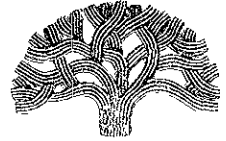


ENVIRONMENTAL CITY OF OAKLAND
PROTECTION



FIRE SERVICES AGENCY • 1605 MARSH LUTHER KING JR. WAY • OAKLAND, CALIFORNIA 94612

Office of Emergency Services

September 15, 1999

(510) 238-3938
FAX (510) 238-7761
TDD (510) 839-6451

Tom Peacock
Alameda County Environmental Health
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577

CO

RE: 460 GRAND AVENUE, ALAMEDA COUNTY CASE NUMBER 3615

Dear Tom:

Enclosed is a LOP case that was closed by your Agency. As a condition of closure, a 15' setback was included in the case closure statement. The property owner at this site feels this condition should be removed based upon the use of the Oakland RBCA Tier 2 site screening.

I informed the property owner that the City of Oakland **could not remove** any previous conditions of closure placed upon a site by another regulatory agency. The site would have to petition the original agency to have this condition removed.

Therefore, I am referring this matter to your agency for review. In addition, I informed the consultant for this site that your agency would charge for time spent during this review process. Upon your approval I will have the case file transferred to your agency.

Please contact me, if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Leroy Griffin".

LeROY GRIFFIN
Hazardous Materials Supervisor

Included:
Case Closure Summary

Gibson & MacPhee

Attorneys at Law
1534 Fifth Avenue
Suite Four
San Rafael, California 94901
Facsimile (415) 485-6994

APR 27 2001

John C. Gibson
direct line: (415) 485-6911

February 23, 2001

MAR 14 2001

Ariu Levi
Division Chief
Alameda County Health Agency
Department of Public Health
Room 260
1131 Harbor Bay Parkway
Alameda, CA 94502-7577

Re: Alameda Case #3615
460 Grand Ave., Oakland / Falaschi Brothers

Dear Mr. Levi:

Several months ago we had a meeting in your offices, along with Don Hwang, Hazardous Materials Specialist, and Leroy Griffin of the Oakland Fire Services Agency. As facilitated by Mr. Griffin, you explained to me the procedure for accomplishing a Reexamination and Reevaluation of the Site Restrictions for 460 Grand Ave., Oakland. I understand, as you explained, that the County of Alameda will be acting as the agent for the City of Oakland in this process. You also explained that the owner of the property, Falaschi Brothers, will be charged for this process at the rate of \$105.00 per hour. As per your instruction, I am sending, under separate cover, a check in the amount of \$1,000.00 as a deposit toward that fee directly to James Trolan, Chief of Finance for the County of Alameda.

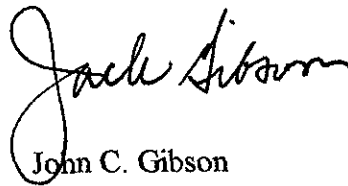
As I explained to you, I am acting with full legal authority as a Receiver, appointed by the Superior Court of The County of Contra Costa to act on behalf of the partnership, Falaschi Brothers, the owner of the property at 460 Grand Ave.. As the successor to my now deceased partner, Joseph Adams (the original Receiver) I have full and complete legal authority to act on behalf of the partnership.

As you requested during our meeting, I am enclosing for your file a copy of the Court Order appointing me as Receiver, the Settlement Agreement, the Addendum to the Settlement Agreement, and the Power of Attorney for Falaschi Brothers.

Ariu Levi
February 23, 2001
page two

Please let me know if you need anything further at this time. Also, please note my new address and telephone number. Once again thank you very much for your help in this matter.

Yours truly,
Gibson & MacPhee
Attorneys at Law



John C. Gibson

cc: Leroy Griffin
James Trolan

Gibson & MacPhee

Attorneys at Law
1534 Fifth Avenue
Suite Four
San Rafael, California 94901
Facsimile (415) 485-6994

John C. Gibson
direct line: (415) 485-6911

CD 000069

ENVIRONMENTAL HEALTH
ADMINISTRATION
MAR 13 PM 2:39

February 23, 2001

James Trolan
Chief of Finance
County of Alameda
1131 Harbor Bay Parkway
Alameda, CA 94502


Re: Alameda Case #3615
460 Grand Ave., Oakland / Falaschi Brothers

Dear Mr. Trolan:

Enclosed please find a copy of a letter to Mr. Ariu Levi regarding the above described case number, and a check to the County of Alameda as deposit for the project described.

Please let me know if you need anything further. Thank you very much for your assistance.

Yours truly,
Gibson & MacPhee
Attorneys at Law


John C. Gibson

Hugo, Susan, Public Health, EHS
From: Hugo, Susan, Public Health, EHS
Sent: Thursday, March 15, 2001 10:23 AM
To: Garcia, Martha, Public Health, EHS
Cc: Levi, Ariu, Public Health, EH
Subject: Deposit for 460 Grand Avenue, Oakland

Hi Martha:

Please process the check (\$1000) received from Falaschi Brothers c/o John Gibson (receiver) for the site located at 460 Grand Avenue, Oakland. The complaint number is CO000069.


Please e-mail or call me at 36780 if you have any question.

Thanks
Susan

→ (415) 485-6911

3/29/01 Called to Jack Gibson. any other reports since LOP case was closed?

FALASCHI BROTHERS
JOHN C GIBSON, RECEIVER
22 BATTERY ST 10th FL (415) 421-6900
SAN FRANCISCO, CA 94111

 BANK OF AMERICA NT & SA
C.A.S. Attorney Trust Accounting 1664
P. O. Box 37001
San Francisco, CA 94137
11-35/1210

0001425

JAN 16, 2001

PAY TO THE
ORDER OF

→ ALAMEDA COUNTY

\$ 1,000-

ONE THOUSAND

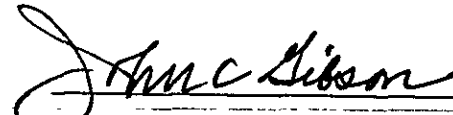
$\frac{00}{100}$

DOLLARS

CASE #3615

MEMO

460 GRAND AVE | OAKLAND




⑈001425⑈ ⑆121000358⑆ 15818⑈19784⑈

FILED
DEC 19 1991
DEPUTY

1 JAMES A. LASSART, ESQUIRE
2 FARLEY J. NEUMAN, ESQUIRE
3 ROPERS, MAJESKI, KOHN,
4 BENTLEY, WAGNER & KANE
5 670 Howard Street
San Francisco, California 94105
(415) 543-4800

Attorneys for Plaintiff and Cross-Defendant
ROBERT E. FALASCHI

This document is a correct copy
of the original on file in this
office.



