

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

THE 1031 TAX GROUP, LLC, *et al.*,

Debtors.

Chapter 11

Case No. 07-B-11448 (MG)  
Jointly Administered

In re:

INVESTMENT PROPERTIES OF  
AMERICA, LLC, *et al.*,

Debtors.

Chapter 11

Case No. 07-13621 (MG)  
Jointly Administered

**ORDER**

Upon consideration of the motion (the “Motion”) pursuant to 11 U.S.C. § 105 and Fed. R. Bankr. P. 9019 for entry of an order approving the settlement agreement (the “Settlement Agreement”) between and among Gerard A. McHale, Jr., as Chapter 11 Trustee of the estate of The 1031 Tax Group, LLC, *et al.*, and as manager of each of Investment Properties of America, LLC, *et al.*, Cordell Funding, LLLP and Cordell Consultants, Inc., Money Purchase Plan, A Qualified Retirement Plan Trust; and a hearing (the “Hearing”) having been held before this Court on December 1, 2008, to consider the Motion. All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion or in the Settlement Agreement that is attached hereto as exhibit A. The Court, having reviewed the Motion and all objections having been overruled (if any), and due and sufficient notice thereof having been given pursuant to Rules 2002 of the Federal Rules of Bankruptcy Procedure; and upon the record at the Hearing and sufficient cause appearing therefor; the Court hereby finds and concludes that:

- A. The Court has jurisdiction of this matter pursuant to 28 U.S.C. §1334;
- B. Venue is proper before this Court pursuant to 28 U.S.C. §1408;

C. Section 105 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) provide the basis for the relief sought in the Motion;

D. Pursuant to Bankruptcy Rules 9019 and 2002, the notice given by Gerard A. McHale, Jr. (the “Trustee” or the “Debtors”) as chapter 11 trustee of the 1031 Tax Group LLC, *et al.* (the “1031 Debtors”), case no. 07-11448, and as manager for each of Investment Properties of America, LLC *et al.* (the “IPofA Debtors”), case no. 07-13621, of the relief requested in the Motion and the terms of the Settlement Agreement, including the injunction against the creditors of the 1031 Debtors and the IPofA Debtors, and the opportunity for hearing on the Motion was and is appropriate under the circumstances and was good and sufficient notice to all persons and entities whose interests would or could be affected by this Order and/or the Settlement Agreement, and no other or further notice need be provided;

E. Pursuant to Bankruptcy Code Section 105(a), the Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code, and pursuant to Bankruptcy Rule 9019(a), the Court may approve a compromise or settlement on motion and after notice and a hearing;

F. Upon consideration of the relevant factors to be utilized in determining whether a proposed settlement is fair and reasonable, namely: the probability of success in litigation; the difficulty in collecting any judgment which may be obtained; the complexity of the litigation involved, and the attendant expense, inconvenience, and delay; and the interests of creditors and equity holders and a proper deference to their and the Trustee’s reasonable views of the settlement, and for the reasons set forth in the Motion, it appears to the Court that the Settlement Agreement provides clear benefits to the creditors of the 1031 Debtors and the IPofA Debtors

including (i) immediate resolution of the Complaints and the 60(b) Motion, and the elimination of further administrative and litigation expenses associated therewith; (ii) removal of the risk and uncertainty associated with litigating the Complaints to judgment; and (iii) a substantial payment that will benefit the creditors of the 1031 Debtors and the IPofA Debtors. In addition, resolution of the Action will allow for prompt closure of certain of these Chapter 11 cases;

G. The settlement, and the Settlement Agreement, are the result of extensive arms-length bargaining and negotiation among the parties, and represents a good faith compromise and resolution of the matters settled and there is no evidence that the settlement is the result of collusion among the parties to the Settlement Agreement or that there has been any intent to prejudice the persons or entities who will be subject to this Order;

H. Based upon the value of the claims, the value of the bonus payments, the potential value of the Mineral Lease, and the significant cost and litigation risks that would be associated with pursuing the Complaints to judgment, the Settlement Agreement is fair and reasonable, “falling well ‘within the reasonable range of possibilities.’” Therefor, the relief sought in the Motion is in the best interests of the creditors of the 1031 Debtors and the IPofA Debtors;

I. The benefits of the Settlement Agreement would not be available to the creditors of the 1031 Debtors and the IPofA Debtors unless the Trustee were to request, and the Court were to order, that such creditors are enjoined from pursuing the persons and entities with respect to the subject matter of this settlement as described in decretal paragraph 2 below, and, sufficient notice of such request having been provided, cause exists to grant such injunction; and

J. The legal and factual bases set forth in the Motion and on the record establish that the Settlement Agreement represents a fair, reasonable, and adequate resolution of the claims and

defenses between the Parties, and is fair and equitable with respect to creditors and other parties in interest in these bankruptcy cases.

K. Accordingly, after due deliberation and sufficient cause appearing therefor, it is hereby

**ORDERED ADJUDGED AND DECREED** that:

1. The Motion is Granted and the terms of the final Settlement Agreement, which is attached hereto as Exhibit A, are hereby approved (as set forth herein) and incorporated into this Order in their entirety, and the Parties are authorized and directed to perform in accordance with the terms thereof, as well as the terms of this Order.

2. In the 1031 Cases and IPofA Cases, all persons or entities, who have held, hold or may hold claims against or interests in the estates of the 1031 Debtors and IPofA Debtors are permanently enjoined from: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action, cause of action or other proceeding of any kind (including, without limitation, asserting a claim in the 1031 Cases and/or the IPofA Cases, or proceeding in any other judicial, arbitration, administrative or other forum) against or affecting the Cordell Parties or the Collateral on account of or respecting any claim, interest, obligation, debt, right, cause of action, remedy or liability discharged, released, to be released, governed by, or relating to the Settlement Agreement that is based upon or derivative of any claim or cause of action that could have been asserted against the Cordell Parties by, or injury to, the estates of the 1031 Debtors and/or the IPofA Debtors; (ii) enforcing, levying, attaching (including, without limitation, any prejudgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order in respect of any claim against the Cordell Parties or the Collateral on account of or respecting any claim, interest, obligation, debt,

right, cause of action, remedy or liability discharged, released, to be released, governed by, or relating to the Settlement Agreement that is based upon or derivative of any claim or cause of action that could have been asserted against the Cordell Parties by, or injury to, the estates of the 1031 Debtors and/or the IPofA Debtors; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any lien or encumbrance of any kind in respect of any claim or interest against the Cordell Parties or the Collateral on account of or respecting any claim, interest, obligation, debt, right, cause of action, remedy, or liability discharged, released, to be released, governed by, or relating to the Settlement Agreement that is based upon or derivative of any claim or cause of action that could have been asserted against the Cordell Parties by, or injury to, the estates of the 1031 Debtors and/or the IPofA Debtors; (iv) asserting, directly or indirectly, any setoff, right of subrogation or recoupment right of any kind that is based upon or derivative of any claim or cause of action that could have been asserted against the Cordell Parties by, or injury to, the estates of the 1031 Debtors and/or the IPofA Debtors; (v) asserting any rights to or over any of the Collateral securing the Cordell Loans and subject to Cordell's liens, with the exception of Cordell Funding, LLLP v. IPofA Columbus Works, LLC, et. al., Case NO. 08 CVE 05-7509, in the Court of Common Pleas, Franklin County, Ohio, and Cordell Funding, LLLP v. IPofA Parkway Complex, LLC, et. al., Case No. 49 D12-0806-MF-026369, in the Marion Superior Court, No. 12, State of Indiana, and any counter-claims or third party claims already pending between Cordell and other third parties in such actions, regarding any of the Collateral that is based upon or derivative of any claim or cause of action that could have been asserted against the Cordell Parties by, or injury to, the estates of the 1031 Debtors and/or the IPofA Debtors; or (vi) commencing or continuing any action or proceeding in any manner or in

any place whatsoever that does not conform to or comply with the provisions of the Settlement Agreement as modified by this Order.

3. Notwithstanding anything to the contrary contained in this Order or the Settlement Agreement, the injunction provisions contained herein and in the Settlement Agreement do not apply to any claims that Wachovia Bank, National Association (“Wachovia”) may have against any person or entity (including against the 1031 Debtors, the IPofA Debtors, the Trustee, or Cordell), or any claims that any person or entity (including *inter alia* the 1031 Debtors, the IPofA Debtors, the Trustee, or Cordell) may have against Wachovia, and the inclusion of Paragraph 12 in and Exhibit F to the Settlement Agreement and the discussion of Impairments contained therein does not constitute or act as an approval or recognition by this Court, or an acknowledgement by Wachovia, as to the viability of any subordination or extinguishment claims with respect to Wachovia’s liens on the Hibiscus Property, the Salina Mall, or anything else.

