

STATE OF INDIANA  
LAKE COUNTY  
FILED FOR RECORD

2004 093690

2004 MAY -3 PM 01:01

THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:  
Scott W. Wilton, Esq.  
Inland Real Estate Exchange Corporation  
2901 Butterfield Road  
Oak Brook, IL 60523

MORRIS W. COLLIER  
RECORDER

Above Space for Recorder's Use Only

**CO-OWNERSHIP AGREEMENT**

This CO-OWNERSHIP AGREEMENT (this "Agreement") dated as of June 10, 2004, is made by and among Hobart Exchange, L.L.C. (the "Manager"), and those Persons (as defined below) who become a party to this Agreement by executing an Acknowledgement of Addition of Co-Owner to Co-Ownership Agreement to be recorded separately (collectively, the "Co-Owners").

**WHEREAS**, Hobart 103 I, L.L.C. ("Seller") has acquired the property located in Hobart, Indiana and more particularly described on Schedule B (the "Property") and has entered into certain Financing Documents (as hereinafter defined) with respect to the Property;

**WHEREAS**, Seller has transferred or shall subsequently transfer undivided interests in the Property to the Co-Owners as tenants in common; and

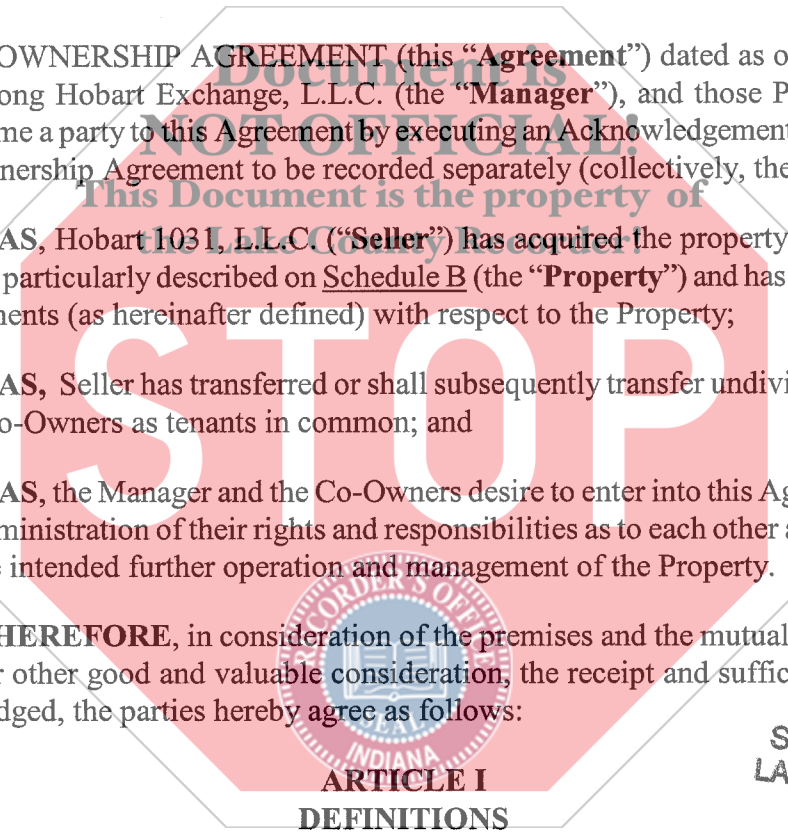
**WHEREAS**, the Manager and the Co-Owners desire to enter into this Agreement to provide for the orderly administration of their rights and responsibilities as to each other and as to others and to provide for the intended further operation and management of the Property.

**NOW, THEREFORE**, in consideration of the premises and the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

For all purposes of this Agreement, the capitalized terms set forth below shall have the following meanings:

Chicago Title Insurance Company  
620046611



**FILED**  
MAY 2 2004

STEPHEN R. STIGLICH  
LAKE COUNTY AUDITOR

000151  
8/16/04  
TJD

“**Affiliate**” shall mean, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control,” when used with respect to any specified Person, shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” shall have meanings correlative to the foregoing.

“**Asset Management Agreement**” shall mean that certain Asset Management Agreement dated June 9, 2004 by and between Seller and the Manager.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“**Interest**” shall mean, with respect to a Co-Owner, such Co-Owner’s tenant-in-common interest in the Property.

“**Operating Agreements**” shall mean those certain Limited Liability Company Agreements of each Co-Owner.

“**Co-Owner(s)**” shall mean each Co-Owner and each of their successors in interest pursuant to Article III.

“**Percentage**” shall mean, with respect to a particular Co-Owner, the percentage Interest of such Co-Owner as compared to all of the Interests.

“**Person**” shall mean a natural person, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company, trust, bank trust company, land trust, business trust or other organization, whether or not a legal entity, and a government or agency or political subdivision thereof.

“**Property Management Agreement**” shall mean that certain Property Management Agreement dated June 9, 2004 by and between Seller and Property Manager.

“**Property Manager**” shall mean Mid-America Management Corp.

“**Section**” shall mean a section in this Agreement, unless otherwise modified.

**ARTICLE II  
FORMATION OF TENANCY IN COMMON**

Section 2.01 Purposes. The purposes of this tenancy-in-common are to engage in the following activities: (i) to manage, lease, mortgage and dispose of the Property; and (ii) to take such other actions as the Co-Owners deem necessary or advisable to carry out the foregoing. The Co-Owners shall hold the Property for investment purposes only and not for the active conduct of a trade or business. In particular, the tenancy-in-common shall only engage in activities which are customary services in connection with the maintenance and repair of the Property. Neither the

tenancy-in-common, nor its agents shall provide any non-customary services, as such term is contemplated under Code Sections 512 and 856 and Rev. Rul. 75-743.