STEVEN M. WEIR County Clerk and ex-officio Clerk of the Superior Court of the State of California for the County of Contra Costa. Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

11 ROBERT E. FALASCHI,)
12 Plaintiff,)
13 vs.)
14 PRESTON COX, JAMES FALASCHI,)
15 and DOES 1 through 10,)
16 inclusive,)
17 Defendants.)
18 _____)
19 AND RELATED CROSS-ACTIONS)
20 _____)

NO. C-89-03528

ORDER GRANTING MOTION TO
ENTER JUDGMENT PURSUANT
TO TERMS OF SETTLEMENT
AGREEMENT AND TO ENFORCE
JUDGMENT

19 Plaintiff's Motion to Enter Judgment Pursuant to Terms of
20 Settlement Agreement and To Enforce Judgment came on regularly for
21 hearing at 9:00 a.m. in Department 8 of the above-entitled court
22 before the Honorable ~~Richard S. Plier~~ WILLIAM A. O'MALLEY and good cause appearing
23 therefor,

24 IT IS HEREBY ORDERED as follows:

25 1. John C. Gibson, a partner in Adams, Sadler & Hovis, a
26 California general partnership, is hereby appointed as the

1 successor receiver to the Settlement Agreement, dated June 20,
2 1990, and shall assume all of the rights, obligations and duties
3 of the original receiver;

4 2. The parties to this case shall each execute the Addendum
5 to Settlement Agreement (attached as Exhibit C of plaintiff's
6 moving papers).

7 3. The parties to this case shall each execute the five
8 Powers of Attorney (attached as Exhibits D through H of
9 plaintiff's moving papers) to appoint John C. Gibson as the
10 attorney in fact for Falaschi/Cox Cypress No. 1, a California
11 general partnership, Management Operations, Inc., a California
12 corporation, Business Center Associates, a California general
13 partnership, Plaza Partners, a California limited partnership, and
14 Falaschi Brothers, a California general partnership;

15 4. Robert Falaschi shall execute the four Durable Powers of
16 Attorney attached as Exhibits I through L of plaintiff's moving
17 papers;

18 5. James D. Falaschi shall execute the four Durable Powers
19 of Attorney attached as Exhibit M through P of the plaintiff's
20 moving papers; and

21 6. The parties to this case shall each mail the executed
22 documents referenced in paragraphs 1 through 5, above, no later
23 than December 24, 1991 to John C. Gibson, Adams, Sadler & Hovis,
24 100 Pine Street, 21st Floor, San Francisco, CA 94111.

25 7. Judgment shall be entered pursuant to the terms of the
26 Settlement Agreement, dated June 20, 1990, entered into by all of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

the parties to this case, and pursuant to the terms of this order.

IT IS SO ORDERED.

Dated:

12/19/91

WILLIAM A. O'MALLEY

~~HONORABLE RICHARD S. FLIER~~
JUDGE OF THE SUPERIOR COURT

ADDENDUM TO SETTLEMENT AGREEMENT

1. This is the first addendum to that Settlement Agreement, dated June 20, 1990, by and between ROBERT E. FALASCHI, JAMES D. FALASCHI, PRESTON COX, FALASCHI BROTHERS, a California general partnership, FALASCHI/COX CYPRESS NO.1, a California general partnership, BUSINESS CENTER ASSOCIATES, a California general partnership, PLAZA PARTNERS, a California limited partnership, and MANAGEMENT OPERATIONS, INC., a California corporation. The provisions set forth below are by this reference made a part of that Settlement Agreement. The terms and conditions of this addendum shall modify and supersede all contrary or inconsistent provisions contained in said Settlement Agreement. All of the terms and conditions of the Settlement Agreement shall remain in full force and effect except as are inconsistent with this First Addendum.

2. Because of the death of Joseph A. Adams on October 20, 1991, the receiver designated by the Settlement Agreement shall be John C. Gibson, a partner at Adams, Sadler & Hovis, a California general partnership, effective immediately upon the full execution of this Addendum. John C. Gibson shall assume all of the rights,

When the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

WITNESS my hand this 20th day of June, 1990.

BUSINESS CENTER ASSOCIATES,
a California general partnership

By:



JAMES D. FALASCHI, General Partner

By:



ROBERT E. FALASCHI, General Partner

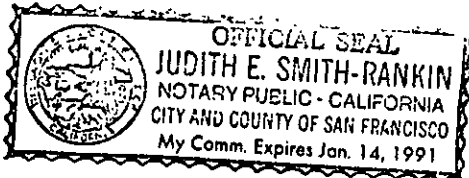
By:

PRESTON COX, General Partner

STATE OF CALIFORNIA)
COUNTY OF San Francisco) ss.

On June 20, 1990, before me, a Notary Public, State of California, personally appeared ROBERT FALASCHI, a general partner of BUSINESS CENTER ASSOCIATES, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument on behalf of BUSINESS CENTER ASSOCIATES, and acknowledged to me that the said partnership executed the same.

WITNESS my hand and official seal.

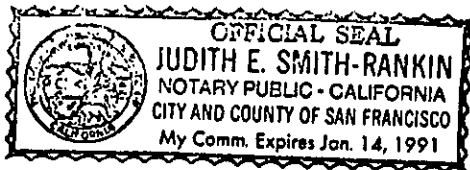


Judith E. Smith-Rankin
Notary Public

STATE OF CALIFORNIA)
COUNTY OF San Francisco) ss.

On June 20, 1990, before me, a Notary Public, State of California, personally appeared JAMES D. FALASCHI, a general partner of BUSINESS CENTER ASSOCIATES, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument on behalf of BUSINESS CENTER ASSOCIATES, and acknowledged to me that the said partnership executed the same.

WITNESS my hand and official seal.



Judith E. Smith-Rankin
Notary Public

POWER OF ATTORNEY

FALASCHI BROTHERS, a California general partnership, of Oakland, California, hereby makes, constitutes and appoints John C. Gibson, a partner at Adams, Sadler & Hovis, a California general partnership, of 100 Pine Street, 21st Floor, San Francisco, CA 94111 as its true and lawful attorney in fact for it and in its name, place and stead and for its use and benefit for the purpose of exercising all the rights, powers, and authority of FALASCHI BROTHERS.