4. This Court shall retain jurisdiction over any and all disputes arising under or otherwise relating to the terms of this Order and the Settlement Agreement.

**IT IS SO ORDERED.**

Dated: New York, New York  
**December 1, 2008**

/s/ Martin Glenn  
Martin Glenn  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

THE 1031 TAX GROUP, LLC, *et al.*,  
  
Debtors.

Case No. 07-11448 (MG)

Chapter 11

(Jointly Administered)

In re:

INVESTMENT PROPERTIES OF AMERICA, LLC, *et al.*,  
  
Debtors.

Case No. 07-13621 (MG)

Chapter 11

(Jointly Administered)

**SETTLEMENT AGREEMENT AND ORDER BY AND BETWEEN GERARD A.  
MCHALE, JR., AS CHAPTER 11 TRUSTEE OF THE 1031 TAX GROUP DEBTORS,  
THE IPOFA DEBTORS, CORDELL FUNDING, LLLP AND CORDELL  
CONSULTANTS, INC., MONEY PURCHASE PLAN, A QUALIFIED RETIREMENT  
PLAN TRUST**

WHEREAS, Cordell (as defined below) asserts that, pursuant to that certain Secured Promissory Note dated May 3, 2006, Cordell Funding, LLLP (“Cordell Funding”) loaned to Sam Trustee Services, LLC (“Sam Trustee”), in its capacity as trustee of Columbus Works Virginia Trust and Parkway Virginia Trust, the principal sum of \$26,500,000.00, which loan (the “Columbus Works Loan”) was guaranteed by Edward H. Okun (“Okun”) ), and pursuant to which Okun gave a lien on his membership interests in Atlantic Exchange Company LLC (“AEC”) and The 1031 Tax Group LLC (“1031”) (the membership interest in AEC and 1031 are collectively referred to hereinafter as the “1031 Membership Interest”);

WHEREAS, Cordell asserts that, pursuant to that certain Secured Promissory Note dated December 12, 2006, Cordell Consultants, Inc., Money Purchase Plan, a Qualified Retirement Plan Trust (“Cordell Consultants,” and, together with Cordell Funding, “Cordell”) loaned to

IPofA 5201 Lender, LLC (“IPofA 5201 Lender”) the principal sum of \$2,500,000.00, which loan (the “5201 Loan”) was guaranteed by Investment Properties of America, LLC (“IPofA”) and Crossroads Transportation and Logistics, Inc. (“Crossroads”);

WHEREAS, Cordell asserts that, pursuant to that certain Secured Promissory Note dated December 19, 2006, Cordell Consultants loaned to Okun the principal sum of \$3,000,000.00, which loan (the “Simone Loan”) was guaranteed by Simone Condo I, LLC (“Simone Condo I”) and Simone Condo II, LLC (“Simone Condo II”);

WHEREAS, Cordell asserts that, pursuant to that certain Promissory Note dated February 23, 2007, Cordell Funding loaned to IPofA Shreveport Industrial Park, LLC (“IPofA Shreveport”) the principal sum of \$13,416,000.00, secured by a mortgage on certain real property owned by IPofA Shreveport (the Shreveport Mortgage”), located at 9595 Mansfield Road, Shreveport, Louisiana (the “Shreveport Property”), which loan (the “Shreveport Loan”) was guaranteed by Okun;

WHEREAS, Cordell asserts that, pursuant to that certain Promissory Note dated April 20, 2007, Cordell Consultants loaned to Okun the principal sum of \$7,000,000.00 (the “7M Loan”) (the Columbus Works Loan, the 5201 Loan, the Simone Loan, the Shreveport Loan and the 7M Loan are referred to collectively as the “Cordell Loans”);

WHEREAS, Cordell asserts that it recorded mortgages and UCC-1 financing statements as to all of the Cordell Loans and asserts that it is a properly perfected secured creditor as to all of the collateral (the “Collateral”) pledged to Cordell pursuant to the Cordell Loans and the Loan Modification Agreement (defined below) (a list of the Collateral is annexed hereto as Exhibit A);

WHEREAS, Cordell asserts that the Cordell Loans are supported by good and valuable consideration, the receipt and sufficiency of which have been acknowledged by the borrowers

and guarantors under the Cordell Loans and the estate of the 1031 Debtors (defined below), and were made by Cordell in good faith without knowledge of any wrongdoing alleged against Okun or entities under his ownership and/or control in arm's length transactions, which assertions the Trustee (as defined below) disputes;

WHEREAS, Cordell asserts that in April and May 2007, Sam Trustee, IPofA 5201 Lender, Okun and IPofA Shreveport (together, the "Borrowers") defaulted on the Cordell Loans and Cordell took steps to protect its rights;

WHEREAS, Cordell asserts that it sent notices of defaults regarding the Cordell Loans, and that the Borrowers contacted Cordell to secure modifications and forbearances in respect of the Cordell Loans;

WHEREAS, the Trustee asserts that, beginning in 2005, Okun or entities owned in whole or in part by Okun purchased the 1031 Debtors (defined below), which were qualified intermediaries that served investors (the "Exchangers") who deposited funds with the 1031 Debtors in connection with like-kind exchanges pursuant to Section 1031 of the Internal Revenue Code;

WHEREAS, the Trustee asserts that, beginning in 2005 and continuing until April 2007, Okun and others aiding him engaged in numerous acts of dishonesty and misappropriation of the funds of the 1031 Debtors (defined below), which resulted in the 1031 Debtors (defined below) having insufficient funds to meet obligations to Exchangers in the amount of more than \$140 million.

WHEREAS, on May 14, 2007, The 1031 Tax Group, LLC; 1031 Advance 132 LLC; 1031 Advance, Inc.; 1031 TG Oak Harbor LLC; Atlantic Exchange Company, Inc.; Atlantic Exchange Company LLC; Investment Exchange Group, LLC (aka "IXG"); National Exchange

Accommodators, LLC; National Exchange Services QI, Ltd.; NRC 1031, LLC; Real Estate Exchange Services, Inc.; Rutherford Investment LLC; Security 1031 Services, LLC; and Shamrock Holdings Group, LLC (together with AEC Exchange Company, LLC, the “1031 Debtors”), filed voluntary petitions for relief in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) under Chapter 11 of Title 11, United States Code (the “Bankruptcy Code”) and AEC Exchange Company, LLC filed a voluntary petition for relief in the Bankruptcy Court under Chapter 11 of the Bankruptcy Code on June 11, 2007 (the “1031 Cases”);

WHEREAS, the 1031 Cases are jointly administered pursuant to the Bankruptcy Court’s Order Directing Joint Administration of Chapter 11 Cases, entered on May 22, 2007 in Chapter 11 Case No. 07-11448, (MG);

WHEREAS, Cordell asserts that, dated as of August 1, 2007, the Borrowers and Cordell entered into that certain Escrow Agreement, which agreement provided for the safeguarding and payment to Cordell of certain of the cash flow generated by certain of the Collateral for the Cordell Loans without waiver of then existing events of default under the Cordell Loans;

WHEREAS, on or about August 10, 2007, Cordell asserts that the Borrowers, IPofA, Crossroads, Simone Condo I, Simone Condo II (together, with the exception of the Borrowers, the “Guarantors”), Cordell, and JPS Capital Partners, LLC, entered into that certain Loan Modification Agreement, which agreement was acknowledged in writing by The Official Committee of Unsecured Creditors of The 1031 Tax Group, LLC, *et al.* (the “Committee”) and the 1031 Debtors;

WHEREAS, Cordell asserts that (a) the Loan Modification Agreement provided for, among other things, deadlines and conditions for a certain proposed refinancing, certain cross

payment requirements in respect of the Cordell Loans, delivery of certain of the Collateral and a reduction in interest rates charged by Cordell during the term of the Loan Modification Agreement, (b) the Borrowers and Guarantors duly acknowledged that certain obligations were due and owing to Cordell and that all of the loan documents in respect of the Cordell Loans (the “Loan Documents”) constituted valid and enforceable security agreements in and to the respective Collateral, all without defense, setoff, or claim, and (c) the Committee and the 1031 Debtors acknowledged the representations, terms and provisions of the Loan Modification Agreement;

WHEREAS, Cordell asserts that on or about August 22, 2007, the Borrowers, Guarantors, Cordell, the Committee, the 1031 Debtors and JPS Capital Partners, LLC entered into that certain Supplement to Loan Modification Agreement (the “Supplement”), which agreement, Cordell asserts, terminated the Escrow Agreement and clarified the Loan Modification Agreement;