Section 2.02 Nature of Co-Tenant Relationship. The Co-Owners shall each hold their respective Interests in the Property as tenants-in-common. The Co-Owners do not intend by this Agreement to create a partnership subject to their respective share of the Loan, joint venture, association or a trust for federal income tax purposes among themselves or with the Manager, but merely to set forth the terms and conditions upon which each of them shall hold their respective Interests. Except as expressly provided herein, no Co-Owner is authorized to act as agent for, to act on behalf of, or to do any act that will bind, any other Co-Owner or to incur any obligations with respect to the Property. Each Co-Owner shall be treated for federal income tax purposes as a tenant-in-common holding a direct ownership interest in the Property. Each Co-Owner agrees to report its interest in the Property in a manner consistent with the foregoing and otherwise not to take any action that would be inconsistent with the foregoing.

Section 2.03 Intentionally Deleted.

Section 2.04 Subchapter K Election. The Co-Owners hereby agree that the joint ownership of the Property as tenants in common shall be excluded from Subchapter K of the Code and the Co-Owners will report on their federal and state income tax returns all items of income, deduction, credits and expense consistent therewith which result from their Interests as provided in Treasury Regulation Section 1.761-2(b). No Co-Owner shall notify the Commissioner of Internal Revenue that such Co-Owner desires that Subchapter K of the Code apply to the Co-Owners and each Co-Owner hereby agrees to indemnify, protect, defend and hold the other Co-Owners free and harmless from all costs, liabilities, tax consequences and expenses, including, without limitation, attorneys' fees, which may result from any Co-Owner so notifying the Commissioner in violation of this Agreement or otherwise taking a contrary position on any tax return.

Section 2.05 Limitation on Number of Co-Owners. Notwithstanding anything to the contrary contained in this Agreement, at no time shall the number of Co-Owners exceed the limit set forth in Revenue Procedure 2002-22, I.R.B. 2002-14, as the same may be modified from time to time.

**ARTICLE III  
TRANSFER OF INTERESTS**

Section 3.01 Transfer. Except as specifically provided in this Agreement, and subject to compliance with applicable securities laws and each Co-Owner may sell, transfer, convey, pledge, encumber or hypothecate its Interest or any part thereof.

Section 3.02 Successors Bound. The Co-Owners agree that any successor to any portion of the Interest of a Co-Owner shall be deemed to accept the Interest so conveyed upon and subject to the terms and provisions of this Agreement and to have assumed all obligations of the grantor or assignor accruing from and after such conveyance.

**ARTICLE IV  
DISTRIBUTIONS**

Section 4.01 Source of Distributions. All distributions to be made by the Manager under this Agreement shall be from the income and proceeds of the Property after payment of all other expenses relating to the Property, including, without limitation, fees to the Manager under the Asset Management Agreement and fees to the Property Manager under the Property Management Agreement.

Section 4.02 Distributions in General. The Manager shall distribute all available cash to the Co-Owners in accordance with their Percentages on a quarterly basis, after paying or reimbursing itself for any fees or expenses paid by the Manager on behalf of the Co-Owners and retaining such additional amounts as are necessary to pay anticipated ordinary current and future expenses of the Property. Amounts of cash retained pursuant to this paragraph shall be invested in interest-bearing bank accounts. All amounts distributable to the Co-Owners pursuant to this Agreement shall be paid by check.

**ARTICLE V  
RIGHTS AND OBLIGATIONS OF CO-OWNERS**

Section 5.01 Status of Relationship. The Co-Owners intend to hold the Property as tenants in common, and this Agreement shall not be interpreted to impose a partnership or joint venture relationship on the Co-Owners either in law or in equity. Accordingly, no Co-Owner shall have any liability for the debts or obligations incurred by any other Co-Owner with respect to the Property or otherwise, and no Co-Owner shall have any authority, other than as specifically provided herein, to act on behalf of any other Co-Owner or to impose any obligation with respect to the Property.

Section 5.02 Bankruptcy.

(a) Neither the bankruptcy, death, dissolution, liquidation, termination, incompetency or other incapacity of any Co-Owner, nor the transfer, by operation of law or otherwise, of any right, title or interest of the Co-Owners in and to the Property or hereunder shall terminate this Agreement.

(b) The Co-Owners agree that the following shall constitute an Event of Bankruptcy with respect to any Co-Owner (and any of his successors-in-interest): (i) if a receiver, liquidator or trustee is appointed for any Co-Owner; (ii) if any Co-Owner is substantively consolidated with the bankruptcy, reorganization, liquidation or arrangement pursuant to federal bankruptcy law, or similar federal or state law of any other Person; (iii) if, in connection with a bankruptcy, reorganization, liquidation or arrangement pursuant to federal bankruptcy law, or similar federal or state law, a court orders a Partition or a sale of the Property or of any Co-Owner's Interest; (iv) if any Co-Owner (and any of its successors-in-interest) becomes insolvent, makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; (v) if any petition for bankruptcy, reorganization, liquidation or arrangement pursuant to federal bankruptcy law, or similar federal or state law shall be filed by or against, consented to, or acquiesced in by, any Co-Owner;



provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by such Co-Owner then, upon the same not being discharged, stayed or dismissed within thirty (30) days thereof. To avoid the inequity of a forced sale and the potential adverse effect on the investment of the other Co-Owners, the Co-Owners agree that, as a condition precedent to entering into this Agreement, the Co-Owner causing such Event of Bankruptcy shall follow the buy-sell procedure set forth in Section 5.02(c).