FALASCHI BROTHERS further grants to said attorney in fact full authority to act in any manner both proper and necessary to the exercise of the foregoing powers, including the following:

(a) To ask, demand, sue for, recover, collect and receive, each and every sum of money, debt, account, legacy, bequest, interest, dividend, annuity and demand (which now is or hereafter shall be due, owing or payable) belonging to or claimed by FALASCHI BROTHERS, and to use and take any lawful means for the recovery thereof by legal process or otherwise, and to execute and deliver a satisfaction or release therefor, together with the right and power of compromise or compound any claim or demand;

(b) To exercise any or all of the following powers as to real property, any interest therein and/or any building thereon: to lease the same for any term or purpose, including leases for business, residence and oil and/or mineral development; to sell, exchange, grant or convey the same with or without warranty; and to mortgage, transfer in trust or otherwise encumber or hypothecate the same to secure payment of a negotiable or non-negotiable note or performance of any obligation or agreement; said authority includes, but is not limited to, the authority to sell and convey the properties commonly known as: 460 Grand Avenue, Oakland, California; 1401 and 1499 Washington Avenue, San Leandro, California; and 1150 and 1160 Industrial Avenue, Petaluma, California.

(c) To exercise any or all of the following powers as to all kinds of personal property and goods, wares and merchandise, choses in action and other property in possession or in action: to contract for, buy, sell, exchange, indorse, release, transfer and in any legal manner deal in and with the same; and to mortgage, transfer in trust, or otherwise encumber or hypothecate

the same to secure payment of a negotiable or non-negotiable note or performance of any obligation or agreement;

(d) To borrow money and to execute and deliver negotiable or non-negotiable notes therefor with or without security; and to loan money and receive negotiable or non-negotiable notes therefor with such security, if any, as he shall deem proper;

(e) To create, amend, make additions to, supplement or terminate any existing or future trust and to instruct and advise the trustee of any trust wherein FALASCHI BROTHERS is or may be trustor or beneficiary; to represent and vote stock, exercise stock rights, accept and deal with any dividend, distribution or bonus, join in any corporate financing, reorganization, merger, liquidation, consolidation or other action and the extension, compromise, conversion, adjustment, enforcement or foreclosure, singly or in conjunction with others of any corporate stock, bond, note, debenture or other security; to compound, compromise, release, adjust, settle and/or satisfy any obligation, secured or unsecured, owing by or to FALASCHI BROTHERS and to give or accept any property and/or money whether or not equal to or less in value than the amount owing in payment, settlement or satisfaction thereof;

(f) To transact business of any kind or class, to sign, execute, acknowledge and deliver any deed, lease, assignment to lease, covenant, indenture, indemnity, agreement, mortgage, deed of trust, assignment of mortgage or of the beneficial interest under deed of trust, any extension or renewal of any obligation, any bill of sale, bill, bond, note, whether negotiable or non-negotiable, receipt, evidence of debt, full or partial release or satisfaction of mortgage, judgment and other debt, request for partial or full reconveyance of deed of trust and such other instruments in writing of any kind or class as may be necessary or proper.

(g) To act as the general partner of FALASCHI/COX CPYRESS NO. 1 and as the general partner of PLAZA PARTNERS.

(h) To cause all acts necessary or appropriate to cause the dissolution and termination of FALASCHI BROTHERS.

GIVING AND GRANTING unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite, necessary or appropriate to be done in and about the premises as fully to all intents and purposes as FALASCHI BROTHERS might or could do if personally present, hereby ratifying all that said attorney, shall lawfully do or cause to be done by virtue of these presents. The powers and authority hereby conferred upon said attorney shall be applicable to all

real and personal property or interests herein now owned or hereafter acquired by FALASCHI BROTHERS and wheresoever situated.

Said attorney is empowered hereby to determine in his sole discretion the time when, purpose for and manner in which any power herein conferred upon him shall be exercised, and the conditions, provisions and covenants of any instrument or document which may be executed by him pursuant hereto.

When the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

WITNESS my hand this 5 day of Feb, 1992.

FALASCHI BROTHERS
a California general partnership

By: 

JAMES D. FALASCHI, General Partner

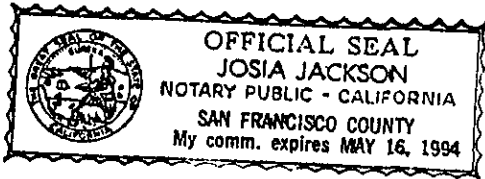
By: 

ROBERT E. FALASCHI, General Partner

STATE OF CALIFORNIA)
COUNTY OF San Francisco) SS:

On February 5, 1992, before me, a Notary Public, State of California, personally appeared ROBERT E. FALASCHI, a general partner of FALASCHI BROTHERS, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument on behalf of said partnership, and acknowledged to me that the partnership executed the same.

WITNESS my hand and official seal.



Josia Jackson
Notary Public

STATE OF CALIFORNIA)
COUNTY OF San Francisco) SS:

On February 7, 1992, before me, a Notary Public, State of California, personally appeared JAMES D. FALASCHI, a general partner of FALASCHI BROTHERS, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument on behalf of said partnership, and acknowledged to me that the partnership executed the same.

WITNESS my hand and official seal.



Josia Jackson
Notary Public

SETTLEMENT AGREEMENT

1. This Agreement is entered into by and between ROBERT E. FALASCHI ("Robert"), JAMES D. FALASCHI ("James"), PRESTON COX ("Preston"), (Robert, James, and Preston shall be referred to collectively as the "Partners") FALASCHI BROTHERS, a California general partnership, FALASCHI/COX CYPRESS NO. 1, a California general partnership, BUSINESS CENTER ASSOCIATES, a California general partnership, PLAZA PARTNERS, a California limited partnership, and MANAGEMENT OPERATIONS, INC., a California Corporation, and is dated June 20, 1990.

I.

RECITALS

2. Falaschi Brothers is a general partnership owned fifty percent (50%) by James, and fifty percent (50%) by Robert.

3. Falaschi/Cox Cypress No. 1 is a California general partnership owned seventy-five percent (75%) by Falaschi Brothers, and twenty-five percent (25%) by Preston.

