withdraw any part of its capital contributions or capital account, to receive interest on its capital contributions or capital account or to receive any distributions from the Partnership, except as expressly provided for in this Agreement or under the Partnership Act.

ARTICLE IV

DISTRIBUTIONS

SECTION 4.1. Net Cash Flow. (a) The term "Net Cash Flow" shall mean, for any given fiscal period of the Partnership, the gross cash receipts of the Partnership from any source whatsoever (including cash receipts from rentals, sales, loans to the Partnership, insurance proceeds, etc.) during such period in excess of the sum of

(i) all operating expenses (including all fees to the extent payable to a Partner under Section 6.3) of the Partnership paid during such period;

(ii) all other payments made during such period on account of the maintenance, repair, replacement or improvement of the Property;

(iii) all debt service payments due on all outstanding indebtedness of the Partnership (including any advances or loans from Partners together with interest thereon); and

(iv) amounts set aside for the Reserve in accordance with Section 7.4.

(b) The Net Cash Flow of the Partnership (including, to the extent allowable by the lender, the excess of any loan to the Partnership over the amounts paid or set aside therefrom under Section 4.1(a)) shall be distributed to the Partners as follows and in the following order of priority:

(i) to the Partners, to the extent not theretofore paid to the Partners under this clause (i), the amount of their Capital Contributions, with the first \$200,000 of distributions under this clause

(i) being allocated to AWLC and the remainder being allocated between the Partners pro rata in accordance with the amounts outstanding of their respective Capital Contributions; and

(ii) to the Partners, the special, preferred return on Capital Contributions described in Section 2.2(d), to the extent that Net Income has been allocated therefor under Section 5.1(a)(i)(B), less any portion of the same theretofore paid to such Partners pursuant to this clause (i), pro rata in accordance with the ratio which each Partner's special, preferred return outstanding bears to the total amount of the special, preferred returns for both Partners outstanding immediately before such distribution;

(iii) to the Partners, the balance of Net Cash Flow pro rata in accordance with their respective Partnership Interests.

(c) Distributions of Net Cash Flow shall be made annually, within a reasonable time, but not more than ninety (90) days, after the end of each fiscal year of the Partnership; provided, however, that the Managing Partner, in his sole discretion, may distribute Net Cash Flow at more frequent intervals.

SECTION 4.2. Offset. In the event that any Partner owes any amount to the Partnership, at the time a payment or distribution would be payable to such Partner under this Article IV, the amount of such distribution shall be reduced by the amount of such obligation, together with interest thereon, from the date such amount became due and payable to the Partnership until payment thereof is made, at a rate equal to three percent (3%) over the fluctuating annual interest rate announced publicly from time to time by Security Pacific National Bank on 90-day unsecured loans to its most creditworthy corporate customers (the "Base Rate"), but not to exceed the maximum rate for such obligation under any applicable usury laws, which offset shall be applied first to such interest and then to such obligation.

ARTICLE V

ALLOCATIONS

SECTION 5.1. Allocations. (a) Net Income and Net Losses shall be allocated for each fiscal year in the following order of priority:

(i) Net Income shall be allocated as follows and in the following order of priority:

(A) first, if the Net Income is derived in the course of a liquidation of the Partnership or is derived from sales or deemed sales under Article XI, an amount of the remaining Net Income (if any) shall be allocated to the Partners with negative capital accounts in the proportion that each Partner's negative balance bears to the aggregate of the negative balances of all such Partners, until all of such capital accounts shall have been increased to zero; and

(B) an amount of the remaining Net Income up to the amount necessary to increase the positive balance in the Partners' capital accounts to the amounts distributable to the Partners under Section 4.1(b) (i) and (ii), in that order, shall be allocated between the Partners, proportionately and in the order of Capital Contributions first and preferred returns second; and

(C) any remaining Net Income shall be allocated between the Partners pro rata in accordance with their respective Partnership Interests on the last day of the applicable period.