WHEREAS, the Trustee (as defined below) disputes most or all of Cordell’s assertions as recited above, regarding the Loan Modification Agreement, and furthermore the Trustee (as defined below) asserts that by the terms of the Supplement, the Loan Modification Agreement became effective, if at all, on August 22, 2007, the date the Supplement was executed, which assertion Cordell disputes;

WHEREAS, on October 25, 2007, Gerard A. McHale, Jr. (the “Trustee”) was appointed the Chapter 11 trustee in the cases of the 1031 Debtors;

WHEREAS, on October 26, 2007, the Bankruptcy Court entered the Order Approving Agreement to Transfer Interests and Assets for the Benefit of Bankruptcy Estates, dated October 11, 2007 (the “Asset Transfer Agreement”), pursuant to which Asset Transfer Agreement, Okun

and his wife, with certain exceptions, transferred to the 1031 Debtors all of their respective assets and properties, including all direct or indirect ownership interests in entities including, without limitation, Crossroads; Columbus Works Virginia Trust; Parkway Virginia Trust; IPofA; Okun Air, LLC; Okun Air 2, LLC; Okun Air 3, LLC; Okun Air 4, LLC; Okun Holdings, Inc.; FMFG Ownership, Inc.; Okun Water, LLC; Simone Bentley, LLC; IPofA Shreveport; Simone Salon, LLC; 9910 Jewella, LLC; 100 Corporate Drive, LLC; IPofA Salina Central Mall, LLC; IPofA West Oaks Mall, LP; IPofA WOM JCP, LP; IPofA Water View, LLC; IPofA Columbus Works LeaseCo, LLC; IPofA Fund Manager, Inc.; CW Acquisition, LLC; IPofA Miami Logistics Center, LLC; IPofA Racing, LLC; IPofA W. 86<sup>th</sup> Street LeaseCo, LLC; IPofA WOM Master LeaseCo, LP; Okun Water Ltd.; FMFG Acquisition, Inc., Simone Condo I, LLC; and Simone Condo II (collectively the “Okun Entities”);

WHEREAS, Cordell objected to the Asset Transfer Agreement and appealed the Bankruptcy Court’s Order approving the Asset Transfer Agreement, which appeal was subsequently withdrawn pursuant to a consent order entered by the District Court for the Southern District of New York on August 20, 2008;

WHEREAS, on November 15, 2007, *inter alia*, IPofA, Simone Condo I, Simone Condo II and IPofA Shreveport filed voluntary petitions for relief in the Bankruptcy Court under Chapter 11 of the Bankruptcy Code. On November 30, 2007, Parkway Virginia Trust and Columbus Works Virginia Trust (together with IPofA, Simone Condo I, Simone Condo II and IPofA Shreveport the “IPofA Debtors”) filed voluntary petitions for relief in the Bankruptcy Court under Chapter 11 of the Bankruptcy Code (the “IPofA Cases”)(Cordell, the Trustee, the 1031 Debtors and the IPofA Debtors are referred to collectively as the “Parties”);

WHEREAS, the IPofA Cases are jointly administered pursuant to the Bankruptcy Court's Order Directing Joint Administration of Chapter 11 Cases, entered on November 20, 2007 and the Order Directing Joint Administration of Affiliate Cases, entered on December 13, 2007;

WHEREAS, on December 19, 2007, the Bankruptcy Court entered the *Ex Parte* Order Granting Application of Chapter 11 Trustee Seeking Production of Documents and Examinations, Pursuant to Rules 2004 and 9016 of the Federal Rules of Bankruptcy Procedure and Rule 45 of Federal Rules of Civil Procedure (the "2004 Order"), granting the Trustee's application to conduct 2004 examinations on numerous parties, including Cordell;

WHEREAS, on December 22, 2007, Cordell filed its motion (the "Lift Stay Motion") for entry of an order (A) dismissing certain Chapter 11 cases of the IPofA Debtors, (B) modifying the automatic stay, (C) granting adequate protection and (D) related relief, seeking, among other things, relief from the automatic stay to enforce its rights under the Cordell Loans and Loan Modification Agreement;

WHEREAS, on February 1, 2008, the IPofA Debtors filed their objection (the "Objection to Lift Stay Motion") to Cordell's Lift Stay Motion;

WHEREAS, on March 7, 2008, upon the consent of the Parties, the Bankruptcy Court entered the Stipulation and Order Modifying Automatic Stay and Establishing Scheduling and Related Relief (the "First Stay Stipulation"), partially resolving the Lift Stay Motion;

WHEREAS, on April 16, 2008, upon the consent of the Parties, the Bankruptcy Court entered the Amended Stipulation and Order Resolving Conditions and Related Relief (the "Second Stay Stipulation," together, with the First Stay Stipulation, the "Stipulations"), resolving the Lift Stay Motion and imposing certain conditions in respect of the automatic stay modifications;

WHEREAS, the Trustee asserts, subsequent to entering into the Stipulations, that it became aware of the existence, and potential scope and magnitude, of the Haynesville Shale, which may contain natural gas deposits, and which, in part, may be located under the Shreveport Property;

WHEREAS, the Trustee asserts that several energy companies have expressed interest in entering a mineral lease for the potential gas underlying the Shreveport Property;

WHEREAS, on June 10, 2008, IPofA Shreveport filed its motion (the “Motion to Vacate”), pursuant to Fed. R. Civ. P. 60(b) and Fed. R. Bankr. P. 9024, to vacate the Stipulations as to those portions of the Stipulations relating to IPofA Shreveport or alternatively in their entirety;

WHEREAS, on June 10, 2008, IPofA Shreveport filed its motion (the “Motion to Lease”), for an order (A) scheduling hearing to approve bid procedures, right of first refusal and notice requirements; (B) scheduling a hearing authorizing the lease of mineral rights appurtenant to the Shreveport Property; and (C) granting other relief related to the foregoing;

WHEREAS, on June 20, 2008, Cordell filed the Omnibus Objection (the “Omnibus Objection”) to the Motion to Vacate and the Motion to Lease;

WHEREAS, on June 24, 2008, IPofA Shreveport filed its reply memorandum (the “Reply”) in further support of the Motion to Vacate and the Motion to Lease;

WHEREAS, the Bankruptcy Court conducted a preliminary hearing on the Motion to Vacate on June 25, 2008, which hearing was adjourned to permit the Parties time to engage in and complete discovery;

WHEREAS, the Parties took extensive discovery in respect of the Motion to Vacate;

WHEREAS, the Trustee conducted an extensive investigation as to Cordell and the Cordell Loans pursuant to the 2004 Order;

WHEREAS, Cordell asserts that it incurred expenses in excess of \$12,000 as a result of compliance with the 2004 Order (“2004 Expenses”), which assertions the Trustee disputes in part but consents to the reimbursement of Cordell in the amount of \$9,000.00 (“2004 Agreed Expenses”);

WHEREAS, pursuant to the Stipulations, on or about August 15, 2008, the Trustee, as the sole member of Shreveport Film Works, LLC (“Shreveport Filmworks”), entered into that certain Assignment and Assumption Agreement (the “Assignment”), assigning Shreveport Filmworks to Cordell Shreveport LLC (“Cordell Shreveport”), Cordell Funding’s designee;

WHEREAS, on September 4, 2008, IPofA Shreveport filed its supplemental memorandum (the “Supplement to Motion to Vacate”) to its Motion to Vacate, the substance of which Cordell objects;

WHEREAS, on September 5, 2008, the Parties filed their pretrial papers, including witness and exhibit lists, deposition designations, proposed findings of fact and conclusions of law, in respect of the Motion to Vacate and the Omnibus Objection;

WHEREAS, based upon initial results reported regarding natural gas in the Haynesville Shale, the Parties believe that there is a good possibility that the revenues under a lease of the mineral rights in the Shreveport Property may be substantial; however, the Parties do not and cannot guaranty that any or all of the benchmarks set forth in this Agreement for the royalty stream will be satisfied;

WHEREAS, Cordell asserts that each of the Cordell Loans, the Loan Documents, and the Loan Modification Agreement (as supplemented) are valid and enforceable and not subject to any defense, contest, claim or offset, which assertions the Trustee disputes;

WHEREAS, Cordell asserts that it has meritorious claims against the Trustee, the IPofA Debtors and the 1031 Debtors for waste and negligent acts and omissions during Trustee's control of the Collateral, which assertions the Trustee disputes;

WHEREAS, the Trustee asserts that the 1031 Debtors and the IPofA Debtors have meritorious claims against Cordell, *inter alia*, claims under Section 506(c) of the Bankruptcy Code arising out of the maintenance and improvements of the Shreveport Property, avoidance claims under chapter 5 of the Bankruptcy Code and tort theories, which assertions Cordell disputes;

WHEREAS, the Trustee has a deadline of October 22, 2008 to file complaints against Cordell (the "Complaints");

WHEREAS, on September 7, 2008, after protracted negotiations, the Trustee/IPofA Shreveport and Cordell entered into that certain non-binding term sheet which set forth general principles of a resolution of all issues between the Parties hereto and adjourned the trial on the Motion to Vacate and the Omnibus Objection to allow the Parties time to attempt to reach a definitive settlement agreement;

WHEREAS, Cordell asserts that, by and through this Agreement, it intends to benefit the creditors of the 1031 Debtors; and

WHEREAS, there were certain parish and city tax sales and/or adjudications of the Shreveport Property resulting from non-payment of 2007 taxes for which tax deeds were recorded in the conveyance records of Caddo Parish, Louisiana. The Trustee is within the

redemption period with respect to the issuance of the foregoing tax deeds (putting aside whether the sales violated the automatic stay).

