

1

2003 115155

2003 OCT 23 AM 9:12

CO-TENANCY AGREEMENT

THIS CO-TENANCY AGREEMENT (this "Agreement") entered into this 15th day of October, 2003, by and between Cypress Point II, L.L.C., an Indiana limited liability company ("II") and Cypress Point, L.L.C., an Indiana limited liability company ("CP").

RECITALS:

A. II and CP are, as tenants in common, the fee owners of that certain tract and parcel of land (hereinafter called the "Property"), situated in the City of Crown Point, County of Lake, State of Indiana, as more particularly described in Exhibit "A" attached hereto and made a part hereof;

B. It is the intention of the parties hereto that II will be the owner of an undivided fifty percent (50%) interest in the Property and CP will be the owner of an undivided fifty percent (50%) interest in the Property; and

C. The parties hereto desire to hold and operate the Property in the manner set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound hereby, the parties hereto agree as follows:

1. Percentage Interests. The parties hereto acknowledge that II owns an undivided fifty percent (50%) interest in the Property and that CP owns an undivided fifty percent (50%) interest in the Property, as tenants in common (each such interest being hereinafter referred to as a "Percentage Interest").

2. Term. This Agreement shall take effect immediately and shall continue until the occurrence of the first of the following: (a) termination by mutual agreement, or (b) the sale of the Property.

3. Control. CP shall have the right to take all action of any nature whatsoever with regard to the Property, including, but not limited to, its operation, management, development, sale, mortgaging, refinancing and leasing.

CP and II shall share, in accordance with paragraph 5 hereof, all costs and expenses incurred in connection with the operation, management, mortgaging, refinancing and leasing of the Property. Professional fees may be payable to one or more of the members of CP so long as such fees are at market rates.

TICOR CP 920035326

TICOR TITLE INSURANCE

TICOR TITLE INSURANCE

21.00
K/M
T/I

II shall, at the direction of CP, execute any instrument affecting the Property CP has decided to execute, including but not limited to easements, leases, mortgages and deeds. The obligation of II to execute such instruments shall be specifically enforceable by order of court, it being acknowledged that there will be damages that will result from a refusal by II to execute such instruments but that such damages will be impossible to determine. Therefore, II acknowledges that this agreement shall be enforceable by CP by equitable relief.

4. Expenses and Losses. Any expenses incurred in connection with the Property and any net losses incurred in connection with the Property shall be borne by II and CP in accordance with their Percentage Interests.

5. Division of Cash and Proceeds of Loans. Provided that CP has not determined that such funds should be used to reduce any indebtedness secured by Property or should be held for future expenses of the development of the Property, cash determined by CP to be available for distribution and the proceeds of any loan secured by mortgage of the Property shall be divided and distributed between II and CP in accordance with their Percentage Interests until such time as each has been paid an amount equal to that amount each co-tenant has paid toward the costs incurred in connection with the acquisition of the Property and expenses paid pursuant to paragraph 4. above. In the event that the cash or loan proceeds being distributed are not sufficient to return to each co-tenant such amounts, then the cash or the loan proceeds shall be divided among the co-tenants on a proportionate basis based upon their relative contributions toward such costs. After each co-tenant has recovered the amounts paid by each for acquisition costs and post-acquisition expenses, any remaining loan proceeds shall be divided between the co-tenants fifty percent (50%) to CP and fifty percent (50%) to II.

6. Books. CP shall maintain or cause to be maintained at its office in Crete, Illinois, full and complete books and records relating to the Property. Such books and records shall be made available to II and its attorneys and/or accountants during usual business hours. On or before one hundred twenty (120) days after the end of each calendar year, CP shall cause to be prepared a certified public accountant's statement showing all income, receipts, fees, costs and expenses incurred in connection with the operation of the Property for such calendar year.

7. Limitation of Agreement. Nothing herein contained shall be construed to constitute the parties hereto as partners, nor, except as herein specifically provided, to constitute either party hereto the agent of the other or in any manner limit the parties hereto in the operation of their respective businesses or activities.