(c) Upon the occurrence of an Event of Bankruptcy in accordance with Section 5.02(b), the Co-Owner that is the subject of the Event of Bankruptcy (hereinafter, "**Seller**") shall first make a written offer ("**Offer to Sell**") to sell its Interest to the other Co-Owners at a price equal to (a) the Fair Market Value (as defined below) of the Seller's Interest minus (b) selling, prepayment or other costs that would apply in the event the Property was sold on the date of the offer. The other Co-Owners shall be entitled to purchase a portion of the selling Co-Owner's Interest in proportion to the Interest of the purchasing Co-Owner as compared to the Interests of all of the Co-Owners exclusive of the Interest of the Seller. In the event any Co-Owner elects not to purchase its share of the selling Co-Owner's Interest, the other Co-Owners shall be entitled to purchase additional Interests in proportion to the undivided Interest of such purchasing Co-Owner as compared to the Interests of all Co-Owners desiring to purchase such additional Interests. "**Fair Market Value**" shall mean the fair market value of Seller's undivided interest in the Property on the date the Offer to Sell is made as determined in accordance with the procedures set forth below. The other Co-Owners shall have twenty (20) days after delivery of the Offer to Sell to accept the Offer to Sell. If any or all of the other Co-Owners ("**Purchaser**") accept the Offer to Sell, Seller and Purchaser shall commence negotiation of the Fair Market Value within fifteen (15) days after the Offer to Sell is accepted. If the parties do not agree, after good faith negotiations, within ten (10) days, then each party shall submit to the other a proposal containing the Fair Market Value the submitting party believes to be correct ("**Proposal**"). If either party fails to timely submit Proposals, then the Fair Market Value shall be determined by final and binding arbitration in accordance with the procedures set forth below. The parties shall meet within seven (7) days after delivery of the last Proposal and make a good faith attempt to mutually appoint a certified MAI real estate appraiser who shall have been active full-time over the previous five (5) years in the appraisal of comparable properties located in the county or city in which the Property is located to act as the arbitrator. If the parties are unable to agree upon a single arbitrator, then the parties each shall, within five (5) days after the meeting, each select an arbitrator that meets the foregoing qualifications. The two (2) arbitrators so appointed shall, within fifteen (15) days after their appointment, appoint a third arbitrator meeting the foregoing qualifications. The determination of the arbitrator(s) shall be limited solely to the issue of whether Seller's or Purchaser's Proposal most closely approximates the Fair Market Value. The decision of the single arbitrator or of the arbitrator(s) shall be made within thirty (30) days after the appointment of a single arbitrator or the third arbitrator, as applicable. The arbitrator(s) shall have no authority to create an independent structure of Fair Market Value or prescribe or change any or several of the components or the structure thereof; the sole decision to be made shall be which of the parties' Proposals most closely corresponds to the Fair Market Value of the Property. The decision of the single arbitrator or majority of the three (3) arbitrators shall be binding upon the parties. If either party fails to appoint an arbitrator within the time period specified above, the arbitrator appointed by one of them shall reach a decision which shall be binding upon the parties. The cost of the

arbitrators shall be paid equally by Seller and Purchaser. The arbitration shall be conducted in Lake County, Indiana, in accordance with Indiana Code of Civil Procedure sections 1280 et seq., as modified by this Agreement. The parties agree that Federal Arbitration Act, Title 9 of the United States Code shall not apply to any arbitration hereunder. The parties shall have no discovery rights in connection with the arbitration. The decision of the arbitrator(s) may be submitted to any court of competent jurisdiction by the party designated in the decision. Such party shall submit to the superior court a form of judgment incorporating the decision of the arbitrator(s), and such judgment, when signed by a judge of the superior court, shall become final for all purposes and shall be entered by the clerk of the court on the judgment roll of the court. If one party refuses to arbitrate an arbitrable dispute and the party demanding arbitration obtains a court order directing the other party to arbitrate, the party demanding arbitration shall be entitled to all of its reasonable attorneys' fees and costs in obtaining such order, regardless of which party ultimately prevails in the matter. BY EXECUTING THIS AGREEMENT YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY INDIANA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY EXECUTING THIS AGREEMENT YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE INDIANA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

(d) The closing of an acquisition pursuant to Section 5.02(c) above shall be held at a mutually acceptable date and location not later than thirty (30) days after the date the Fair Market Value is determined, whether by agreement or by arbitration. At the closing, the following shall occur:

(i) Seller shall assign to Purchaser or its or their designee(s) the Interest of the Seller in accordance with the instructions of Purchaser, and shall execute and deliver to the Purchaser all documents which may be required to give effect to the disposition and acquisition of such Interest, in each case free and clear of all liens, claims and encumbrances, with covenants of general warranty; and

(ii) Purchaser shall pay to Seller the consideration therefor in cash.

**Section 5.03 Sale of Property by Manager Is Binding.** Any sale or other conveyance of the Property or any part thereof by the Manager made at the direction of the Co-Owners, or otherwise, pursuant to the terms of this Agreement shall bind the Co-Owners and be effective to transfer or convey all rights, title and interest of the Co-Owners in and to the Property.

**Section 5.04 Rights of Partition.**

(a) The Co-Owners agree generally that any Co-Owner (and any of its successors-in-interest) shall have the right at any time to file a complaint or institute any proceeding at law or in equity to have the Property partitioned corresponding to its Percentage (a "**Partition**") in accordance with and

to the extent provided by applicable law. The Co-Owners acknowledge and agree that Partition of the Property may result in a forced sale by all of the Co-Owners. To avoid the inequity of a forced sale and the potential adverse effect on the investment by the other Co-Owners, the Co-Owners agree that, in connection with a Partition, on or before two (2) business days after a price for the Property has been bid, set or offered (a "**Partition Price**") by any third party (a "**Partition Purchaser**"), the Co-Owner that instituted the Partition shall send all of the other Co-Owners notice of the Partition Price (the "**Partition Notice**"), and the other Co-Owners shall have a right of first refusal to purchase the Property at the Partition Price on or before thirty (30) days after receipt of the Partition Notice (the "**Purchase Period**"). In the event that prior to the expiration of the Purchase Period, more than one Co-Owner elects to purchase the Property, then the electing Co-Owners shall each purchase an equal interest in the Property unless they agree otherwise. In the event that no Co-Owner elects to purchase the Property on or before the expiration of the Purchase Period, then the Property may be sold to a Partition Purchaser at a price equal to or greater than the Partition Price, and the Co-Owners shall have no further right to purchase the Property pursuant to this Section 5.04(a); provided, however, that if the Co-Owner seeking Partition fails to sell the Property on or before six (6) months after the date of the Partition Notice, then prior to selling the Property to a Partition Purchaser, the Co-Owner seeking Partition must, once again, give the other Co-Owners a right of first refusal to purchase the Property pursuant to this Section 5.04(a). Notwithstanding the foregoing, in the event that any portion of the Property is subject to the Financing Documents or otherwise security for a debt, the Co-Owners shall not be entitled to Partition the Property if such Partition shall violate the terms or conditions of the Financing Documents or other such indebtedness.