(ii) Net Losses shall be allocated as follows and in the following order of priority:

(A) to the extent Net Losses are derived in the course of a liquidation of the Partnership or are derived from sales or deemed sales under Article XI, they shall be allocated in proportion and to the extent required to bring the capital accounts of the Partners into the ratio which the aggregate amounts dis-

tributable to the Partners in respect of such transactions under Section 4.3 bear to one another; and

(B) any other Net Losses shall be allocated among the Partners in accordance with their respective Partnership Interests on the last day of the applicable period.

(b) The Partnership's items of income, loss, deduction, capital gain, capital loss and other items governed by Section 702(a) of the Code and comparable provisions of state and local law shall be allocated among the Partners proportionately to the allocation of Net Income and Net Losses among the Partners as set forth above, provided, however, that appropriate adjustments shall be made in the event that an election under Section 754 of the Code is in effect.

(c) The allocations in respect of a Partnership fiscal year pursuant to this Section 5.1 and the distributions in respect of such year pursuant to Section 4.1(b) shall be reflected in the capital accounts in the following order:

(i) allocations of Net Income under Section 5.1(a) (i) (B);

(ii) distributions of Net Cash Flow under Section 4.1(b) (i);

(iii) allocations of all other Net Income and Net Losses; and

(iv) distributions of Net Cash Flow pursuant to Section 4.1 (other than distributions previously reflected pursuant to subsection (c) (iii) of this Section).

(d) Investment credits and other tax credits available to the Partnership for Federal, State and local income tax purposes shall be allocated among the Partners in proportion to their respective Partnership Interests as in effect on the day on which the property giving rise to the credits is placed in service or on which the transaction giving rise to the credit otherwise takes effect.

(e) The following terms shall have the following meanings hereunder:

(i) "Net Income" shall be the excess of the gross income of the Partnership determined under Federal income tax principles over any and all amounts deductible in computing the Partnership's taxable income or loss for Federal income tax purposes.

(ii) "Net Losses" shall be the excess of any and all amounts deductible in computing the Partnership's taxable income or loss for Federal income tax purposes over the gross income of the Partnership determined under Federal income tax principles.

SECTION 5.2. Allocation Accounting. Except as otherwise provided herein, all computations shall be made by the Managing Partner in accordance with generally accepted accounting principles or tax accounting principles, as the case may be, consistently applied, and shall be subject to confirmation by the Accountant. All disputes among the Partners as to any such computations or allocations shall be referred to the Accountant for resolution, such resolution to be final and binding on the Partners.

SECTION 5.3. Tax Elections. The Managing Partner shall make all applicable elections, determinations and other decisions under the Code, including the rates of depreciation to be claimed by the Partnership and the positions to be taken on the Partnership's Federal income tax return; to this end, the Managing Partner is appointed tax matters partner of the Partnership under Section 6231(a)(7) of the Code. Without limiting the generality of the foregoing, the Managing Partner shall have the sole discretion to determine whether or not to make an election under Section 754 of the Code.

ARTICLE VI

MANAGEMENT

SECTION 6.1. Management. (a) Except as otherwise expressly provided in this Agreement, the business and affairs of the Partnership shall be exclusively vested in the Managing Partner, who agrees to use his best efforts to carry out the purposes and business of the Partnership

pursuant to this Agreement and to devote to the Partnership's business such time as shall reasonably be required, but which shall not be required to devote all of his time thereto. Subject to the terms of this Agreement and to limitations imposed by law, including the Partnership Act, and provided the same shall not be prohibited under this Agreement, the Managing Partner shall have full and complete charge of all the affairs and business of the Partnership, in all respects and in all matters, including the responsibility, authority and power, on behalf of the Partnership, at Partnership expense and without the approval of any other Partner:

(i) To deal in and with the Property, whether real or personal or mixed, including the rights (x) to acquire, alter, improve, repair, raze, replace, create easements and servitudes by grant or otherwise and (y) to lease, sell, assign, transfer, exchange or otherwise convey any right, title or interest in or to all or any portion of the Property, all of the foregoing upon such terms and conditions as the Managing Partner shall determine.