4. Business Center Associates is a general partnership owned forty percent (40%) by James, forty percent (40%) by Robert, and twenty percent (20%) by Preston.

5. Plaza Partners is a California limited partnership whose general partner is Falaschi Brothers, and whose limited partners are James and Robert.

6. Various disputes and controversies have arisen among Robert, James, and Preston regarding Falaschi Brothers, Falaschi/Cox Cypress No. 1, Business Center Associates, Plaza Partners, Management Operations, Inc., and certain other matters. Robert, James, and Preston intend by this Agreement to dissolve said entities and resolve all disputes between them regarding said entities and other matters.

II.

APPOINTMENT OF RECEIVER

7. The Partners hereby appoint Joseph A. Adams ("Receiver") as the Receiver for Falaschi Brothers, Falaschi/Cox Cypress No. 1, Business Center Associates, Plaza Partners, the limited partners' interest in Plaza Partners, and Management Operations, Inc. (collectively referred to as the "Partnerships").

8. The Receiver shall take exclusive possession and control of all real property and fixtures and all personal and other property owned by the Partnerships and Management Operations, Inc. (All such property shall collectively be referred to as the "Properties"). Receiver may open such bank accounts as he may determine necessary, in the exercise of his sole discretion, into which he may deposit past and future rents and other sums, and from which accounts the Receiver may disburse funds in accordance with this Agreement.

9. The Receiver is authorized and empowered to conserve and manage all of the Properties; to employ such property managers as the Receiver, in his sole discretion, may determine necessary for

the conservation of the Properties; to begin immediately to market and sell the Properties for amounts which he considers in his sole discretion to be fair market values in accordance with paragraph 33; to direct and otherwise take all steps necessary to cause the tenants of any of the Properties to pay to him all rents; to pay real property taxes and assessments and any senior liens to any deed of trust; to pay ordinary and customary expenses associated with the operation of the Properties; to take all steps necessary or desirable to cause the Partnerships to transfer any and all documents necessary to aid the Receiver in the effective discharge of his duties; to receive and review any and all mail addressed to the Partnerships or otherwise intended to be read by the manager of the Properties; to employ security personnel for the protection of some or all of the Properties; to employ any and all other personnel as may be reasonably required in an emergency to ensure the continued operation of the Properties and habitability of the premises subject to leases; to terminate leases, to determine whether breaches of any lease of any of the Properties has occurred, and to evict lessees for breaches of the terms of any of the leases; to borrow funds (subject to limitations set forth hereinafter) from any lending institution (to be secured by any of the Properties); to perform all acts necessary or appropriate to market, promote, advertise and rent space located in the Properties; to enforce leases and other contracts relating to any of the Properties; to do all other things necessary or appropriate to protect and enhance the values of the Properties; and to retain

accountants, attorneys, appraisers, brokers, property managers, consultants, and other agents to assist the Receiver in the performance of his duties. The Receiver's authority to borrow funds shall be limited to \$35,000 for all of the Partnerships in the aggregate, and shall only be for the purpose of preserving or selling the Properties, or any one of them. Notwithstanding the foregoing, the Receiver shall in his discretion maintain, modify or eliminate the present management structure for the Cypress property in Petaluma until said property is sold in accordance with the provisions of this Agreement.

10. The Partnerships shall surrender forthwith to the Receiver possession of all books and records relating to the Properties and shall refrain from exercising any further dominion or control over any of the Properties or any rents. Robert, James, and Preston hereby agree to deliver to the Receiver any and all books and records related to the Properties within their dominion and control, or the dominion and control of any of their agents, within ten (10) days from the date of this Agreement. Attached hereto as Exhibit "A" is a complete list of all current agreements with real estate brokers and agents with respect to the sale or leasing of the Properties. Each partner warrants and represents he is unaware of any other such agreements.

11. The Receiver shall permit all secured creditors of the Partnerships to examine during normal business hours the books and records maintained by the Receiver in connection with the activities undertaken by the Receiver under the terms of this

Agreement. The Receiver shall provide written monthly reports to James and Robert regarding the status of the Partnerships.

12. Rents and other sums received by Receiver pursuant to this Agreement shall be applied by the Receiver as follows (subject to the rights of Wells Fargo Bank, to the extent asserted): first, to the compensation of the Receiver for his services under this Agreement; second, to the payment of all expenses incurred by the Receiver in the discharge of the Receiver's duties or in the exercise of the Receiver's rights in connection with this Agreement; third, to the payment of all taxes, assessments and liens; fourth, to the retention by the Receiver of a working capital fund not to exceed \$2,500.00; fifth, to pay current amounts due to any secured creditors; sixth, to reduce indebtedness to unsecured creditors; seventh, to be held by the Receiver to establish a fund for the payment of all other liabilities, if any; and eighth, for disbursement to the partners of the Partnerships, which shall only be made in accordance with paragraph 23 herein.

13. The Receiver shall keep separate books and records for each of the Partnerships; shall not use any funds from one of the Partnerships to pay the debts of any of the other Partnerships; shall not use the assets of one of the Partnerships as security for any loan whose proceeds will be used in whole or in part for any other partnership; and shall not in any other way commingle the assets or liabilities of said Partnerships.

14. As compensation for his services as Receiver, the Receiver shall be paid for his time based upon his normal hourly

billing rate, and shall be entitled to reimbursement of all reasonable out-of-pocket expenses.

III.

INVESTMENT OF FUNDS

15. The Receiver is directed to invest all accumulated funds of the Partnerships which he believes will not be needed for at least thirty (30) days in money market or equivalent accounts.

IV.

NO INTERFERENCE WITH RESPONSIBILITIES OF RECEIVER

16. The Partners agree that they will in no way interfere with the management of the Properties, the sale of the Properties, or any other activities which are the responsibility of the Receiver. Except as provided below, the Partners shall not engage in any written or oral communication (unless the Receiver is physically present) or any business transactions or other business dealings of any kind related to the Partnerships with any of the following: any real estate brokers or agents retained by the Receiver or otherwise involved in any transactions related to the Partnerships; any lessees or prospective lessees of any of the Properties; any property managers retained by the Receiver; or any suppliers or vendors of the Partnership. Notwithstanding the foregoing, the Partners may communicate with lessees, prospective lessees, suppliers, vendors, and contractors outside the presence of the Receiver if they are specifically requested to do so by the Receiver in writing. A Partner may communicate with any accountants retained by the Partnerships or the Receiver, but only

for the purpose of obtaining information necessary to prepare an income tax return or financial statements, for the Partners or any other entity.