NOW, THEREFORE in consideration of the mutual promises and covenants contained in this Agreement and for other good and valuable consideration, the receipt of which the Parties duly acknowledge, it is hereby

AGREED AND STIPULATED:

1. As used herein, the following terms shall have the following meanings:

“Land” shall mean the Shreveport Property as further described on Exhibit A to the Deed.

“Minerals” shall mean and be limited to oil, gas and sulphur and other hydrocarbons in liquid, gaseous or vaporous forms or state in, on and under the Land, which can or may be produced through the bore of a well. No other minerals or substances including iron ore, coal, lignite, bentonite and gravel or any other hard minerals shall constitute Minerals nor shall such materials be included within the Mineral Servitude.

“Mineral Rights” shall mean the Mineral Servitude, the Mineral Lease, the Subsequent Mineral Leases, and all funds derived therefrom, together with the executive rights and other rights of management related thereto.

“Mineral Servitude” shall mean the right to explore for and produce Minerals and to reduce them to possession and ownership, subject to the provisions, limitations and restrictions set out herein and in the Deed.

2. IPofA Shreveport shall (i) redeem the Shreveport Property from the purchasers and/or adjudicatees at the 2008 tax sales and/or adjudications (for taxes for the 2007 tax year) to the extent necessary or take such other action as necessary to deliver title to the Shreveport Property; and (ii) deliver to Cordell Funding or its designee, pursuant to an order of the

Bankruptcy Court approving this Agreement which shall not be stayed, a dation en paiement (i.e. the Louisiana equivalent to a deed in lieu of foreclosure, the “Deed,” which will be in the form of Schedule B to Exhibit B hereto), conveying with special warranty of title fee title to the Shreveport Property (including the land, improvements and personal property) as is, and without any representations or warranties whatsoever, except a special warranty as to title, together with such other conveyance documents set forth in Exhibit B hereto, within two (2) calendar days of the Bankruptcy Court’s approval of this Agreement. Cordell agrees to advance funds up to \$200,000 as necessary for such tax sales and adjudications redemptions (the “Tax Payment”), subject to the protections provided in Paragraph 9 below and this Paragraph. The Tax Payment shall be reimbursed to Cordell from the Trustee/IPofA Shreveport’s distribution of the bonus payment as provided in Paragraph 3.a below. In the event that the Trustee/IPofA Shreveport’s distribution of the bonus payment is not sufficient fully to reimburse the Tax Payment, the balance thereof shall be reimbursed from the mineral royalties or sums in lieu thereof which would otherwise be received by the Trustee/IPofA Shreveport until the Tax Payment is fully reimbursed. The Tax Payment shall not be reimbursed from any other funds of the Trustee/IPofA Shreveport, except in the event this Agreement is not approved by the Court, the Tax Payment will be reimbursed from the Property as provided more fully in Paragraph 9 below. IPofA Shreveport shall reserve in the Deed the Minerals, the Mineral Servitude and the Mineral Rights. The Mineral Servitude and Mineral Rights reserved by the Trustee/IPofA Shreveport shall be subject to: (a) the terms and limitations set forth in form of the Deed attached as Schedule "B" to Exhibit B annexed hereto, including a prohibition against adverse material economic impact to the business operations and improvements in the Shreveport Property as specifically set forth on Schedule “B” to Exhibit B annexed hereto; (b) the terms and limitations

set forth in Exhibit D annexed hereto; (c) a prohibition against surface operations on the Shreveport Property; and (d) the rights of consent of Cordell as detailed more fully herein below. In addition to the foregoing, in the event the Trustee/IPofA Shreveport makes any use of the Mineral Servitude other than the Mineral Lease or a Subsequent Mineral Lease, then all of the foregoing terms, conditions and limitation that are applicable to a mineral lessee shall apply to such operations and activities. The Trustee/IPofA Shreveport shall grant Cordell Funding a mortgage, lien and security interest as set forth in and in the form of the Present and Future Obligations Mortgage Security Agreement, and Assignment of Production (Mineral Rights) attached as Schedule H to Exhibit B (the "Mineral Rights Mortgage"). IPofA Shreveport shall be responsible for the real estate tax obligations incurred in respect of the Shreveport Property for the 2007 tax year (provided that Cordell shall advance the Tax Payment as provided above) and Cordell or its designee shall be responsible for the real estate tax obligations incurred in respect of the Shreveport Property for the 2008 tax year (provided the Agreement is approved).

3. Upon execution of this Agreement, the Marketing Agent (as defined in Paragraph 5 below), subject to the terms hereof, shall commence to market and seek to enter into a mineral lease (the "Mineral Lease") of the Shreveport Property as further discussed in and subject to in all respects Paragraphs 4 and 5 below. Expressly subject to the entry of an order approving this Agreement, after 10 days of the order being entered by the Bankruptcy Court and which order has not been appealed ("Final Order"), the revenues attributable to the lessor's interest in the Mineral Lease shall be distributed as follows:

- a. The Trustee and IPofA Shreveport (collectively, "the Trustee/IPofA Shreveport"), on the one hand, and Cordell Funding (or its designee), on the other hand, shall equally share (50%-50%) any bonus payments contemporaneously received with the execution and delivery of the Mineral Lease and any Subsequent Mineral Lease, and any delay rentals paid during the primary term of the first executed Mineral Lease and any Subsequent Mineral Lease (if any) (such bonus payments

and delay rentals being collectively called the “Bonus Payment”), net of any costs incurred to market the lease (including inter alia, certain legal fees, and the commission of the Marketing Agent, as set forth herein). The 2004 Agreed Expenses shall be reimbursed to Cordell from the Trustee/IPofA Shreveport’s portion of the Bonus Payment. Additionally, the Tax Payment as provided in Paragraph 2 above, if paid by Cordell, and the 2004 Agreed Expenses, shall be reimbursed to Cordell from the Trustee/IPofA Shreveport’s portion of the Bonus Payment, prior to distribution, unless the Bonus Payment is not sufficient to reimburse the Tax Payment to Cordell, in which case, the Tax Payment shall be reimbursed to Cordell from the Trustee/IPofA Shreveport’s portion of funds distributed pursuant to subparagraph 3.b. below.

- b. The Trustee/IPofA Shreveport shall receive, without deduction for any amount received in the preceding subparagraph 3.a., one hundred percent (100%) of the first two million dollars (\$2,000,000.00) in mineral royalties or sums in lieu thereof paid pursuant to the Mineral Lease or any other sums that are attributable to the Mineral Rights.
- c. Cordell Funding (or its designee) shall receive, without deduction for any amount received in the preceding subparagraph 3.a. – 3.b., one hundred percent (100%) of the second two million dollars (\$2,000,000.00) in mineral royalties or sums in lieu thereof paid pursuant to the Mineral Lease or any other sums that are attributable to the Mineral Rights.
- d. Cordell Funding (or its designee) and the Trustee/IPofA Shreveport shall share, without deduction for any amount received in the preceding subparagraphs 3.a. – 3.c, each dollar of the next five-million-five-hundred-thousand dollars (\$5,500,000.00) in mineral royalties or sums in lieu thereof paid pursuant to the Mineral Lease or any other sums that are attributable to the Mineral Rights, seventy-five percent (75%) to Cordell Funding (or its designee) and twenty-five percent (25%) to the Trustee/IPofA Shreveport.
- e. The Trustee/IPofA Shreveport and Cordell Funding (or its designee) shall share, without deduction for any amount received in the preceding subparagraphs 3.a. – 3.d, each dollar of the next five-million-five hundred thousand dollars (\$5,500,000.00) in mineral royalties or sums in lieu thereof paid pursuant to the Mineral Lease or any other sums that are attributable to the Mineral Rights, seventy-five percent (75%) to the Trustee/IPofA Shreveport and twenty-five percent (25%) to Cordell Funding (or its designee).
- f. The Trustee/IPofA Shreveport and Cordell Funding (or its designee) shall equally share (50%-50%), without deduction for any amount received in the preceding subparagraphs 3.a. – 3.e, each dollar of the next six million dollars (\$6,000,000.00) in mineral royalties or sums in lieu thereof paid pursuant to the Mineral Lease or any other sums that are attributable to the Mineral Rights.