(ii) To borrow money and, as security for the repayment thereof, to mortgage, hypothecate, charge, pledge or otherwise encumber all or any part of the Property, to obtain financing or refinancing of any and all obligations of the Partnership, and to prepay, increase, modify, consolidate or extend, in whole or in part, any and all such obligations, all of the foregoing upon such terms and conditions as the Managing Partner shall determine.

(iii) To purchase such insurance as the Managing Partner may deem appropriate for the protection of the Partnership, the Property and/or any or all of the parties hereto, including worker's compensation insurance, public liability insurance, fire and extended coverage insurance, automobile liability coverage, crime coverage and key man life insurance on the lives of the Partnership's employees or the employees of the Managing Partner.

(iv) To pay, collect, compromise, arbitrate or otherwise adjust any and all claims or demands of or against the Partnership, in such amounts and upon such terms and conditions as the Managing Partner shall determine.

(v) From time to time to employ, engage, hire or otherwise secure the services of such persons, firms or corporations, including any of the parties hereto or any persons, firms or corporations related thereto or affiliated therewith, as the Managing Partner may deem advisable for the proper operation of the business of the Partnership and the discharge of its duties hereunder, such employment to be for such reasonable compensation and upon such reasonable terms and conditions as the Managing Partner shall determine.

(vi) To prepare, execute and acknowledge by its signature or by signature of an attorney-in-fact appointed by written instrument executed and acknowledged by it and to file, record, publish and deliver any and all instruments, documents or statements necessary or convenient to effectuate any and all actions authorized or required of the Partnership.

(vii) To take any and all other action permitted or required of the Partnership under this Agreement, the Partnership Act or the Laws.

(b) In addition to and without limiting the customary duties and obligations of the Managing Partner as a general partner of the Partnership, the Managing Partner shall:

(i) use its best efforts to cause the Partnership and all third parties at all times to perform and comply with the provisions of any loan commitment, agreement, mortgage, lease, management agreement or other contract, instrument or agreement to which the Partnership is a party or which affects the Property or the operation thereof;

(ii) cause the Partnership to keep and maintain at least such insurance coverage as may be reasonable for the business carried on by the Partnership;

(iii) deliver to the other Partners, promptly upon the receipt or sending thereof, copies of all notices, reports and communications between the Partnership and any holder of a mortgage or deed of trust or lessor under any lease affecting all or any portion of the Property which relate to any existing or pending default thereunder or to any financial

or operational information required by such lessor or holder; and

(iv) regularly report to and promptly respond to questions from the other Partner as to the business and policy of the Partnership and the decisions he intends to make pursuant to the power granted in Section 6.1(a).

SECTION 6.2. Major Decisions. Notwithstanding the provisions of Section 6.1, no Major Decision shall be made or followed unless it shall have been first approved in writing by both Partners. The term "Major Decision" shall mean only a decision by and/or for the Partnership to:

(a) sell, transfer, assign, convey or exchange all or any substantial part of the Property; provided, however, that the foregoing shall not apply to the leasing of space therein.

(b) admit a new partner to the Partnership;

(c) do any of the following acts:

(1) assign the Partnership's property in trust for creditors or on the assignee's promise to pay the debts of the Partnership;

(2) dispose of the goodwill of the business of the Partnership;

(3) do any act which would make it impossible to carry on the ordinary business of partnership;

(4) confess a judgment; or

(5) submit a Partnership claim or liability to arbitration or reference.