(b) The closing of a sale in connection with a right of first refusal exercised pursuant to Section 5.04(a) above shall be held at a mutually acceptable date and location not later than forty-five (45) days after the expiration of the Purchase Period. At the closing, the following shall occur:

- (i) The Co-Owners seeking Partition shall assign to the acquiring Co-Owner(s), or its or their designee(s), the Property in accordance with the instructions of the acquiring Co-Owner(s), and shall execute and deliver to the acquiring Co-Owner(s) all documents which may be required to give effect to the disposition and acquisition of such Interest(s), in each case free and clear of all liens, claims and encumbrances, with covenants of general warranty; and
- (ii) The acquiring Co-Owner(s) shall pay to all of the Co-Owner(s) the consideration therefore in cash.

**Section 5.05 Obligation to Fund Deficits.** The Manager shall notify Co-Owners if it determines that there are insufficient funds available to pay the Co-Owners' respective shares of expenses of the Property, including debt service. The Co-Owners shall decide, in accordance with Section 5.06, how to provide such funds, whether by borrowing, contribution or otherwise. In the event any Co-Owner agrees to contribute additional funds pursuant to Section 5.06 but such Co-Owner fails to contribute such additional funds (the "**Unpaid Funds**") by the date for payment as set forth in the Outcome Notice (as hereinafter defined), the Manager shall advise the contributing Co-Owners (the "**Contributing Co-Owners**") of such failure and the total amount of the Unpaid Funds



(the “**Failure Notice**”), and the Contributing Co-Owner(s) may elect to contribute, in such proportion as they may determine, the Unpaid Funds on the non-paying Co-Owner’s behalf by giving notice to the Manager of their intention to contribute the Unpaid Funds on or before ten (10) days after receipt of the Failure Notice. In the event two or more Co-Owners desire to pay the Unpaid Funds and are unable to agree on the apportionment thereof, each such Co-Owner shall be entitled to pay the Unpaid Funds in the ratio that his Interest bears to the total Interests of the Co-Owners desiring to pay the Unpaid Funds. Immediately after the Manager receives the Unpaid Funds from the Contributing Co-Owner(s), the Manager shall send each non-paying Co-Owner a notice indicating the amount of the Unpaid Funds that each Contributing Co-Owner contributed on each non-paying Co-Owner’s behalf (the “**Reimbursement Notice**”), and immediately after receiving the Reimbursement Notice, the non-paying Co-Owner shall reimburse each Contributing Co-Owner the amount indicated in the Reimbursement Notice plus interest thereon at the rate of fourteen percent (14%) per annum (but not more than the maximum rate allowed by law) from the date advanced by the Contributing Co-Owner until paid. The Manager acknowledges and agrees that, upon receipt of written notice from any Contributing Co-Owner(s) of its failure to be reimbursed by a non-paying Co-Owner pursuant to a Reimbursement Notice, the Manager will use available cash otherwise distributable to the non-paying Co-Owner to reimburse the Contributing Co-Owner(s) for all funds advanced with interest thereon, as provided in the Reimbursement Notice. The remedies against a non-paying Co-Owner provided for herein are in addition to any other remedies that may otherwise be available, including the right to obtain a lien against the undivided interest in the Property of the non-paying Co-Owner, to the extent allowed by law.

Section 5.06 Actions by Co-Owners

(a) All actions requiring consent of the Co-Owners with respect to the Property shall require their unanimous consent. Such actions include, but are not limited to: (i) selling or otherwise disposing of all of the Property; (ii) obtaining any financing secured by or encumbering the Property; (iii) materially altering or changing the physical condition or legal status of the Property; (iv) engaging in any act or activity with respect to the Property that would be outside the normal course of holding real estate for passive investment; (v) contributing additional funds pursuant to Section 5.05; (vi) intentionally deleted; (vii) hiring a replacement Manager; (viii) amending, supplementing or terminating this Agreement; and (ix) intentionally deleted; and (x) amending or supplementing the Asset Management Agreement or the Property Management Agreement. Notwithstanding the foregoing, as more further set forth in the Property Management and Asset Management Agreements, said agreements may be conditionally terminated by the action of a single Owner, however, any replacement Property Manager or Asset Manager must be agreed upon unanimously, as more further set forth therein.

(b) Whenever an action by the Co-Owners is proposed by any Co-Owner, the Manager shall first send to all Co-Owners written notice (the “**Decision Notice**”) setting forth the particulars of the decision (the “**Decision**”). The Decision Notice shall include a ballot on which the Co-Owner may mark its vote for or against the Decision. Consistent with the provisions of Section 12.02, the Co-Owners shall respond to the Decision Notice by returning the marked ballot to the Manager within fourteen (14) days of the receipt of the Decision Notice. A Co-Owner not returning the ballot within the prescribed period shall be deemed to have voted for the Decision. The Manager shall notify all



Co-Owners of the results of the vote (the “**Outcome Notice**”). If the Decision is unanimous, the Manager shall be authorized to take action with respect to such Decision. If the Decision is not unanimous, then the procedure in Section 5.06(c) hereof shall apply.

(c) If less than 75% of the Interests of the Co-Owners approve or consent to the Decision, no action can be taken with respect to such Decision. If the Decision is not unanimous, but at least 75% of the Interests of the Co-Owners shall have (or are deemed to have) voted for such Decision (the “**Majority Group**”), the Majority Group shall have the right, in its sole discretion, to elect, within thirty (30) days of the Outcome Notice, to make an offer (the “**Offer**”) to purchase all of the Interests of the Co-Owners voting against such Decision (the “**Minority Group**”) for a purchase price indicated in the Offer (the “**Offer Amount**”), which Offer Amount shall be the aggregate dollar amount the Majority Group would be willing to pay for the Interests of the Minority Group as of the Closing Date (as defined in Section 5.06(d)). On or before fifteen (15) days after the date of the Offer, the members of the Minority Group shall either (i) consent to the Decision; (ii) sell their Interests to the Majority Group for the Offer Amount proposed by the Majority Group; or (iii) if the members of the Minority Group do not elect either alternative (i) or (ii), they must purchase the Interests of the Majority Group under substantially the same terms and conditions as offered by the Majority Group, provided that the Offer Amount shall be adjusted to reflect the Percentage ownership of the Majority Group’s Interests. If some, but not all, of the Co-Owners who are in the Minority Group elect to consent to the Decision, those consenting members shall then become members of the Majority Group for purposes of (ii) and (iii) above. The obligation of the Majority Group or Minority Group to acquire the other group’s Interest, and the allocations of the Interests amongst such group shall be apportioned between the members of the purchasing group as they unanimously agree. If they do not unanimously agree, the obligation to acquire the Interests and the allocation thereof shall be apportioned based upon each member’s pro rata share calculated as their current Interest divided by all the Interests of the purchasing group. In the event a member of the Minority Group fails to respond or act as required by this Section 5.06(c), each member of the Minority Group shall be liable to the other Co-Owners for all consequential damages and attorneys’ fees incurred as a result of such failure.