V.

SALE OF ALL PROPERTIES

17. The Receiver is directed to market and sell all of the Properties, except the Falaschi Brothers Grand Avenue Parcel, as soon as reasonably possible. The Receiver is directed to market and sell the Falaschi Brothers Grand Avenue Parcel as soon as all toxic problems have been corrected, if possible, pursuant to paragraph 20 herein. The Receiver shall not list any Property with any broker unless: the broker agrees to advertise the Property to other brokers and the general public; and to cooperate with other brokers. In the event that any of the Properties have not been sold within two (2) years from the date of this Agreement, the Receiver is directed to cause a public auction of said unsold Properties.

VI.

RIGHT OF JAMES AND ROBERT TO PURCHASE PROPERTIES

18. James and Robert shall have the right to submit to the Receiver offers for the purchase of any of the Properties at any time following the receipt by the Receiver of an offer to purchase said property from an unaffiliated third party, and thereafter to purchase any of such Properties. James or Robert may submit such offers either with or without a real estate agent or broker acting on their behalf, but all such offers must be submitted to the

Receiver by means of the listing brokerage. If either James or Robert choose to use a real estate broker or agent during the course of this Agreement, they shall not use, hire, or otherwise compensate in any way any of the real estate agents or brokers retained by the Receiver as listing agents or brokers for any of the Properties, unless otherwise agreed upon in writing by all the Partners. The Receiver shall evaluate, accept or reject any and all offers or bids by James or Robert in the same manner that he would evaluate, accept or reject any offers or bids by independent parties.

VII.

GRAND AVENUE PARCELS

19. The parcel of real estate owned by Falaschi Brothers located at the corner of Grand Avenue and Bellevue Street shall hereinafter be separately referred to as the "Falaschi Brothers Grand Avenue Parcel" but shall still be included with the definition of the "Properties".

20. Robert and James and Falaschi Brothers agree that any toxic problems which exist with respect to the Falaschi Brothers Grand Avenue Parcel shall be corrected, if possible, before it is marketed for sale by the Receiver. The Receiver is directed to correct any such toxic problems as soon as reasonably possible, and to obtain the funds necessary to correct any toxic problems in the following manner:

(a) First, by obtaining a loan from a lending institution secured by the Falaschi Brothers Grand Avenue Parcel

upon terms and conditions which the Receiver determines, in his sole discretion, to be reasonable; or

(b) Second, if the Receiver is unable to obtain such a loan from a lending institution, then he shall use funds from the "Partnership Reserve Fund" (defined in paragraph 22 herein) for Plaza Partners to finance the correction of any such toxic problems. The use of said Reserve Fund for this purpose shall constitute a permissible exception to the general prohibition in this Agreement against commingling any of the assets or liabilities of the separate Partnerships; or

(c) Third, if the Receiver determines in his sole discretion that a correction of toxic problems at the Falaschi Brothers Grand Avenue Parcel is necessary to avoid the assessment of fines or penalties by any governmental authority, then he may require that Robert and James equally contribute capital up to \$20,000 each to Falaschi Brothers to be used to correct said toxic problems. Within ten (10) days after receipt of a written request from the Receiver to contribute such additional capital, Robert and James agree to deliver said funds to the Receiver. If the foregoing sum is not sufficient, the Receiver may obtain funds pursuant to paragraph 20(a) or 20(b) if such funds subsequently become available.

21. The Receiver is hereby directed to evaluate the merits of a potential claim or lawsuits against the predecessors in title to the Falaschi Brothers Grand Avenue Parcel to recover the damages related to the toxic problems. The Receiver shall in his sole

discretion decide whether or not to pursue said claim or lawsuit.

(a) Upon completion of all reasonably necessary remedial work, the Receiver shall market and sell the Falaschi Brothers Grand Avenue Parcel.

VIII.

RESERVE FUND AND DISTRIBUTIONS TO PARTNERS

22. Upon the sale of all assets of a Partnership, the Receiver shall pay all known obligations, debts, and liabilities of that Partnership; any funds remaining after the sale of said assets and the payments of said liabilities, debts, and obligations shall hereinafter be referred to as a "Partnership Reserve Fund." Each Partnership shall have a separate "Partnership Reserve Fund" which shall not be commingled with any other Partnership fund except to the limited extent allowed by the preceding paragraph regarding the Falaschi Brothers Grand Avenue Parcel. The Receiver shall at all times have authority to use a Partnership Reserve Fund to pay any additional liabilities of that Partnership which come to his attention.

23. No amount from any Partnership Reserve Fund may be distributed to any of the partners of that Partnership until all of the following have occurred:

(a) All of the assets of that Partnership have been sold except that the sale of the Falaschi Brothers Grand Avenue Parcel shall not delay any distribution from Falaschi Brothers;

(b) All of the liabilities, contingent liabilities, debts, and obligations of that Partnership have been determined and

paid or reserved, to the extent feasible;

(c) As to Falaschi Brothers, all of the work to correct any toxic problems on the Falaschi Brothers Grand Avenue Parcel has been completed.

(d) The final State and Federal Income Tax Returns for that partnership have been filed; and

(e) Any other action reasonably necessary for the dissolution, liquidation and termination of the particular partnership has been completed.

24. Upon the occurrence of all the above events, the Receiver shall distribute the Partnership Reserve Fund of a partnership to the partners in accordance with the respective partnership agreements, taking into account the relative capital accounts of the partners, and any debts or obligations between the parties and the Partnerships (including, but not limited to, the obligations pursuant to Amendment No. 1 to the partnership agreement for Falaschi/Cox Cypress No. 1); notwithstanding the preceding, nothing in this paragraph shall be construed as a modification of the provisions in any of the Partnership Agreements governing distribution of Partnership assets upon dissolution of any of the Partnerships. The Receiver may withhold from said distribution a reasonable amount which he believes reasonably necessary to pay any contingent partnership liabilities which may arise. The Receiver may withhold from the Falaschi Brothers distribution a reasonable amount which he believes reasonably necessary to pay any carrying costs or other costs necessary to

manage, market, and sell the Falaschi Brothers Grand Avenue Parcel.

IX.