SECTION 6.3. Fees and Reimbursements Payable to Partners. (a) In addition to their rights as Partners to receive allocations and distributions under Articles IV, V and XI, the Partners (or their affiliates) shall be entitled to reasonable fees for services provided to the Partnership outside their roles as Partners. Such fees shall include:

(i) fees payable to the Managing Partner or his affiliate for general contracting and development services in connection with the construction of the Improvements equal to five percent (5%) of the "hard" costs of development and construction (including all site, building construction and tenant improvement costs) of the Property.

(ii) fees payable to either Partner (or an affiliate) for arranging leases and/or sales of the Property equal to those customarily charged under agreements between property owners and non-affiliated real estate companies for sales and leases of similar size, nature and location as the Property; and

(iii) fees payable to the Managing Partner (or his affiliate) for acting as the Partnership's property manager with respect to the Property equal to those customarily charged under agreements between property owners and non-affiliated real estate companies for projects of similar size, nature and location as the Property; provided however, that such fees shall not exceed four percent (4%) of the gross income from the Property without the approval of AWLC.

Fees payable to the Partners (or their affiliates) under this Section 6.3 shall be payable to the service provider with the same priority as fees payable to other providers of services to the Partnership, except that any such fees which accrued but were unpaid as of the date of dissolution of the Partnership shall be paid only after all obligations owing to third parties have been paid and after AWLC shall have received distributions from the Partnership in the aggregate under Articles IV and XI during the term of the Partnership equal to its Capital Contribution in respect of the Land.

(b) The Partnership (or their affiliates) shall also be entitled to reimbursement for costs incurred by them for the benefit or on behalf of the Partnership from time to time; provided, however, that any and all carrying costs incurred with respect to the Land (including all interest expense, financing costs and real property taxes) prior to the funding of any construction loan obtained by the Partnership shall be paid by AWLC, all development costs (including architect's fees and fees for building permits) incurred with respect to the Land prior to the funding of any said construction loan shall be paid by the Managing Partner, and AWLC and the



Managing Partner shall be reimbursed for such costs only if an when funding of the construction loan occurs.

SECTION 6.4. Duties and Conflicts. None of the parties hereto shall have any obligation, liability or duty to offer to the Partnership or to any of the parties hereto any opportunity of which it may have knowledge or be informed. Each of the parties hereto shall have the right to engage in any other ventures for its own personal account, without notice or liability to the other parties hereto and even though such venture may be presently contemplated by the other parties hereto. Nothing in this Agreement shall preclude or prevent any of the parties from acting, or be a limitation upon any of the parties hereto acting, for itself or for others or from being a partner in other partnerships or a stockholder of a corporation engaged in business in competition with the Partnership nor shall the Partnership or any Partner have the right, by virtue of this Agreement, in or to such activities, or the income or profits derived therefrom.

SECTION 6.5. Development Procedure. (a) The Managing Partner shall not commence construction of any phase of the Improvements unless and until he shall have prepared and submitted to AWLC a detailed plan (a "Project Plan") outlining the timing, nature, design and cost of each phase. Such Project Plan shall include:

(i) Phase specifications, including building size (both height and area), related improvements (such as parking structures, plaza areas and amenities), and allocations of use;

(ii) The budget for such phase;

(iii) The proposed financing for such phase;

(iv) Leasing guidelines and a marketing plan for such phase; and

(v) Proposed schedule for the development, construction and lease-up for such Phase.

(b) AWLC shall have the right to present its reasonable views as to the contents of a Project Plan to the Managing Partner. However, said right shall be advisory only, and AWLC shall not have the right to disapprove

of a Project Plan; provided, however, that AWLC shall have the right to approve or disapprove of any Project Plan for the Land where it constitutes only the Reduced Site. The Managing Partner may begin to implement a Project Plan at any time after thirty (30) days after its submission to AWLC (except in the case of a Project Plan for the Reduced Site alone), with or without such modifications as AWLC may suggest, in the Managing Partner's sole discretion.