(d) The closing of an acquisition pursuant to Section 5.06(c) above (the “**Closing**”) shall be held at a mutually acceptable date and location (the “**Closing Date**”) not later than forty-five (45) days after the date of the Offer. At the Closing, the following shall occur:

- (i) The selling Co-Owner(s) shall assign to the acquiring Co-Owner(s) or its or their designee(s) the Interest(s) of the selling Co-Owner in accordance with the instructions of the acquiring Co-Owner(s), and shall execute and deliver to the acquiring Co-Owner(s) all documents which may be required to give effect to the disposition and acquisition of such Interest(s), in each case free and clear of all liens, claims and encumbrances, with covenants of general warranty; and
- (ii) The acquiring Co-Owner(s) shall pay to the selling Co-Owner(s) the consideration therefore in cash.

(e) Notwithstanding the above, for all purposes of Section 5.06, a Co-Owner which is an Affiliate of the Manager shall not vote on, or be counted with respect to (i) any actions to provide for an audit of the Property operations, (ii) any termination of the Manager in accordance with the terms hereof, or (iii) any termination of the Asset Management Agreement or the Property Management Agreement in accordance with the terms thereof.

Section 5.07 Intentionally Deleted.

Section 5.08 Documents. The Co-Owners each agree to execute all documents required in connection with a sale or refinancing of the Property and such additional documents as may be required under this Agreement or may be reasonably required to effect the intent of the Co-Owners with respect to the Property. In the event that any Co-Owner fails to so execute any such documents and return the documents to the Manager on or before thirty (30) days after such Co-Owner receives a copy of such documents from the Manager, (a) the Manager is authorized and directed to execute the same on such Co-Owner's behalf and Co-Owner hereby appoints the Manager as Co-Owner's attorney-in-fact for such purpose, and (b) the non-executing Co-Owner shall be liable to the other Co-Owners for all consequential damages and attorneys' fees incurred as a result of such failure.

**Document is  
ARTICLE VI  
NOT OFFICIAL!  
THE MANAGER IN GENERAL!**

Section 6.01 Acceptance of Duties. The Co-Owners hereby acknowledge and agree that each Co-Owner has assumed an undivided interest in the Property subject to the Asset Management Agreement and the Property Management Agreement and that the Co-Owners are bound by the terms thereof. The Manager accepts and agrees to perform its duties as provided herein and in the Asset Management Agreement, including receiving and disbursing all money received by it with respect to the Property subject to the Financing Documents, property leases and other relevant agreements. The Manager shall not be individually answerable or accountable to the Co-Owners for its actions on behalf of the Co-Owners, except: (i) for its own willful misconduct or gross negligence; (ii) for the inaccuracy of any of its representations or warranties contained in Section 6.04 hereof; (iii) for its failure to perform obligations expressly undertaken by them in the first sentence of Section 7.04; (iv) for its own income taxes based on fees, commissions or compensation received as Manager; or (v) for the failure to use ordinary care to disburse money received by Manager in accordance with the terms hereof.

Section 6.02 Not Acting in Individual Capacity. The Manager acts solely as agent for each Co-Owner hereunder and not in its individual capacity, and all Persons other than the Co-Owners having any claim against the Manager by reason of the transactions contemplated hereby, shall look only to the Property for payment or satisfaction thereof.

Section 6.03 Authority of Manager. The Manager shall have no authority to manage,

control, use, sell, dispose of or otherwise deal with the Property except (i) in accordance with the Asset Management Agreement and this Agreement; or (ii) in accordance with written instructions received from the Co-Owners pursuant to Section 7.02.

Section 6.04 Representations or Warranties as to Property or Documents. The Manager makes no representation or warranty to the Co-Owners as to (i) the title, value, condition or operation of the Property, and (ii) the validity or enforceability of Transaction Documents or as to the correctness of any statement contained in any thereof. The Manager represents and warrants to the Co-Owners that this Agreement has been validly authorized, executed and delivered by Manager.

Section 6.05 Reliance. The Manager shall not be liable to anyone for relying in good faith on any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by them to be genuine and signed by the proper parties. The Manager may accept a copy of a resolution of the board of directors or other governing body of any corporate party, certified by the secretary or a senior officer thereof, as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter, the manner of ascertainment of which is not specifically prescribed herein, the Manager may for all purposes hereof rely on an officer's certificate of the relevant Person (if not an individual) as to such fact or matter, and such certificate shall constitute full protection to the Manager for any action taken, suffered or omitted by it in good faith in reliance thereon.

Section 6.06 Ambiguity or Conflict of Provisions. If any provision of this Agreement is ambiguous or unclear as to its application, or if this Agreement permits any determination by the Manager or is silent or incomplete as to the course of action which the Manager is required to take with respect to a particular set of facts, the Manager may request and, as between the Manager and the Co-Owners, may rely upon written instructions of the Co-Owners. In such case, the Manager shall have no liability to, and shall be held harmless by, the Co-Owners from any liability, costs or expenses incurred by the Manager in its individual capacity from acting upon such instructions, except that the Co-Owners shall not be required so to indemnify the Manager with respect to any of the matters described in the last sentence of Section 6.01.