USE OF NAMES OF PARTNERSHIPS

25. The Partners agree that upon execution of this Agreement:

(a) they will not use the names of any of the Partnerships for any purposes;

(b) they shall terminate any credit accounts, bank accounts, loans or other borrowing made in the name of any of the Partnerships or Management Operations, Inc.;

(c) they shall not represent to anyone that they are partners of said Partnerships; and

(d) they shall not in any other manner imply or represent that they are affiliated with any such Partnerships.

In the event that any of the Partners or Receiver learn or realize that a third party believes a partner is still affiliated with one of the Partnerships, that partner agrees to notify such person in writing that the party is no longer affiliated with such Partnership, and that such Partnership has been dissolved. Any breach of this paragraph shall be considered a material breach of this Agreement.

X.

INDEMNIFICATION

26. James agrees to indemnify Robert and Preston, hold Robert and Preston harmless, and defend Robert and Preston for any and all liabilities, debts and causes of action which may result from James' use of any of the names of the Partnerships without the

knowledge and consent of Robert and Preston. This provision shall apply to any debts and liabilities incurred both prior to, and after, the date of this Agreement.

27. Robert agrees to indemnify James and Preston, hold James and Preston harmless, and defend James and Preston for any and all liabilities, debts and causes of action which may result from Robert's use of any of the names of the Partnerships without the knowledge and consent of James and Preston. This provision shall apply to any debts and liabilities incurred both prior to, and after, the date of this Agreement.

28. Preston agrees to indemnify James and Robert, hold James and Robert harmless, and defend James and Robert for any and all liabilities, debts and causes of action which may result from Preston's use of any of the names of the Partnerships without the knowledge and consent of James and Robert. This provision shall apply to any debts and liabilities incurred both prior to, and after, the date of this Agreement.

XI.

DISSOLUTIONS OF PARTNERSHIPS

29. The Partners agree that dissolutions of all the Partnerships shall become effective immediately upon the full execution of this Agreement. The parties further agree to take all necessary steps to obtain a Decree of Dissolution of Partnerships and Management Operations, Inc. (in the form attached hereto as Exhibit "B") signed by a Judge of the Contra Costa County Superior Court within thirty (30) days from the date of this Agreement, or

as soon thereafter as may be scheduled with the Court. The parties hereto direct the Receiver to publish notices of dissolution pursuant to Corporations Code Section 15035.5 for all of the Partnerships and to take any additional action necessary to comply with any laws related to the dissolutions of partnerships and corporations.

30. The Partners agree that upon full execution of this Agreement, they shall be permitted to pursue individually their own livelihoods and business opportunities without having any obligation to offer any business opportunities to any of the other parties hereto. This paragraph shall not be construed as a waiver of any other fiduciary duty among the Partners.

XII.

SETTLEMENT OF LAWSUIT

31. The case of Robert Falaschi v. Preston Cox, et al. (Case Number C 89-03528, in the Superior Court of Contra Costa County) shall hereinafter be referred to as the "Lawsuit" subject to the terms and conditions of this Agreement. Each of the signatory Partners expressly waives all rights provided by section 1542 of the California Civil Code, which provides as follows:

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

This Agreement constitutes a full and final release applying to each signatory Partner's claims related to the Lawsuit against any or all of the other signatory Partners, and to all known and

unanticipated damages arising out of any of the Partnerships, the conduct or operation of any of the Partnerships, all other matters done or omitted to be done by any or all of the signatory Partners related to the Lawsuit, and all potential claims related to the Lawsuit arising from any violation of federal or state laws, as well as to those claims not now known or disclosed related to the Lawsuit. Each signatory Partner understands that if the facts with respect to which this Agreement is executed (except those warranties and representations stated in this Agreement) are found hereafter to be different from the facts now believed to be true, this Agreement shall be and remain effective and not subject to termination, rescission or any other remedy by virtue of any such differences in facts. Each signatory Partner also understands and acknowledges that it is possible that unknown losses or claims exist or that present losses may have been underestimated in amount or severity. Each signatory Partner explicitly considered this possibility in determining the amount of consideration to be paid for the giving of this Agreement, and a portion of this consideration was bargained for among the signatory Partners with the knowledge of the possibility of such unknown claims. This release shall extend to all allegations of any party made in any pleading filed in the Lawsuit. This Agreement is given in exchange for a full accord, satisfaction and discharge of all possible claims by each signatory Partner against any or all of the signatory Partners. The release and waiver contained in this paragraph shall be effective for claims relating to each

Partnership and Management Operations, Inc. upon the execution of this Agreement. No signatory Partner may accept any assignment from Preston Cox of any of Preston Cox' claims or causes of action against any signatory Partner.

32. The Partners agree to take all necessary steps to appear within twenty (20) days from the date of this Agreement, or as soon thereafter as may be scheduled with the Court in Contra Costa County Superior Court before a Judge and a court reporter to affirm openly and stipulate that they have agreed to settle said lawsuit (case number C 89-03528) against each other pursuant to the terms of this Agreement which shall be introduced into the record in open court. The case of Robert Falaschi v. Preston Cox, et al. and all cross-complaints (Case Number C 89-03528, in the Superior Court of Contra Costa County) shall be dismissed with prejudice. In the event Preston Cox does not become a party to this Agreement (pursuant to Paragraph 61), the parties hereto shall not be required to dismiss any complaints or cross-complaints against Preston Cox.

XIII.

BROKERS, LISTING PRICES, AND SELLING PRICES

33. The Receiver shall have the authority to determine, in his sole discretion, who, shall be the listing brokers and agents for leasing and selling the Properties, the amounts of the listing prices for the Properties, and the amounts of the selling prices for the Properties. The Partners shall be free to provide their advice and recommendations to the Receiver regarding these matters,

but only if so requested by the Receiver. The Receiver shall only agree to sell the Properties for all cash, and shall not agree to accept any promissory notes (secured or unsecured) or any other promises for payments to occur after the close of escrow. The Receiver shall use his best efforts to expose each and every property to the broadest available market and shall sell each and every Property for its maximum reasonable fair market value under the selling terms described above; and in no event less than the secured debt on the property.

34. The Receiver may, in his sole discretion, exclude potential purchasers (hereinafter the "Excluded Purchasers") from any of the listing agreements so that the real estate brokers and agents will not be entitled to any commission for a sale to the Excluded Purchasers. The Receiver may not accept any offers for the purchase of any Property by an Excluded Purchaser until after the Receiver receives at least one offer from a non-Excluded Purchaser for the same Property.