ARTICLE VII

BOOKS AND RECORDS; RESERVES

SECTION 7.1. Maintenance. (a) The Managing Partner shall cause to be kept, at the principal place of business of the Partnership, full and proper ledgers and other books of account of all receipts and disbursements and other financial activities of the Partnership and shall provide the following financial reports or information to each Partner:

(i) within ninety (90) days after the expiration of each of the Partnership's fiscal years, annual financial statements in reasonable detail;

(ii) within ninety (90) days following the end of each fiscal year of the Partnership, a report which shall include all necessary tax reporting information required by the Partners for preparation of their respective Federal, State and local income or franchise tax returns, including each Partner's pro rata share of income, gain, loss, deductions and credits for such fiscal year;

(iii) promptly after receipt thereof, all reports or statements prepared by the Accountant; and

(iv) within a reasonable period of time, such other reasonable financial information as to the Partnership as any Partner shall request.

(b) Each Partner (but only through its authorized representative and not through any shareholder, partner or other owner of an interest in a Partner) shall have the right to examine and copy the books and records of the Partnership at all reasonable times.

SECTION 7.2. Bank Accounts. All funds of the Partnership shall be deposited in the name of the Partnership in such bank account or accounts selected from time to time by the Managing Partner, under such terms and conditions (including signatories) as the Managing Partner shall approve.

SECTION 7.3. The Accountant. The Managing Partner shall employ Price Waterhouse & Co. as the Partnership's accountant, and may thereafter replace the same with another accountant or accounting firm approved by the Partners (such initial accountant or accounting firm or any successor thereto being herein called the "Accountant"). The fees and expenses of the Accountant shall be a Partnership expense.

SECTION 7.4. Reserve. The Managing Partner shall establish such reserves (collectively, the "Reserve") as the Managing Partner determines are necessary or desirable for the Partnership's business. The Managing Partner shall have the sole and absolute discretion to determine, from time to time, the nature, amount and funding of the Reserve.

ARTICLE VIII

APPRAISAL

SECTION 8.1. Appraisal. Any appraisal required to be made pursuant to the terms of Sections 11.3(c) shall be made as follows:

(a) Any Partner may serve written notice upon the other Partner stating that an appraisal should be conducted pursuant to this Section 8.1. In such event, unless otherwise expressly provided to the contrary in this Agreement, within thirty (30) days after receipt of any such notice, the Partner serving such notice and the other Partner shall each nominate and appoint one appraiser. Upon the appointment of the two appraisers as hereinabove provided, the two appraisers so appointed shall, within fifteen (15) days after the appointment of the second appraiser and before exchanging views as to the questions at issue, appoint a third appraiser and give written notice of such appointment to the Partners. In the event such Partner or the other Partner fail to appoint an appraiser within the thirty (30) day period set forth above, the appraiser appointed by such Partner or the other Partner shall make the appraisal alone. If the two appraisers selected by

the Partners shall fail to appoint or agree upon the third appraiser within the fifteen (15) day period outlined above, a third appraiser may be selected by the Partners if they can agree upon such third appraiser within a further period of ten (10) days; otherwise, any Partner may apply to any Federal or State court of or sitting in the State of California having subject matter jurisdiction for the appointment of any appraiser not appointed or agreed upon within the time periods herein provided. The appraisers selected pursuant hereto shall be sworn faithfully and fairly to determine expeditiously the question at issue.

(b) The three appraisers shall, with all possible speed, make the appraisal contemplated herein, set forth their results in writing, and give notice of the same to the Partners. If two of the three appraisers shall render a concurring determination, then that concurring determination shall be conclusive and binding on the Partners. If no two of the three appraisers shall render a concurring determination, then the determination of the third appraiser appointed shall be conclusive and binding upon the Partners; provided, however, that if the determination of the third appraiser shall be lower than the lowest determination of the other two appraisers, or higher than the highest determination of the other two appraisers, the final determination shall be the lowest determination or the highest determination, as the case may be, of the other two appraisers. The Partners shall each pay the fees and expenses of the appraiser selected by or on behalf of it or them, and any fees and expenses of the third appraiser (or of the single appraiser, if only one appraiser is appointed) and any general expenses incurred by the appraisers in connection with the appraisal shall be divided equally between the two sets of Partners.