Section 6.07 Advice of Counsel. The Manager may perform any of its powers and duties under this Agreement, directly or through agents or attorneys and may consult with counsel, accountants and other skilled Persons selected and employed by them. The Manager shall not be liable for anything done or omitted in good faith in accordance with the advice or opinion within the scope of competence of any such counsel, accountant or other skilled Persons selected with due care.

## **ARTICLE VII DUTIES OF MANAGER**

Section 7.01 Duties of the Manager in General. The Manager shall have the duties and obligations expressly provided in the Asset Management Agreement and this Agreement. The

Manager is hereby authorized and directed to enter into any agreement permitted or directed by the Asset Management Agreement and this Agreement.

Section 7.02 Action Upon Instructions. Upon the written instructions from the Co-Owners, the Manager will act or refrain from acting regarding any matter concerning the Property, as specified in such instructions, including, but not limited to:

(a) those matters covered in Article V of this Agreement; and

(b) giving notice, direction or exercising a right, remedy or power hereunder or under the Transaction Documents in respect of the Property;

Section 7.03 Actions of Manager without Specific Instructions by Co-Owners. The Manager is hereby authorized and directed by the Co-Owners to take the following actions on their behalf without their prior specific written instructions:

(a) to collect rents itself or, if applicable, from the Property Manager, and make distributions in accordance with Article IV;

(b) to notify the relevant parties of any default by them under the Transaction Documents;

(c) Intentionally deleted; and

(d) to take other actions as specifically provided in this Agreement and in the Asset Management Agreement.

Section 7.04 Intentionally deleted.

Section 7.05 Books and Records. The Manager shall keep customary and appropriate books and records relating to the Property. The Manager shall maintain separate books and records for each Co-Owner's Interest in the Property and shall provide reports of income and expenses to each Co-Owner as necessary for such Co-Owner to prepare his/her income tax returns regarding the Property.

Section 7.06 Furnishing of Documents. The Manager will promptly furnish to the Co-Owners, copies of all reports, notices, requests, demands, certificates and financial statements pursuant to the Transaction Documents, which the Co-Owners have not otherwise received.

Section 7.07 Duty to Act.

(a) The Manager shall not manage, sell, dispose of or otherwise deal with the Property except as expressly provided by the Asset Management Agreement and this Agreement or in written instructions received pursuant to Section 7.02 hereof. No implied duties or obligations shall be read into this Agreement against the Manager.



(b) The Manager shall not be required to act or refrain from acting under this Agreement if the Manager reasonably determines, or has been advised by counsel, that such actions may result in personal liability, unless the Manager is indemnified by the Co-Owners against any liability and cost (including reasonable legal fees and expenses) which may result in manner and form reasonably satisfactory to the Manager. However, the Co-Owners shall not be required to indemnify the Manager with respect to any of the matters described in Section 6.01 (i) through (v).

(c) Except in accordance with written instructions received pursuant to Section 7.02 or as provided in Section 7.03, the Manager shall not have any duty (i) to file, record or deposit any document or to maintain any such filing, recording or deposit or to refile, rerecord or redeposit any such document; (ii) to obtain or maintain any insurance on the Property; (iii) to maintain the Property; and (iv) to pay or discharge any tax levied against any part of the Property;

## ARTICLE VIII INDEMNIFICATION

Section 8.01 Indemnification of Manager. The Co-Owners (not jointly, but severally based on each Co-Owner's Percentage) agree to indemnify the Manager, in its individual capacity, from and against, any and all liabilities, obligations, losses, damages, taxes, claims, actions, suits, costs, expenses and disbursements including reasonable legal fees and expenses (any, a "Liability" and collectively "Liabilities") which may be imposed on, incurred by or asserted at any time against the Manager (provided, however, that the Co-Owners shall not be obligated to indemnify Manager for any Liability for which Manager is reimbursed or otherwise made whole by another Person), which relate to or arise out of the Property. Notwithstanding the above, the Co-Owners shall not be required so to indemnify the Manager with respect to any of the matters described in Section 6.01(i) through 6.01(v). The indemnities contained in this Article VIII shall survive the termination of this Agreement.

Section 8.02 Indemnification of Other Co-Owners. Each Co-Owner agrees to indemnify the other Co-Owners (and the manager and members of the other Co-Owners) from and against any and all Liabilities, which may be imposed on, incurred by or asserted at any time against the other Co-Owners (or the manager and members of the other Co-Owners) as a result of the indemnifying Co-Owner's breach of this Agreement. In no event shall this indemnity be relied on or enforceable by third parties other than the Manager and the other Co-Owners (and the manager and members of the other Co-Owners) (and their successors and assigns). Without limiting the foregoing, this indemnity may not be relied on or enforced by or any third party creditor of the Property.

Section 8.03 Intentionally deleted.

**ARTICLE IX  
TERMINATION OF AGREEMENT**

Section 9.01 Termination in General. This Agreement shall terminate on December 31, 2034, provided the Note shall have been paid in full, unless the Co-Owners elect to extend the term of this Agreement.

Section 9.02 Termination at Option of the Co-Owners. Notwithstanding Section 9.01 above, this Agreement shall terminate upon the unanimous election of the Co-Owners by written notice to the Manager, if (a) such notice shall be accompanied by the written agreement (in form and substance satisfactory to the Manager) of the Co-Owners assuming all the obligations of the Manager and releasing the Manager therefrom, and (b) the Note shall have been paid in full.