8. Distribution of Proceeds on Disposition of Property. In the event the Property is sold, totally condemned, totally destroyed (and is not to be rebuilt under the terms of any lease affecting the Property) or in any manner disposed of, the net proceeds received by reason of such sale, total condemnation, total destruction or other disposition shall, after the payment due to the holder or holders of any mortgage or deeds of trust on the Property, be divided and distributed to

II and CP in accordance with their Percentage Interests until such time as each has been paid an amount equal to that amount each co-tenant has paid toward the costs incurred in connection with the acquisition of the Property and expenses paid pursuant to paragraph 4. above and not previously paid to each co-tenant pursuant to paragraph 5. above. In the event that the net proceeds of such sale, condemnation or destruction are not sufficient to return to each co-tenant such amounts, then the net sale or other disposition proceeds shall be divided among the co-tenants on a proportionate basis based upon their relative contributions toward such costs. After each co-tenant has recovered the amount paid by each for acquisition costs and post-acquisition expenses, any remaining net sale or other disposition proceeds shall be divided between the co-tenants fifty percent (50%) to CP and fifty percent (50%) to II.

Before so dividing and distributing the above-mentioned proceeds, the gross proceeds shall be applied first to the payment of expenses incurred in collecting such proceeds, to debts and liabilities of II and CP incurred in connection with the Property and to the setting up of any reserves which seem reasonably necessary for any contingent or unforeseen liabilities or obligations arising out of the development and operation of the Property.

9. Banking. All funds derived from the Property shall be deposited in such bank account or accounts as shall be designated by CP, and all withdrawals therefrom are to be made upon check signed by the party designated by CP.

10. Mortgage Refinancing. To the extent permitted by the holder of any mortgage or deed of trust on the Property, CP shall have the right to prepay in whole or in part, replace, modify or extend such mortgage or deed of trust and to execute any extensions, renewals, replacements or modifications thereto, including, but not limited to, a transfer of title of the Property to a nominee for the purpose of mortgage financing.

11. Notices. All notices, demands and acceptances required to be given hereunder shall be in writing and shall be served by depositing such notice, demand or acceptance in the United States mail, certified with return receipt requested and postage prepaid, or by reputable 24-hour courier service providing evidence of receipt, properly addressed and directed to the party to receive the same at the address of that party first stated above or at such other address as may be hereafter substituted by notice, given as herein provided. Notice shall be deemed to be given when it is so deposited in the mail or with the courier service, as the case may be.

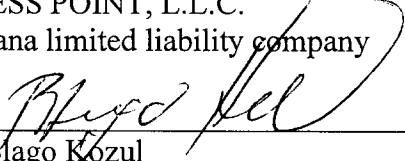
12. Partition. Neither II nor CP shall, directly or indirectly, make application to or petition any court for a partition of the Property.

13. Interpretation. This Agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the State of Indiana.

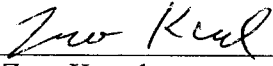
14. Benefit. Except as otherwise specifically provided herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

CYPRESS POINT, L.L.C.
an Indiana limited liability company

By: 
Blago Kozul

CYPRESS POINT II, L.L.C.
an Indiana limited liability company

By: 
Zora Kozul



Prepared By: Michael Moleski

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

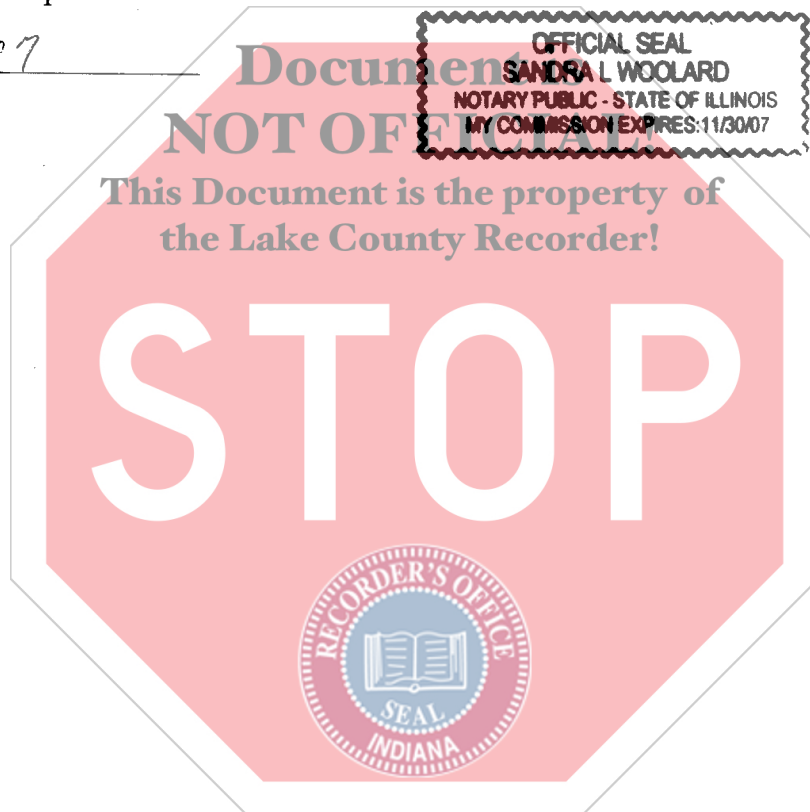
The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Blago Kozul, personally known to me to be a Managing Member of CYPRESS POINT L.L.C. an Indiana limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as he own free and voluntary act and as the free and voluntary act of the Manager on behalf of such limited liability company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 15 day of October, 2003.