(c) Any appraiser appointed hereunder shall be an appraiser with at least five (5) years' experience in appraising properties of comparable character, size and location as the property to be appraised.

(d) Any appraisal hereunder shall be made on the basis that the property appraised is owned by one (1) person.

ARTICLE IX

TRANSFERS

SECTION 9.1. Transfers. No Partner may sell, assign, transfer, exchange, charge, pledge, give, hypothecate or otherwise convey or encumber (any such sale, assignment, transfer, exchange, charge, pledge, gift, hypothecation, conveyance or encumbrance being hereinafter referred to as a "Transfer"), directly or indirectly, by operation of law or otherwise, voluntarily or involuntarily, any interest in the Partnership (any such interest or portion thereof being hereinafter called an "Interest"), except upon the prior written consent of the other Partner. Any Transfer of any Interest in contravention of this Article IX shall be null and void and of no force whatsoever. No Partner, without the prior written consent of the other Partner, shall retire or withdraw from the Partnership except as a result of such Partner's death or dissolution.

SECTION 9.2. Right of First Offer. If, after the expiration of two (2) years after the date of execution hereof, any Partner desires to Transfer all or any part of an Interest, whether directly or indirectly or by operation of law or otherwise, voluntarily or involuntarily, the first Partner (the "Offeror"), shall give a notice (the "First Offer Notice") to the other Partner (the "Other Partner"). The First Offer Notice shall constitute an offer by the Offeror to sell such Interest to the Other Partner for consideration of cash and/or promissory notes and on the other terms and conditions set forth in such notice, except as the same may be modified by this Section and except that such terms and conditions must be consistent with the provisions this Article IX. The Other Partner, if it desires to accept such offer, shall, within thirty (30) days after the giving of the First Offer Notice, give the Offeror written notice accepting such offer (the "Acceptance Notice"). If such Other Partner shall fail to give the Acceptance Notice within the time period hereinabove provided, the Offeror may sell such Interest to any third party upon the terms and conditions and for at least the same purchase price as set forth in the First Offer Notice at any time within one hundred fifty (150) days of the expiration of the time period for the giving of the Acceptance Notice. In the event that such Other Partner shall give the Acceptance Notice, then, on such business day, not less than thirty (30) days nor more than sixty (60) days after the giving

of the Acceptance Notice as such Other Partner shall set forth in the Acceptance Notice, such Other Partner shall purchase the Interest in question of the Offeror for the purchase price stated in the First Offer Notice, and upon the other terms and conditions of said First Offer Notice. The closing of the sale shall be held in the principal office of the Partnership on the date selected as above provided, or as the Offeror and such Other Partner shall otherwise designate. The terms of the purchase and sale shall (unless otherwise set forth in the First Offer Notice) be unconditional, except that the Offeror shall be deemed to represent and warrant to such Other Partner that the entire Interest is subject to no legal or equitable claims (other than legal or equitable claims to such interest, if any, of such Other Partner hereunder arising from its exercise of the Acceptance Notice, or which will be satisfied and discharged at such closing) and upon demand shall deliver an instrument confirming such representation and warranty at the closing. If such Other Partner shall default in their purchase of the Offeror's Interest, then, in addition to any other remedies which it may have by reason of such default, the Offeror shall have the right, for a period of one hundred fifty (150) days following such default, to sell its Interest upon the terms and conditions and for not less than the purchase price set forth in the First Offer Notice. The provisions of this Section shall apply to any subsequent purchaser of an Offeror's Interest.