**ARTICLE X  
SUCCESSOR MANAGER**

The Manager or any successor may resign at any time without cause by giving at least sixty (60) days' prior written notice to the Co-Owners. The Co-Owners (based on the unanimous consent of the Co-Owners) may at any time remove the Manager without cause by written notice to the Manager. In case of the resignation, dissolution or removal of the Manager, the Co-Owners may appoint a successor by written instrument. This Agreement shall not be terminated solely due to the death, resignation or removal of the Manager. If a successor manager shall not have been appointed within sixty (60) days after the giving of such notice, the Co-Owners may apply to any court of competent jurisdiction in the United States to appoint a successor manager to act until such time, if any, as a successor shall have been appointed as provided above. Any successor so appointed by such court shall immediately and without further act be superseded by any successor appointed as provided above within one year from the date of the appointment by such court. Any successor, however appointed, shall execute and deliver an instrument accepting such appointment, and thereupon such successor, without further act, shall become vested with all the rights, powers, and duties of the predecessor Manager hereunder with like effect as if originally named the Manager herein; but upon the written request of such successor, such predecessor shall execute and deliver an instrument transferring to such successor, all the rights, powers and duties of such predecessor, and such predecessor shall duly assign, transfer, deliver and pay over to such successor all monies or other property then held by such predecessor upon the manager herein expressed. Any right of the Co-Owners against the predecessor Manager, in its, his or her individual capacity, shall not be prejudiced by the appointment of any successor manager and shall survive the termination of this Agreement.

**ARTICLE XI  
SUPPLEMENTS AND AMENDMENTS**

This Agreement may be supplemented or amended by a written instrument signed by the Manager and all the Co-Owners, but if in the reasonable opinion of the Manager any amendment adversely affects any right, duty or liability of, or immunity or indemnity in favor of, the Manager under this Agreement, or any of the documents contemplated hereby to which they are a party, or would cause or result in any conflict with or breach of or default under any terms, conditions or provisions of its charter documents or bylaws or any document contemplated hereby to which they are a party, the Manager may, in its sole discretion, decline to enter into such amendment.

**ARTICLE XII  
MISCELLANEOUS**

Section 12.01 Limitations on Rights of Others. Nothing in this Agreement, whether express or implied, shall give to any Person other than the Manager and the Co-Owners any legal or equitable right, remedy or claim hereunder.

Section 12.02 Notices, Etc. All notices, requests, demands, consents and other communications (“Notices”) required or contemplated by the provisions hereof shall refer on their face to this Agreement (although failure to do so shall not make such Notice ineffective), shall, unless otherwise stated herein, be in writing and shall be (a) personally delivered, (b) sent by reputable overnight courier service, (c) sent by certified or registered mail, postage prepaid and return receipt requested, or (d) transmitted by telephone facsimile with electronic confirmation of receipt, in each case, as follows:

if to the Manager: Hobart Exchange, L.L.C.  
2901 Butterfield Road  
Oak Brook, Illinois 60523  
Attention: Patricia DelRosso

to the Co-Owners: at the address and/or fax set forth in the Acknowledgement of Addition of Co-Owner to Co-Ownership Agreement

or at such other address and telephone facsimile number as shall be designated, respectively, by the Manager or the Co-Owners in a written notice to the other Persons receiving Notices pursuant to this Section. Notices given pursuant to this Section shall be deemed received upon the earliest of the following to occur: (i) upon personal delivery; (ii) on the fifth day following the day sent, if sent by registered or certified mail; (iii) on the next business day following the day sent, if sent by reputable overnight courier; and (iv) if transmitted by telephone facsimile, on the day sent if such day is a business day of the addressee and the telephone facsimile is received by the addressee by 5:00 p.m. local time of the addressee on such day and otherwise on the first business day of the addressee after the day that the telephone facsimile is sent.

Section 12.03 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 12.04 Separate Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 12.05 Successors and Assigns. All covenants and agreements contained herein shall be binding upon and inure to the benefit of the Manager and its successors and assigns and the Co-Owners and their successors and assigns, all as herein provided, and shall, as to each of the Co-Owners and their successors and assigns operate as covenants running with the land. Any request, notice, direction, consent, waiver or other writing or action by the Co-Owners shall bind each of their successors and assigns.

Section 12.06 Usage of Terms. With respect to all terms in this Agreement, the singular includes the plural and the plural includes the singular; words importing any gender include the other gender; references to "writing" include printing, typing, lithography and other means of reproducing words in a visible form; references to agreements and other contractual instruments include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms and not prohibited by this Agreement; references to Persons include their successors and permitted assigns; and the term "including" means including without limitation.

Section 12.07 Headings. The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 12.08 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the state in which the Property is located applicable to contracts to be performed entirely within such state, including all matters of construction, validity and performance.

Section 12.09 Possession. The Co-Owners intend to lease the Property at all times and no Co-Owner shall have the right to occupy or use any portion of the Property at any time during the term of this Agreement.

Section 12.10 Mutuality; Reciprocity; Runs With the Land. All provisions, conditions, covenants, restrictions, obligations and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part of the Property, shall be binding upon and shall inure to the benefit of each of the Co-Owners, and their respective heirs, executors, administrators, successors, assigns, devisees, representatives, lessees and all other persons acquiring any undivided interest in the Property or any portion thereof whether by operation of law or any manner whatsoever (collectively, "Successors"); shall create mutual, equitable servitudes and burdens upon the undivided interest in the Property of each Co-Owner in favor of the Interest of every other Co-Owner; shall create reciprocal rights and obligations between the respective Co-Owners, their