XIV.

MAINTENANCE OF RECORDS

35. The Receiver shall safeguard and preserve the books and records of the Partnerships for a period of five (5) years after the sale of all the Properties and shall provide the Partners reasonable access to said books and records.

XV.

EFFECT OF BANKRUPTCY

36. Business Center Associates filed for Bankruptcy relief; its principal asset, Airport Oaks Business Center, was foreclosed upon by Wells Fargo Bank. The responsibility of the Receiver shall be to wind up said partnership. Falaschi/Cox Cypress No. 1 has filed for bankruptcy relief and is currently under the jurisdiction of the Bankruptcy Court. The Partners acknowledge that said bankruptcy may affect the validity of this Agreement, or may affect the ability to implement this Agreement. The Partners agree to take all steps reasonably necessary to achieve the intent of this Agreement as it relates to said Partnership. The Partners shall direct said Partnership's bankruptcy attorneys to take whatever steps are necessary to obtain approval by the Bankruptcy Court of this Agreement, if necessary, or to do whatever else may be necessary to achieve the intent of this Agreement. Said Bankruptcy shall not affect this Agreement as it relates to all other Partnerships or Properties not subject to said Bankruptcy.

XVI.

FALASCHI PROPERTIES, INC.

37. James and Robert acknowledge that they are both shareholders of Falaschi Properties, Inc., and that the existence of said corporation shall not be affected by the execution of this Agreement. Nevertheless, James and Robert agree that with respect to said corporation they shall have no duty to offer or present any business opportunities to each other or the corporation upon

execution of this Agreement. James and Robert agree further that each shall be free to pursue personally any business opportunity of which they become aware. With the exception of the preceding sentence, all of the fiduciary duties of James and Robert with respect to Falaschi Properties, Inc. shall remain unchanged. Attached hereto as Exhibit "C" is an Agreement of the Shareholders of Falaschi Properties, Inc. in which the shareholders consent to the provisions of this paragraph.

XVII.

MANAGEMENT OPERATIONS, INC.

38. The Receiver is directed to dissolve and liquidate Management Operations, Inc. within three (3) months from the date of this Agreement. Prior to the dissolution of that corporation, the Receiver is directed to issue invoices to the Partnerships for management services and any other services rendered by Management Operations, Inc. to those Partnerships for which payment has not been made. The Receiver is directed to pursue collection of said invoices and use the collected amounts to pay the liabilities of Management Operations, Inc., or to distribute to the shareholders of Management Operations, Inc. In conducting the liquidation of Management Operations, Inc., the Receiver may sell assets to the Partners, distribute assets to the Partners, or sell the assets to others.

XVIII.

DIVISION OF SPORT TICKETS

39. Robert and James acknowledge that they currently have joint rights to eight (8) season tickets for the San Francisco 49ers. James acknowledges that he is currently the owner of two (2) season tickets for the Golden State Warriors. All of the season tickets for the Golden State Warriors shall be changed to the joint ownership by James and Robert prior to the commencement of the 1990-1991 basketball season. The address of said season tickets shall be "care of" James. On odd numbered years (such as 1991, 1993, etc.) James shall deliver to Robert, no later than ten (10) days after receipt of the Warriors tickets, all tickets to the odd numbered games (i.e., the first, third, fifth, etc. games), including pre-season games. On even numbered years (such at 1990, 1992, etc.), James shall deliver to Robert, no later than ten (10) days after receipt of the Warriors tickets, all tickets to the even numbered games (i.e., the second, fourth, sixth, etc. games) including pre-season games. All post-season games shall be allocated in a like manner. Concurrent with receipt of such tickets, Robert shall deliver to James reimbursement for the cost of said tickets received by Robert. James and Robert each covenants and warrants that he shall neither sell nor surrender his one-half joint ownership rights to said season tickets without first offering to the other the opportunity to acquire said rights.

40. The season tickets for the 49ers shall be divided and distributed equally between James and Robert. The four tickets to

the seats in Section 14, Row "S" shall be distributed to Robert, to be held and used by Robert in his sole discretion. The four tickets to the seats in Section 14, Row "T" shall be distributed to James, to be held and used by James in his sole discretion. James and Robert hereby covenant to cooperate in all reasonable respects to accomplish the division and transfer of the 49er tickets in accordance with the provisions of this paragraph, and to change the title to said tickets accordingly. Each Partner shall be reimbursed by the other for any deposits or prepayments on the 1990 season tickets, and for the cost of 1989 play-off tickets.

XIX.

VOTES BY PARTNERSHIPS

41. The Partners acknowledge and represent that prior to the full execution of this Agreement duly noticed meetings were held for Falaschi Brothers, Falaschi/Cox Cypress No. 1, Plaza Partners, Business Center Associates and Management Operations, Inc. At all such meetings, the shareholders and partners (including the limited partner of Plaza Partners) voted to dissolve the entities, appoint Joseph Adams as Receiver, liquidate the assets, and to enter into this Agreement and be bound by the terms and conditions of this Agreement. Attached hereto as Exhibit "D" are the duly executed minutes and resolutions of said entities reflecting the votes referenced above.

XX.

POWER OF ATTORNEY

42. The Partners shall each execute all of the irrevocable Durable Powers of Attorney attached hereto as Exhibit "E".

43. The Receiver may record said Powers of Attorney in any county recorder's office in which any Partnership owns real property. The Partners desire that said Powers of Attorney will enable the Receiver to sell all of the Properties and the Falaschi Brothers Grand Avenue Parcel without the need for any signatures by any of the Partners.

XXI.

INVALIDITY

44. If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, the remaining provisions shall not be invalid and shall remain in full force and in effect.

XXII.

BINDING EFFECT

45. This Agreement shall be binding upon the parties and their respective legal representatives, heirs, successors, and assigns.

XXIII.

PARAGRAPH HEADINGS

46. The headings in this Agreement are for purposes of convenience and ease of reference only and shall not be construed to limit or otherwise affect the meaning of any part of this Agreement.

XXIV.

ENTIRE AGREEMENT

47. This Agreement and the exhibits attached hereto constitute the entire agreement among the Partners relating to the subject matter hereof. All prior agreements, correspondence, discussions, and understandings of the parties are merged herein and made a part hereof, with the intention of the Partners that this Agreement shall serve as the complete and exclusive statement of the terms of their agreement. No amendment, waiver or modification hereto or hereunder shall be valid unless in writing, signed by the party or parties against whom enforcement is sought.