SECTION 9.3. Assignees and New Partners. (a) In the event of a Transfer of any Partnership Interest permitted pursuant to the provisions of this Article, and notwithstanding anything in this Article to the contrary (except subsection (b) of this Section), the person or entity to whom such Transfer is made shall not become a Partner hereunder and shall be considered only an assignee ("Assignee") of the Partnership Interest and as such shall only be entitled to share in those distributions, if any, in which its assignor would otherwise have been entitled to share, diminished by the share of the losses and obligations, if any, for which such assignor would be liable. An Assignee shall have no right to require any information or accounting of any transactions of the Partnership or inspect the Partnership books and records and shall not be deemed a Partner of the Partnership.

(b) An Assignee of a Partnership Interest pursuant to a Transfer permitted under the provisions of this Article may become a substituted partner ("Substituted

Partner") with all the rights and liabilities of its assignor under this Agreement if and only if (i) the Assignee expressly assumes and agrees to be bound by this Agreement in the place and stead of such assignor, (ii) the appropriate instruments, documents, or statements, if any, are prepared, executed, acknowledged, filed, recorded, published and delivered as required by the Partnership Act or the Laws, (iii) the Assignee pays or obligates itself to pay any and all reasonable expenses of the Partnership connected with such substitution, and (iv) the Assignee causes to be delivered to the Partnership, at his or its sole cost and expense, a favorable opinion of legal counsel reasonably acceptable to the other Partners, to the effect that (w) the contemplated Transfer of such Interest to such person or entity does not violate any applicable Federal or State securities law, (x) that such person or entity has the legal right, power and capacity to own the Partnership Interest, (y) if applicable, that the Transfer does not violate any provision of any mortgage, deed of trust or ground lease encumbering all or any portion of the Property, and (z) if applicable, that the Transfer of such Partnership Interest will not cause the termination of the Partnership for purposes of Section 708 of the Code. Upon compliance with all provisions hereof applicable to such person or entity becoming a Partner, all other Partners agree to execute and deliver such amendments hereto as are necessary to constitute such person or entity a Partner of the Partnership.

(c) Upon a Transfer by a Partner of all or part of its Partnership Interest and substitution of a Substituted Partner with respect to all or such portion of its Partnership Interest, the Transferring Partner shall cease to be a Partner to the extent of the Partnership Interest so Transferred.

SECTION 9.4. Buy/Sell. At any time after six (6) months after the completion of construction of the Improvements, either Partner shall be entitled to give a notice (a "Buy/Sell Notice") to the other Partner that it desires to exercise its rights under this Section 9.4 to sell its entire interest in the Partnership to, or purchase the entire interest in the Partnership of, the other Partner.

(a) In the event a Buy/Sell Notice is delivered, the following terms shall have the following meaning with respect thereto for purposes of this Section 9.4:

(i) The term "Noticing Partner" shall mean whichever Partner shall give the Buy/Sell Notice;

(ii) The term "Electing Partner" shall mean whichever Partner shall receive the Buy/Sell Notice;

(iii) The term "Noticing Partner's Property" shall mean the Noticing Partner's entire interest in the Partnership;

(iv) The term "Electing Partner's Property" shall mean the Electing Partner's entire interest in the Partnership;

(v) The term "Buyer" shall mean the Partner who is required pursuant to the applicable Option to buy property from the other Partner under this Article XI; and

(iv) The term "Seller" shall mean the Partner who is required pursuant to the applicable Option to sell property to the other Partner under this Article XI.

(b) The Buy/Sell Notice shall specify the value of the Property and shall contain an offer by the Noticing Partner both (i) to buy the Electing Partner's Property ("Option A"), and (ii) to sell to the Electing Partner the Noticing Partner's Property ("Option B"), in either case for an amount (the "Purchase Price") equal to the amount which the Seller would receive if the Property were sold to the third party for such value and the proceeds of sale distributed in accordance with Section 11.3 of this Agreement.