- g. The Trustee/IPofA Shreveport and Cordell Funding (or its designee) shall share, without deduction for any amount received in the preceding subparagraphs 3.a. – 3.f, each dollar of the next four million dollars (\$4,000,000.00) in mineral royalties or sums in lieu thereof paid pursuant to the Mineral Lease or any other sums that are attributable to the Mineral Rights, sixty percent (60%) to the Trustee/IPofA Shreveport and forty percent (40%) to Cordell Funding (or its designee).
- h. The Trustee/IPofA Shreveport and Cordell Funding (or its designee) shall share, without deduction for any amount received in the preceding subparagraphs 3.a. – 3.g, each dollar of the next ten million dollars (\$10,000,000.00) in mineral royalties or sums in lieu thereof paid pursuant to the Mineral Lease or any other sums that are attributable to the Mineral Rights, eighty percent (80%) to the Trustee/IPofA Shreveport, and twenty percent (20%) to Cordell Funding.
- i. The Trustee/IPofA Shreveport shall receive ninety percent (90%) and Cordell Funding (or its designee) shall receive ten percent (10%) of each dollar of the balance, without deduction for any amount received in the preceding subparagraphs 3.a. – 3.h, of mineral royalties or sums in lieu thereof paid pursuant to the Mineral Lease until the Mineral Lease expires or any other sums that are attributable to the Mineral Rights until the Mineral Servitude expires. Cordell shall be entitled to recoup its payment of 11/12s of 2008 real estate taxes paid for the Shreveport Property from the Trustee/IPofA Shreveport's portion of the funds distributed pursuant to this subsection, which amounts shall be paid directly to Cordell from the Trustee/IPofA Shreveport's share of such distributions.

All monies received on all subsequent mineral leases executed while the Mineral Servitude is still in effect ("Subsequent Mineral Lease"), if any, shall be apportioned and distributed consistent with the above (and shall not be aggregated to funds distributed under prior mineral leases); provided however, that costs incurred to market any subsequent lease (including, inter alia, fees and amounts due any marketing agent) shall be paid prior to any sharing of funds. In addition to the foregoing, any other sums attributable to the Mineral Rights (other than monies paid pursuant to the Mineral Lease or any Subsequent Mineral Lease), if any, shall be apportioned, paid and distributed in accordance with the foregoing.

4. All funds derived from the Mineral Lease and any Subsequent Mineral Lease shall be paid to an escrow agent (the "Escrow Agent") jointly designated by Cordell Funding and

the Trustee pursuant to the terms of an Escrow Agreement (herein so called) in the form of Exhibit C attached hereto and made part hereof, which funds shall remain subject to the Mineral Rights Mortgage until distributed by the Escrow Agent in accordance herewith. The Escrow Agent shall be an independent third party, and not an affiliate or insider of any of the Parties, and shall be bonded or insured in an amount sufficient to assure the safety of the Mineral Lease and Subsequent Mineral Lease revenues. No such revenues shall be distributed by the Escrow Agent prior to entry of a Final Order and conveyance of the Shreveport Property to Cordell Funding (or its designee). All distributions by the Escrow Agent shall be made pursuant to Paragraph 3 above and shall be made net of any commissions, fees and/or costs of the Escrow Agent and the Marketing Agent (as described below). If the Bankruptcy Court does not approve this Agreement and the parties nonetheless proceed with the Mineral Lease, the Bonus Payment shall be forwarded to Cordell Funding within five (5) business days and which Bonus Payment will be held by Cordell Funding and subject to distribution expressly subject to the escrow requirements under the terms and conditions of the Stipulations.

5. Immediately upon execution and delivery of this Agreement Ayres Warren Shelton & Williams, L.L.C. (“AWSW” or “Lead Co-Agent”), on behalf of the Trustee/IPofA Shreveport as lead agent, and Baker & Hostetler LLP (“BH” or “Reviewing Co-Agent”), on behalf of Cordell Funding as reviewing agent (AWSW and BH together, the “Marketing Agent”), shall commence marketing and lease negotiations to secure the highest and best offer for the Mineral Lease through competing offers to be obtained through negotiations conducted by the Marketing Agent rather than through an open-call bankruptcy auction. Lead Co-Agent shall seek advice and consent from Reviewing Co-Agent regarding the Mineral Lease, and Lead Co-Agent and Reviewing Co-Agent shall cooperate on the process. The Marketing Agent shall

follow the same process and procedure with respect to any Subsequent Mineral Lease. The Marketing Agent shall only submit to the Trustee/IPofA Shreveport and Cordell Funding bids for Mineral Leases and Subsequent Mineral Leases, that conform to the terms, conditions and limitations set forth in Exhibits B and D hereto, and herein, which shall be a condition of any Mineral Lease, any Subsequent Mineral Lease, and any other operations or activities conducted with respect to the Mineral Rights. The Marketing Agent shall secure the highest and best offers from the respective energy companies for the Mineral Lease and Subsequent Mineral Leases and submit them to the Trustee/IPofA Shreveport and Cordell Funding. Upon the Trustee/IPofA Shreveport and Cordell Funding's designation of the "highest and best" offer, the Trustee/IPofA Shreveport promptly shall submit same to the Bankruptcy Court for approval. If the Trustee/IPofA Shreveport and Cordell Funding cannot agree as to the "highest and best" offer, the competing offers shall be submitted to the Bankruptcy Court for approval (under a process as expedited as the Bankruptcy Court will permit), unless this Agreement is not approved by the Bankruptcy Court in which event the parties have complete discretion to withhold their respective consent to any Mineral Lease and Subsequent Mineral Lease and nothing herein shall be deemed a consent to any such Mineral Lease or Subsequent Mineral Lease. With respect to the marketing and sale of the Mineral Lease and any Subsequent Mineral Lease, AWSW shall be entitled to payment of a flat commission in the amount of 5% of the Bonus Payment, as set forth in the order approving the retention of the AWSW, and BH shall be entitled to payment of its actual, reasonable hourly fees and costs incurred as Reviewing Co-Marketing Agent not to exceed the amount of \$50,000.00, and for which documentation shall be submitted to the Trustee/IPofA Shreveport. The Marketing Agent's commission, fees and costs shall be paid from the Bonus Payment. Nothing herein shall be construed as creating any attorney-client

relationship between AWSW or any of its attorneys and any person or entity other than Trustee/IPofA Shreveport or as creating any obligation or duty of AWSW to any person or entity other than Trustee/IPofA Shreveport. Nothing herein shall be construed as creating any attorney-client relationship between BH or any of its attorneys and any person or entity other than Cordell or as creating any obligation or duty of BH to any person or entity other than Cordell.

6. The rights of the parties to the revenues from the Mineral Rights, any Mineral Lease and any Subsequent Mineral Lease, along with the limitations upon such Mineral Lease, Subsequent Mineral Leases, Mineral Servitude and Mineral Rights pursuant to this settlement agreement are for the benefit of the current and all subsequent owners of the Shreveport Property and the Mineral Rights and shall constitute real rights in and covenants running with the Shreveport Property and the Mineral Rights and shall be binding upon and affect the Shreveport Property and the Mineral Rights whether owned now or hereafter by Cordell Funding, Cordell Funding's designee, the Trustee/IPofA Shreveport and/or their respective successors and assigns.