Sandra L Woolard
Notary Public

My commission expires:

11/30/07



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Zora Kozul, personally known to me to be the Manager of CYPRESS POINT II, L.L.C., an Indiana limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as he own free and voluntary act and as the free and voluntary act of the Manager on behalf of such limited liability company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 15 day of October, 2003.

Sandra J Woolard
Notary Public

My commission expires:

11/30/07

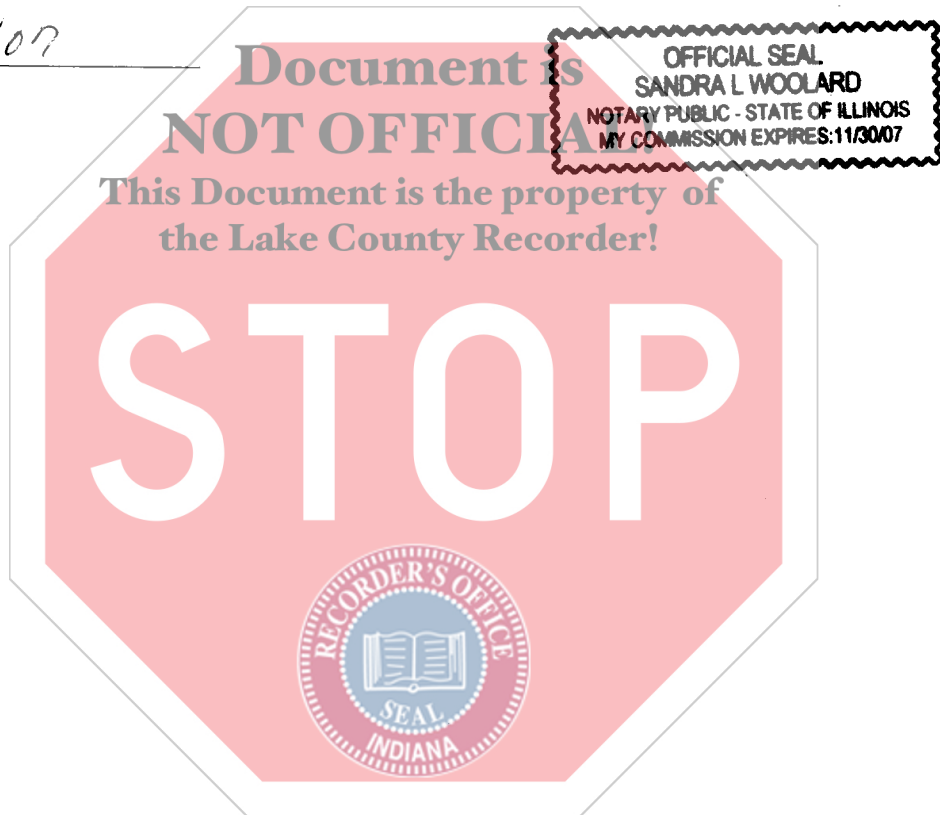


EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

LOTS "A" AND "B" – HIGH MEADOWS, IN THE CITY OF CROWN POINT, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 44 PAGE 90, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA, BEING A RESUBDIVISION OF ALL OF HIGH MEADOWS UNIT NO. 1 AND A SUBDIVISION OF PART OF THE NORTHWEST ¼ OF SECTION 16, TOWNSHIP 34 NORTH, RANGE 8 WEST OF THE 2ND PRINCIPAL MERIDIAN, IN LAKE COUNTY, ILLINOIS.



Exhibit A