(c) The Electing Partner shall have a period of ninety (90) days after the giving of the Buy/Sell Notice in which to exercise by written notice to the Noticing Partner, Option A or Option B. If the Electing Partner shall fail to exercise either Option within said ninety (90) day period, the Electing Partner shall thereupon be deemed to have exercised Option A. If either Option A or Option B is properly exercised or deemed exercised as above provided, then the Noticing Partner shall buy or sell, as the case may be, the property in question, the closing to be held on a business day selected by the Buyer, which day shall be at least thirty (30) days and not more

than six (6) months after the applicable Option is properly exercised or deemed exercised, at the principal office of the Partnership. The terms of the purchase and sale shall be unconditional, except that the Seller shall be deemed to represent and warrant to the Buyer that its entire interest in the Partnership is subject to no legal or equitable claims and upon demand shall deliver an instrument confirming such representation and warranty at the closing.

(d) A purchase and sale hereunder shall be closed by the concurrent delivery by the Buyer to the Seller of the Purchase Price, in cash, and by the Seller to the Buyer of a simple assignment (without warranty, except as expressly provided above) to the Buyer of the purchased interest; provided, however, that upon tender by the Buyer of the Purchase Price to the Seller, such assignment shall be made hereby notwithstanding the Seller's failure to execute and deliver such a separate assignment, and, if the Seller refuses such tender (which the Buyer may condition on delivery of such separate assignment), the Buyer may nonetheless close such purchase and sale by delivering the Purchase Price into escrow with irrevocable written instructions to the escrow holder to disburse such funds, to the Seller upon the Seller's deposit into escrow, for delivery to the Buyer, of such separate assignment and such written instructions.

(e) Notwithstanding any other provision of this Agreement, if the Buyer wrongfully fails to close such purchase and sale, the Seller shall have the right, by written notice to the Buyer given within sixty (60) days after the last date for such closing, to treat the Buyer's failure as an election by the Buyer, as the Electing Partner, of Option A, made as of the date of such notice; and the Seller shall then have all of the rights of the Buyer hereunder.

(f) Upon close of a purchase and sale hereunder, the Buyer shall hereby assume (and indemnify the Seller from any further obligation or liability with respect to) all of the obligations and liabilities of the Partnership with respect to the interest so purchased, except to the extent that such obligation or liability is the result of any wrongful act of the Seller.

SECTION 9.5. Investment Representation. Except as otherwise provided or implied herein, each of the parties hereto does hereby covenant, agree, represent and warrant

to the other parties hereto that it is acquiring its Partnership Interest for its own account, and not as agent, trustee, custodian or otherwise for any other person or persons, with the intention of holding its Partnership Interest for investment, and without any present intention of making a Transfer or further distributing its Partnership Interest. Each of the parties hereto is fully aware and does hereby acknowledge that the offer and sale of its Partnership Interest was not registered under the Securities Act of 1933, as amended, nor qualified under the Law, and does hereby covenant and agree, any and all other provisions of this Agreement to the contrary notwithstanding, that it will not Transfer any Interest in violation of such law.

ARTICLE X

BROKERS

SECTION 10.1. Brokers. Each Partner represents and warrants to the other Partners that it has not dealt with any broker or finder in connection with the formation of the Partnership or the transactions contemplated herein, and agrees to indemnify and hold harmless the other Partners and the Partnership from and against any actions, claims or demands for any commissions or fees arising from a breach of the foregoing representation and warranty by such Partner.

ARTICLE XI

DISSOLUTION, LIQUIDATION AND TERMINATION OF PARTNERSHIP

SECTION 11.1. Limitations. The Partnership may be dissolved, liquidated and terminated pursuant to and only pursuant to the provisions of this Article XI, and the parties hereto do hereby irrevocably waive any and all other rights they may have to cause a dissolution of the Partnership or a sale or partition of the Property and/or any or all of its other assets. The parties hereto do hereby covenant and agree that, except as otherwise provided in this Article XI, neither the dissolution nor the withdrawal from the Partnership for any other reason of any of the parties hereto nor the admission to the Partnership of a Substituted Partner pursuant to the provisions