XXV.

GOVERNING LAW

48. This Agreement shall be governed and construed according to the laws of the State of California.

XXVI.

ATTORNEY FEES

49. If any party brings an action, at law, or in equity, or a motion against any other party or parties arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover from the other party or parties the costs of suit or motion incurred and reasonable attorney fees.

XXVII.

COUNTERPARTS

50. This Agreement may be executed in one or more counterparts, all of which shall be read together and construed as

one and the same agreement.

XXVIII.

COOPERATION

51. Each party to this Agreement agrees to perform any further acts and execute and deliver any additional documents that may be reasonably necessary to carry out the provisions and intent of this Agreement.

XXIX.

PREPARATION

52. Each party hereto has participated in the drafting and preparation of this Agreement; hence, in any construction to be made of this Agreement, the same shall not be construed against any party hereto.

XXXI.

NON-WAIVER OF BREACH

53. The parties agree that the failure to take advantage of any default or breach of any provision of this Agreement shall not operate or be construed as a waiver by the other party of any right hereunder.

XXXII.

INDEMNITY OF RECEIVER

54. The receiver shall not be liable to Robert, James or Preston for any damage to any of the Properties covered by this Settlement Agreement, from any cause, and Robert, James and Preston, and each of them, waive all claims or demands against the Receiver for damage to person(s) or property(ies) arising now or

hereafter from any reason or cause or for any acts or omissions by or of the Receiver done or undertaken or suffered in good faith.

55. Robert and James, and each of them, as to those Partnerships or Properties they are part of and Robert, James and Preston, and each of them, as to those Partnerships and Properties they are a part of, shall and they hereby do, indemnify, agree to defend and hold the Receiver harmless from all damages, claims, causes of action or suits arising out of, or in connection with, the Receiver's actions, acts or omissions and the carrying out of his duties under this Settlement Agreement, except that the Receiver shall be liable for acts done in bad faith.

56. Without limiting the generality of the foregoing indemnity and hold harmless, Robert and James acknowledge that (as set forth in this Agreement) the Grand Avenue property has a toxic waste problem. The Receiver, by reason of the duties and responsibilities accepted herein, will expose himself to liability therefor. Robert and James agree that the indemnity and hold harmless set forth herein shall survive and continue beyond the termination or expiration of this Agreement and shall extend to all matters related to, or connected with, the removal of the toxic waste problem.

57. The parties agree that the Receiver shall be named as an additional insured under all of the public liability and property damage insurance policies carried on the properties and shall be responsible for accomplishing said addition..

58. This indemnity and hold harmless shall extend to all

costs and expenses incurred or paid by the Receiver in connection with this Settlement Agreement including, but not limited to, reasonable attorney fees.

59. Notwithstanding the foregoing, if one of the parties hereto shall sue the Receiver, then only that party who brought such suit shall be liable to indemnify, defend, and hold harmless the Receiver for such lawsuit.

60. Robert, James, and Preston represent to the receiver that they have their own counsel who has advised each of them with respect to the terms and conditions of this Settlement Agreement and that they have not relied on any advice from the Receiver concerning this Agreement. The parties further acknowledge that the Receiver has acted from time to time, and continues to act, as legal counsel for various parties on various matters and that he will continue to do so.

XXXIII.

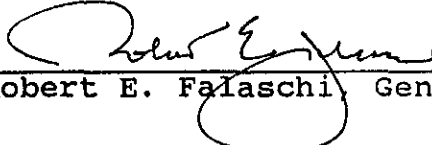
BINDING EFFECT WITHOUT PRESTON COX

61. In the event that Preston Cox does not sign this Agreement, this Agreement shall remain binding and valid as between all of the signatories to this Agreement. Preston Cox may join as a party to this Agreement only by execution of two copies hereof (including execution of all applicable exhibits) on or before June 29, 1990 and hand delivery of an original to John Hartog, Esquire of Lempres & Wulfsberg, 300 Lakeside Drive, 24th Floor, Oakland, CA 94612-3524 and Farley J. Neuman, Esquire of Ropers, Majeski, Kohn, Bentley, Wagner & Kane, 655 Montgomery Street, Suite 1600,

San Francisco, CA 94111, on or before said date. After that date, Preston Cox may only become a party to this Agreement if written consent is given by James Falaschi and Robert Falaschi.


FALASCHI BROTHERS,
a California general partnership

By: 
James D. Falaschi, General Partner

By: 
Robert E. Falaschi, General Partner

BUSINESS CENTER ASSOCIATES,
a California general partnership

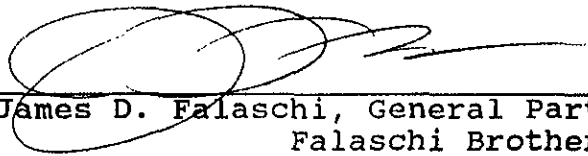
By: _____
James D. Falaschi, General Partner

By: 
Robert E. Falaschi, General Partner

By: _____
Preston Cox, General Partner

**PLAZA PARTNERS,
a California limited partnership,**

By: Its General Partner, Falaschi Brothers,
A California general partnership


By: 
James D. Falaschi, General Partner of
Falaschi Brothers

By: 
Robert E. Falaschi, General Partner of
Falaschi Brothers

**FALASCHI/COX CYPRESS NO. 1,
a California general partnership**

BY: Its General Partner, Falaschi Brothers,
a California general Partnership,

By: 
James D. Falaschi, General Partner of
Falaschi Brothers

By: 
Robert E. Falaschi, General Partner of
Falaschi Brothers

By: _____
Preston Cox, General Partner of
Falaschi/Cox Cypress No. 1

MANAGEMENT OPERATIONS, INC.
A California corporation

By: _____

President

By: _____

Secretary CFO

THE INDIVIDUALS

JAMES D. FALASCHI, Individually

ROBERT E. FALASCHI, Individually

PRESTON COX, Individually

I accept appointment as the Receiver in accordance with the foregoing:

DATED: June __, 1990

JOSEPH A. ADAMS

GIBSON & MACPHEE
1534 Fifth Ave -
Suite Four
San Rafael, CA 94901

Don Huang

← **Aritu Levi**
Division Chief
Department of Public Health
Room 260
1131 Harbor Bay Parkway
Alameda, CA 94502-7577