7. The provisions of this settlement agreement regarding the Mineral Rights, the Mineral Lease and all Subsequent Mineral Leases and any other agreement entered into by the Trustee/IPofA Shreveport concerning operations or activities conducted with respect to the Mineral Rights shall be deemed to stipulate a benefit for each of the Trustee/IPofA Shreveport and Cordell Funding or Cordell Funding's designee and/or the successors and assigns thereof, and the intention of such third party beneficiary to avail itself of such benefit shall be deemed to have been manifested by the execution of this settlement agreement with the results that (a) no Mineral Lease, Subsequent Mineral Leases or other agreement entered into by the Trustee/IPofA Shreveport concerning operations or activities conducted with respect to the Mineral Rights shall be revoked or otherwise terminated without the concurrence of both the Trustee/IPofA

Shreveport and such third party beneficiary; and (b) each of the Trustee/IPofA Shreveport and such third party beneficiary (to the same extent and with the same force and effect as if such third party beneficiary had been named as an obligee or beneficiary of each provision of the Mineral Lease or Subsequent Mineral Lease or any other agreement entered into by the Trustee/IPofA Shreveport relating to other operations or activities conducted with respect to the Mineral Rights shall have the right to demand performance from any mineral lessee. Nothing herein shall be interpreted as creating any obligation on the part of the Trustee/IPofA Shreveport to perform any obligations of or as a guaranty of any obligation of any such mineral lessee, and Cordell Funding shall not, on account of its being a third party beneficiary, have any rights in or any rights to affect the continued existence of the Mineral Servitude or against the Trustee/IPofA Shreveport.

8. Upon the entry of a Final Order, all of the mortgage and security agreements securing the existing Cordell Loans shall be deemed to be amended by inclusion of the following paragraph:

The obligations of *Mortgagor/Debtor* hereunder shall be without recourse to *Mortgagor/Debtor*.

Notwithstanding anything herein to the contrary, Cordell will retain its liens in the Collateral, but will partially release the Shreveport Mortgage as to the Minerals, Mineral Servitude and Mineral Rights except to the extent that the Shreveport Mortgage secures the obligation of the Trustee/IPofA Shreveport to remit to the Escrow Agent any revenues that the Trustee/IPofA Shreveport receives, but which are payable to and/or to be distributed to Cordell Funding pursuant to Paragraph 3.a through Paragraph 3.i, inclusive, in payment of Cordell's portion of the revenues as set forth in Paragraph 3 of this Agreement. The only obligation that will be secured by the Mineral Rights Mortgage is the obligation of the Trustee/IPofA Shreveport to remit to the

Escrow Agent any funds that the Trustee/IPofA Shreveport receives and which are due to Cordell Funding pursuant to Paragraph 3 of this Agreement as Cordell Funding's share of the revenues. In addition to the foregoing, Cordell Funding shall, upon execution of a Mineral Lease or Subsequent Mineral Lease pursuant to this Agreement and so long as there is no Event of Default as defined in the Mineral Rights Mortgage then existing or pending, execute and deliver a subordination agreement to the Shreveport Mortgage, in the form of Exhibit H attached hereto, and a subordination agreement to the Mineral Servitude Mortgage, in the form of Exhibit B to Schedule H to Exhibit B attached hereto. Cordell's liens on the remaining Collateral will specifically exclude the 1031 Membership Interest and, solely to the extent of actual Impairment pursuant to and as defined in Paragraph 10 below, the Hibiscus Property and the Salina Membership Interest.

9. Without prejudice to Cordell's rights to seek additional amounts under the Second Stay Stipulation and the Bankruptcy Code and the Trustee's rights to object thereto, upon the execution of this Agreement, but prior to Bankruptcy Court approval hereof, Cordell may (i) make all actual expenditures reasonably necessary for the preservation of the Shreveport Property up to \$150,000 and actual expenditures of up to \$350,000 for improvements to the Shreveport Property and (ii) advance funds up to \$200,000 for the Tax Payment provided for under Paragraph 2 above (the amounts provided under Paragraphs 9(i) and 9(ii) herein, for preservation, improvement and the Tax Payment, collectively, the "Advances"), which Advances shall receive the protections provided under Section 364(e) of the Bankruptcy Code as to the estates of the IPofA Debtors (and the 1031 Debtors if applicable) and be secured by a first priority secured lien in the Property as provided in the annexed proposed order. Any Advances shall, upon refinancing, sale or other transfer of the Shreveport Property, be paid back to Cordell

first. Cordell shall be and hereby is authorized to finance Advances on a secured basis either individually or through a third party lender. In the event that Cordell loans monies or obtains a loan to make the Advances, interest at a rate not to exceed 15% per annum (or such lesser amount as is charged by any third party lender) may be charged in connection with such loans, subject in all events to the aggregate limit set forth above. The Trustee, the IPofA Debtors and/or the 1031 Debtors shall take no action to prevent Cordell from obtaining a loan and lien on the Shreveport Property for Advances in accordance with the foregoing. Notwithstanding anything contained herein to the contrary, any lien provided in accordance with this paragraph shall expire upon a Final Order. In no event shall the Trustee, the IPofA Debtors and/or the 1031 Debtors have priority over any loan for Advances as provided for hereunder. The Trustee/IPofA Shreveport agrees to execute and submit to the Bankruptcy Court for immediate approval the consent order annexed hereto as Exhibit E for the approval of this Paragraph 9 of the Agreement.

10. Except with respect to the Minerals, the Mineral Servitude and the Mineral Rights, the Impairment (defined in Paragraph 12 below) and Cordell's liens on the 1031 Membership Interest, Cordell expressly retains all of its rights, claims and liens, in the respective Collateral securing its Cordell Loans and against any third-party guarantors and/or third-party obligors to Cordell, including but not limited to Okun. The Trustee, the 1031 Debtors and the IPofA Debtors shall not contest, prejudice, interfere or impair the ability of Cordell (i) to realize upon the value of the Collateral, except as explicitly set forth herein, or (ii) Cordell's rights to pursue third-party guarantors and/or third-party obligors, if any. Cordell shall, if so requested by the Trustee/IPofA Shreveport, in connection with the Mineral Lease, or any Subsequent Mineral Lease, execute an instrument in the form of Exhibit B to Schedule H subordinating the Mineral Rights Mortgage to the Mineral Lease or any Subsequent Mineral Lease.

11. Upon (i) entry of a Final Order and (ii) the transfer of the Deed under Paragraph 2 above, Cordell withdraws, releases, and waives all claims of any nature as against the estates of the IPofA Debtors and the 1031 Debtors, including, but not limited to, its secured claim alleged by Cordell to be in excess of \$60 million, which includes the aggregate principal amount of \$42,416,000, non-default and default rate interest generally accruing from on or about March 2007, attorneys fees and costs and amounts due pursuant to the Loan Modification Agreement, and its liens on the 1031 Membership Interest, except as explicitly set forth herein. Notwithstanding the foregoing, any and all such claims shall be and are preserved and continue solely to the extent necessary for Cordell to enforce any and all of its rights in and to the Collateral (except as provided in Paragraphs 2, 3 and 10 herein) and against any third-party guarantors, Okun, or other third parties not a signatory hereto.

12. (a) Nothing herein shall prohibit or prejudice the ability of the Trustee, the 1031 Debtors and the IPofA Debtors from prosecuting any and all claims and causes of action as to any party other than the Cordell Parties (as expressly defined in Paragraph 13 below), including, without limitation, other lenders (“Third Party Litigations”), provided that except as agreed to below, such actions shall not impair Cordell’s interest in the Collateral. In the event that such claims are prosecuted, notwithstanding anything herein to the contrary, Cordell acknowledges that the relief, if any, that may be obtained (whether by judgment, settlement, or otherwise) in any of the Third Party Litigations may impair Cordell’s interests solely in the following Collateral, and not in any other Collateral: (i) the real property located at 394 South Hibiscus Drive, Miami Beach, Florida (“Hibiscus Property”) and (ii) the membership interest of IPofA Salina LLC (“Salina Membership Interest”) in the mall located in Salina, Kansas (the “Salina Mall”) as expressly provided in Paragraphs 2, 3 and 10 herein. In no event shall any

action taken by the Trustee, the 1031 Debtors or the IPofA Debtors (or any of their agents, representatives or assigns) in the Third Party Litigations impair Cordell's interest in the Collateral except as expressly provided above. This scenario is hereinafter referred to as the "Impairment". In the event that a settlement or judgment in any of the Third Party Litigations creates an Impairment, (such as by way of, without limitation, settlement or judgment establishing unjust enrichment, the imposition of a constructive trust, equitable lien or similar remedy, which right becomes senior to any lien held by Cordell Consultants in the Hibiscus Property or the Salina Membership Interest), and to the extent, if any, that such right or remedy results in Cordell Consultants not receiving funds from the actual monetization of the Hibiscus Property or the Salina Membership Interest which it otherwise would have received absent such right or remedy, the 1031 Debtors and/or the IPofA Debtors shall compensate Cordell Consultants in an amount equal to fifty percent (50%) of the Impairment, provided that such compensation shall be made solely from the actual recoveries received from such right or remedy ("Recoveries"), but in no event to exceed fifty percent (50%) of the amount of the cash value of any consideration received from such Recoveries, and Cordell shall have no other right, claim or remedy against the 1031 Debtors or the IPofA Debtors, the Trustee, or their agents, representatives, or assigns, except as specifically set forth above. It is the intention of the Parties that half of any Impairment is to be paid to Cordell Consultants so that any such Impairment shall be and is limited to 50% of any Impairment. In the event that the settlement or judgment or other resolution of the Third Party Litigations does not result in a Impairment, but a senior lender's lien is avoided, or that lender is subordinated, or other such remedy, such that Cordell Consultant's position in the Collateral (i) is not changed or (ii) is actually improved ("Lien Avoidance"), Cordell shall not share in the Recoveries that arises purely as a result of the Lien

Avoidance. Annexed hereto as Exhibit F, for illustrative purposes only, is a list of Impairment scenarios and Lien Avoidance scenarios. Notwithstanding anything contained herein, Cordell shall have no standing to object to any potential settlement of any the Third Party Litigations, either in form, or in substance so long as the Trustee, the IPofA Debtors and the 1031 Debtors comply with and provide for the terms and provisions herein in any such settlement. Notwithstanding anything herein to the contrary, in the event that IPofA Salina seeks to market and sell the Salina Mall, Cordell Consultants shall be deemed to have standing to object to the form or method of marketing, bid procedures and sale, and matters related thereto, provided however that except for the limited purposes set forth in the preceding sentence and to enforce this Agreement, the Cordell Parties shall not have standing in the cases of the 1031 Debtors or the IPofA Debtors.

(b) Cordell may continue its pending foreclosure action and the sale of the Hibiscus Property unless and until the Trustee is able to procure the consent of all necessary parties for a voluntary sale of the Hibiscus Property. To the extent there is an Impairment, that results in the impairment of Cordell's interest in the Hibiscus Property, Cordell shall be entitled to recoup its reasonable and actual legal fees and expenses for such action to the fullest extent possible under state law from and after September 8, 2008 from the Impairment, prior to any distribution of the Impairment, notwithstanding anything herein to the contrary, including fees and expenses of counsel, up to an amount no greater than \$50,000. To the extent of Cordell's monetization of the Hibiscus Property, it shall deposit funds from such sale up to the available amounts to cover senior lien holders into escrow with the trustee, retain and apply 50% of funds to which Cordell would be entitled (net of Cordell's above legal fees and expenses) absent the

Third Party Litigations, and retain the other 50% of funds to which Cordell would be entitled in one or more of the protected vehicles provided for under the Stipulations.

13. This Agreement shall be in full and final settlement of any and all claims, causes of action, rights, acts, liabilities, suits, debts, dues, sums of money, accounts, covenants, contracts, controversies, agreements, promises, judgments, demands, damages, and injuries of whatever kind and nature, whether in law, equity, or otherwise, known, contingent, liquidated, unliquidated, or unknown, from the beginning of time through the execution of this Agreement by (i) the IPofA Debtors and their estates (ii) the 1031 Debtors and their estates, (iii) the Okun Entities, and/or (iv) the Trustee and all of their respective representatives, agents, professionals and assigns (the "1031 Parties") including, but not limited to all claims for relief that have existed, exist and may exist and that could have been or be asserted against any of them relating in any way to the 1031 Debtors, the IPofA Debtors, the Trustee, the Okun Entities, Cordell or the Cordell Loans against Cordell, Cordell Shreveport and Shreveport Film Works and their beneficiaries, successors, present and former managers, members, investors, loan participants, affiliates, directors, officers, partners, employees, heirs, executors, administrators, agents, assigns, attorneys or representatives (collectively, the "Cordell Parties"), and all remedies for such claims hereby are waived and released. Notwithstanding, the above release shall exclude any such entities to the extent that such entities were secured lenders to the IPofA Debtors other than the Cordell Parties or any entities that participated in the Secured Lenders' loans (the "Secured Lenders") solely to the extent of involvement in such Secured Lenders' loans. The Trustee shall have no claims, liens or interests to or against Cordell or any of its Collateral whether direct, indirect or otherwise, except with respect to the Mineral Servitude on the Shreveport Property, the Salina Membership Interest, the Hibiscus Property and the 1031

Membership Interest as specifically set forth in Paragraphs 2, 3 and 10. Upon Bankruptcy Court approval of this Agreement, Cordell shall be and is released of the obligation to maintain the reserved amount (the "Reserved Amount") and any other provisions obligating or affecting Cordell, as provided in the Second Relief Stay Stipulation. Notwithstanding, the foregoing shall not release the Cordell Parties from their obligations under this Agreement.

14. This Agreement shall be in full and final settlement of any and all claims, causes of action, rights, acts, liabilities, suits, debts, dues, sums of money, accounts, covenants, contracts, controversies, agreements, promises, judgments, demands, damages, and injuries of whatever kind and nature, whether in law, equity, or otherwise, known, contingent, liquidated, unliquidated, or unknown, from the beginning of time through the execution of this Agreement, including, but not limited to all claims for relief that have existed, exist and may exist by the Cordell Parties and that could have been or be asserted against the 1031 Parties (explicitly excluding Okun), including, *inter alia*, any claims to set aside or challenge the Asset Transfer Agreement or any claims to the 1031 Membership Interest, and all remedies for such claims hereby are waived and released. Except as explicitly provided herein, Cordell shall not have any claims, liens or interests to or against the 1031 Parties or their bankruptcy counsel or other professionals. The Cordell Parties have not filed any proofs of claims against any of the 1031 Debtors or the IPofA Debtors, nor will the Cordell Parties file any claims of any type or nature against the 1031 Debtors or the IPofA Debtors. Notwithstanding, the foregoing shall not release the Trustee and the IPofA Debtors and the 1031 Debtors and their estates from their obligations under this Agreement and the rights to enforce such within obligations, nor release Okun from any claims.

15. In seeking Bankruptcy Court approval of this Agreement, in the 1031 Cases, the Trustee shall seek injunctive relief permanently enjoining all persons or entities, who have held, hold or may hold claims against or interests in the estates of the 1031 Debtors from: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action, cause of action or other proceeding of any kind (including, without limitation, asserting a claim in the 1031 Cases, or proceeding in any other judicial, arbitration, administrative or other forum) against or affecting the Cordell Parties or the Collateral on account of or respecting any claim, interest, obligation, debt, right, cause of action, remedy or liability discharged, released, to be released, governed by, or relating to this Agreement; (ii) enforcing, levying, attaching (including, without limitation, any prejudgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order in respect of any claim against the Cordell Parties or the Collateral on account of or respecting any claim, interest, obligation, debt, right, cause of action, remedy or liability discharged, released, to be released, governed by, or relating to this Agreement; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any lien or encumbrance of any kind in respect of any claim or interest against the Cordell Parties or the Collateral on account of or respecting any claim, interest, obligation, debt, right, cause of action, remedy, or liability discharged, released, to be released, governed by, or relating to this Agreement; (iv) asserting, directly or indirectly, any setoff, right of subrogation or recoupment right of any kind; (v) asserting any rights to or over any of the Collateral securing the Cordell Loans and subject to Cordell's liens; with the exception of Cordell Funding, LLLP v. IPofA Columbus Works, LLC, et. al., Case NO. 08 CVE 05-7509, in the Court of Common Pleas, Franklin County, Ohio, and Cordell Funding, LLLP v. IPofA Parkway Complex, LLC, et. al., Case No. 49 D12-0806-MF-026369, in the Marion

Superior Court, No. 12, State of Indiana, and any counter-claims or third party claims already pending between Cordell and other third parties in such actions, regarding any of the Collateral, or (vi) commencing or continuing any action or proceeding in any manner or in any place whatsoever that does not conform to or comply with the provisions of this Agreement.

16. In addition, in seeking Bankruptcy Court approval of this Agreement, in the IPofA Cases, the Trustee shall seek injunctive relief permanently enjoining the Exchangers, who have held, hold or may hold claims against or interests in the estates of the 1031 Debtors from: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action, cause of action or other proceeding of any kind (including, without limitation, asserting a claim in the IPofA Cases, or proceeding in any other judicial, arbitration, administrative or other forum) against or affecting the Cordell Parties or the Collateral on account of or respecting any claim, interest, obligation, debt, right, cause of action, remedy or liability discharged, released, to be released, governed by, or relating to this Agreement; (ii) enforcing, levying, attaching (including, without limitation, any prejudgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order in respect of any claim against the Cordell Parties or the Collateral on account of or respecting any claim, interest, obligation, debt, right, cause of action, remedy or liability discharged, released, to be released, governed by, or relating to this Agreement; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any lien or encumbrance of any kind in respect of any claim or interest against the Cordell Parties or the Collateral on account of or respecting any claim, interest, obligation, debt, right, cause of action, remedy, or liability discharged, released, to be released, governed by, or relating to this Agreement; (iv) asserting, directly or indirectly, any setoff, right of subrogation or recoupment right of any kind; (v) asserting any rights to or

over any of the Collateral securing the Cordell Loans and subject to Cordell's liens; with the exception of Cordell Funding, LLLP v. IPofA Columbus Works, LLC, et. al., Case NO. 08 CVE 05-7509, in the Court of Common Pleas, Franklin County, Ohio, and Cordell Funding, LLLP v. IPofA Parkway Complex, LLC, et. al., Case No. 49 D12-0806-MF-026369, in the Marion Superior Court, No. 12, State of Indiana, and any counter-claims or third party claims already pending between Cordell and other third parties in such actions, regarding any of the Collateral, or (vi) commencing or continuing any action or proceeding in any manner or in any place whatsoever that does not conform to or comply with the provisions of this Agreement. Notwithstanding anything contained in paragraphs 15 and 16 herein to the contrary, the injunctive relief shall not interfere with the 1031 Parties rights set forth in this Agreement and does not prohibit the 1031 Parties from enforcing their rights under this Agreement. Without limiting any of the foregoing, the above injunctive relief shall be included in the proposed order approving this Agreement annexed hereto as Exhibit G.

17. The Trustee shall use his reasonable good faith best efforts to include the injunctive relief set forth in Paragraphs 15 and 16 herein in any plan of reorganization or liquidation he submits (whether individually or jointly with other parties) in the 1031 Cases and the IPofA Cases and shall oppose, in good faith, any objection to such injunction made by any and all third parties.

18. In addition to the conveyance of the Shreveport Property, to the extent requested by Cordell in writing and consistent with the terms of this Agreement, the IPofA Debtors shall assign to Cordell their interests, if any, in the Collateral, with the exception of the Hibiscus Property, the Salina Membership Interest, the 1031 Membership Interest, and the Mineral Servitude (and the executive rights and management rights related thereto).

19. The hearing on the Motion to Vacate shall be adjourned and rescheduled for a status conference at the same date and time as the hearing on the approval of this Agreement. Upon the Bankruptcy Court's approval of this Agreement (and such order becoming final and non-appealable), IPofA Shreveport shall be deemed to have withdrawn with prejudice the Motion to Vacate and the Supplement to Motion to Vacate.

20. The Trustee's time to commence an action against Cordell is extended until such time as the Bankruptcy Court approves this Agreement. If the Bankruptcy Court does not approve the Agreement, once such order denying approval of the Agreement becomes a Final Order, the Parties agree that the Trustee will have two weeks thereafter within which to file the Complaints.

21. Pending approval of this Agreement by the Bankruptcy Court, Cordell agrees to adjourn the foreclosure sale currently pending in the foreclosure action regarding the Shreveport Property, currently pending in the United States District Court for the Western District of Louisiana, Shreveport Division, Civil Action No. 5:08-Cv-00763-SMH-MLH, Judge S. Maurice Hicks, Magistrate Judge Mark L. Hornsby ("Foreclosure Action"), provided, however, that nothing herein shall be deemed a consent by Cordell to adjourn or continue such foreclosure sale beyond November 14, 2008. Notwithstanding anything contained herein to the contrary, if this Agreement is not approved, Cordell acknowledges that the consent foreclosure order entered into in the Foreclosure Action is still in effect. Upon a Final Order, Cordell will withdraw the Foreclosure Action in its entirety (including discharge of the Keeper), with prejudice, and the costs and expenses of the Keeper appointed in such foreclosure action will be borne by Cordell (and not be a claim against the Trustee, the 1031 Debtors' or their estates or the IPofA Debtors' or their estates) thereafter. In the event the Bankruptcy Court does not approve this Agreement,

the Parties will be bound by that certain consent order entered into in the Bankruptcy Court and in the Foreclosure Action.

22. The undersigned acknowledge that they possess the proper authority to enter into this Agreement.

23. This Agreement constitutes the final and entire agreement between the Parties and contains all of the final covenants, terms and conditions agreed upon by the Parties. None of the provisions of this Agreement shall be modified, amended, extended, discharged, terminated, released or waived in any way or manner except by a writing specifically referring to this Agreement which is signed by the party against whom enforcement is sought.

24. This Agreement is deemed to have been jointly drafted and represents the entire and complete integration of the agreement of the Parties to this Agreement with respect to the subject matter hereof and is and shall be binding on and inure to the benefit of the Parties and their respective administrators, executors, successors, assigns and trustees. It is specifically understood and agreed between the Parties that this Agreement is the result of extensive negotiations between the Parties. It is understood and agreed that each of the Parties shall be deemed to have drawn this document to avoid any negative inference by any court as against the preparer of this document.

25. The Parties agree that this Agreement constitute a valid, binding, and enforceable obligation of that Party, its terms are lawful and fair, and it constitutes an equitable settlement of their differences.

26. If any provision of this Agreement or its application to any person or circumstance is held invalid, the invalidity will not affect other provisions or applications of this Agreement that can be given effect without the invalid provision or application provided it does

not materially alter the agreement reached by the Parties. Notwithstanding, in the event that the Trustee and the 1031 Debtors are unable to obtain the injunctions described in Paragraphs 15 and 16 above, which Cordell considers a material term to this Agreement, Cordell shall have the option to withdraw its consent to this Agreement.

27. If the Agreement does not become effective for any reason, it shall be deemed negotiation for settlement purposes only, and, pursuant to Federal Rules of Evidence 408 and comparable provisions of state law, will not be admissible in evidence or usable for any purpose whatsoever.

28. To the extent that there are any inconsistencies between this Agreement any exhibits attached hereto, this Agreement shall control.

29. This Agreement shall be governed by the laws of the State of New York without regard to its conflict of laws rules that would direct application of the laws of another jurisdiction, except to the extent that either Federal bankruptcy law may apply or that it is mandatory that the laws of the State of Louisiana apply to the conveyance of the Shreveport Property, the Mineral Rights, the Mineral Servitude, and the Mineral Lease (and each Subsequent Mineral Lease) and the executive and management rights with respect thereto.

30. The Bankruptcy Court shall retain and have exclusive jurisdiction and venue over this Agreement, as well as the interpretation and enforcement thereof, and the Parties consent to such jurisdiction and venue.

31. This Agreement represents a compromise and resolution of a dispute, and neither this Agreement nor the Parties' willingness to enter into it shall be construed as an admission or acknowledgement of liability, wrongdoing or the validity of any claim or defense asserted by either of the Parties to this Agreement.

32. In the event that one of the Parties seeks judicial intervention to enforce this Agreement, the non-prevailing party shall be responsible for the prevailing party's reasonable and necessary attorneys' fees.

33. The Parties shall execute such other and further documents and agreements as reasonably necessary in carrying out the purposes and intent of this Agreement, including without limitation the Exhibits hereto.

34. To the fullest extent permitted by law, the Parties hereby waive any provision of any law, statute, ordinance, rule or regulation that might render any provision hereof invalid, illegal or unenforceable.

35. This Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original for all purposes.

36. This Agreement and its terms and conditions shall be incorporated by reference into the Bankruptcy Court's approval order, which order shall authorize and direct the Parties to take such actions as necessary to effectuate the purpose and intent of this Agreement.

37. This Agreement and Order shall be effective immediately upon entry by the Bankruptcy Court.

38. The Trustee, the IPofA Debtors and the 1031 Debtors shall file a motion to approve this Agreement promptly upon execution hereof and shall include a proposed order in form acceptable to Cordell, in its reasonable discretion.

Dated: October 30, 2008

THE 1031 DEBTORS

CORDELL FUNDING, LLLP

By: /s/ Gerard A. McHale

By: /s/ Robin Rodriguez

Gerard A. McHale, Jr., Chapter 11 Trustee

Robin Rodriguez, Manager

THE IPOFA DEBTORS

CORDELL CONSULTANTS, INC.,  
MONEY PURCHASE PLAN, A  
QUALIFIED RETIREMENT PLAN  
TRUST

By: /s/ Gerard A. McHale

By: /s/ Robin Rodriguez

Gerard A. McHale, Jr., Manager

Robin Rodriguez, Manager