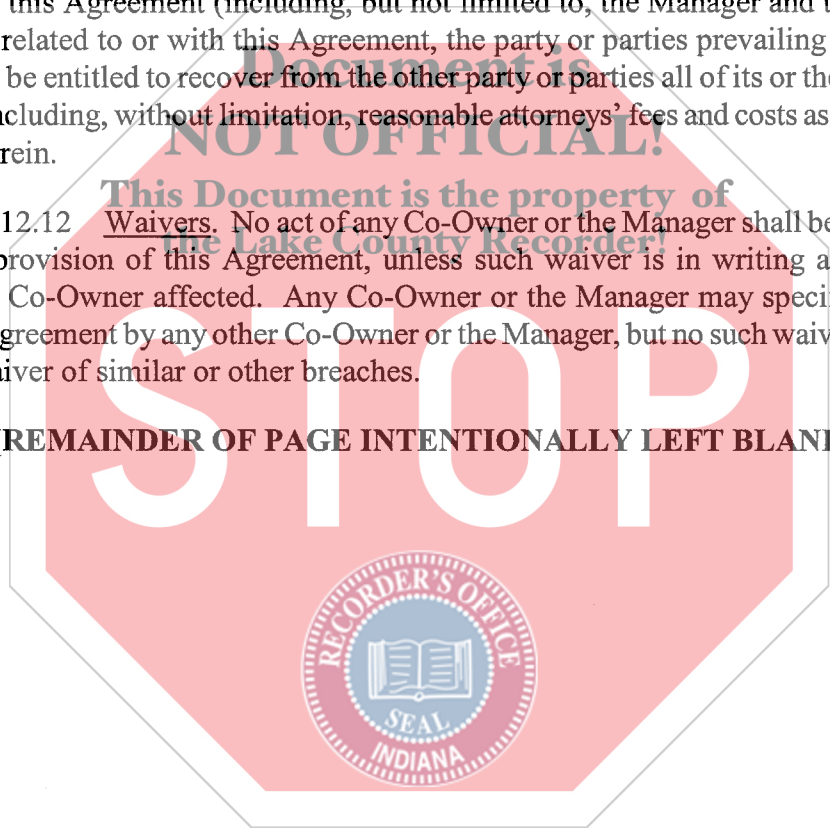


Interests in the Property, and their Successors; and shall, as to each of the Co-Owners and their Successors operate as covenants running with the land, for the benefit of the other Co-Owners pursuant to applicable law. It is expressly agreed that each covenant contained herein (i) is for the benefit of and is a burden upon the undivided Interests of each of the Co-Owners; (ii) runs with the undivided Interest of each Co-Owner; and (iii) benefits and is binding upon each Successor owner during its ownership of any undivided Interest, and each owner having any interest therein derived in any manner through any Co-Owner or Successor. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every restriction, provision, covenant, right and limitation contained herein, whether or not such person or entity expressly assumes such obligations or whether or not any reference to this Agreement is contained in the instrument conveying such interest in the Property to such person or entity. The Co-Owners agree that, subject to the restrictions on transfer contained herein, any Successor shall become a party to this Agreement upon acquisition of an undivided interest in the Property as if such person was a Co-Owner initially executing this Agreement.

Section 12.11 Attorneys' Fees. If any action or proceeding is instituted between all or any of the parties to this Agreement (including, but not limited to, the Manager and the Co-Owner(s)) arising from or related to or with this Agreement, the party or parties prevailing in such action or arbitration shall be entitled to recover from the other party or parties all of its or their costs of action or arbitration, including, without limitation, reasonable attorneys' fees and costs as fixed by the court or arbitrator therein.

Section 12.12 Waivers. No act of any Co-Owner or the Manager shall be construed to be a waiver of any provision of this Agreement, unless such waiver is in writing and signed by the Manager or the Co-Owner affected. Any Co-Owner or the Manager may specifically waive any breach of this Agreement by any other Co-Owner or the Manager, but no such waiver shall constitute a continuing waiver of similar or other breaches.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

Hobart Exchange, L.L.C., as  
Manager

By: Inland Real Estate Exchange Corporation, its  
sole member,

By: *Patricia A. DeRosso*  
Title: *President*



STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF DU PAGE        )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that **PATRICIA A. DELROSSO**, personally known to me to be the President of **INLAND REAL ESTATE EXCHANGE CORPORATION**, a Delaware corporation, sole member of **HOBART EXCHANGE, L.L.C.**, a Delaware limited liability company ("LLC1"), sole member of **HOBART 1031, L.L.C.**, a Delaware limited liability company ("LLC2"), 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 severally acknowledged that as such President, she signed and delivered the said instrument, pursuant to the authority given by the board of directors of said corporation, as her free and voluntary act, and as the free and voluntary act and deed of said corporation as sole member of LLC1, as sole member of LLC2, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 19 day of October, 2004.

[SEAL]

*Deborah J. Price*  
Notary Public

OFFICIAL SEAL  
DEBORAH J. PRICE  
Notary Public, State of Illinois  
My Commission Expires 01-27-2008



**SCHEDULE B**

**LEGAL DESCRIPTION OF PROPERTY**

LOT 1, RESUBDIVISION OF LOTS 47-58, ANDREW MELIN'S FAIRFIELD ADDITION, AN ADDITION TO THE CITY OF HOBART, LAKE COUNTY, INDIANA, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 88, PAGE 30, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA.





## GUARANTY

FOR VALUE RECEIVED, and in consideration of, and as an inducement for the execution and delivery of the foregoing and attached Co-Ownership Agreement (the "**Agreement**") which governs the co-ownership by the parties listed on Schedule A attached hereto (the "**Co-Owners**") of the property commonly known as \_\_\_\_\_ (the "**Property**") and more particularly described on Schedule B attached hereto, the undersigned party (the "**Guarantor**"), who is the sole member of \_\_\_\_\_ (the "**Company**") (which is one of the Co-Owners), hereby guarantees to the other Co-Owners (and to the manager and members of each other Co-Owner (the "**Co-Owner Indemnified Parties**")) and to \_\_\_\_\_ (the "**Manager**") the full and timely payment, performance and observance of all the covenants, terms, conditions and agreements to be paid, performed and observed by the Company under the Agreement, including, without limitation, payment and performance of all liabilities and obligations of the Company pursuant to Sections 8.01 and 8.02 of the Agreement (all of such obligations of payment and performance are hereinafter collectively called the "**Obligations**"); and Guarantor hereby covenants and agrees to and with the Co-Owners and the Manager that if default shall at any time be made by the Company in the payment or the performance and observance of any of the Obligations, Guarantor will forthwith pay such Obligation, and any arrears thereof, to the Co-Owners and/or the Manager, as applicable, and will forthwith faithfully perform and fulfill all Obligations and will forthwith pay to the Co-Owners and/or the Manager, as applicable, all damages that may arise in consequence of any default by the Company under the Agreement, including without limitation, all reasonable attorneys' fees, disbursements incurred by the Co-Owners and/or the Manager, as applicable, or caused by any such default and/or by the enforcement of this Guaranty.

This Guaranty is an absolute and unconditional guaranty of payment and of performance. It shall be enforceable against Guarantor without the necessity of any suit or proceedings on part of the Co-Owners and/or the Manager of any kind or nature whatsoever against the Company and without the necessity of any notice of non-payment, non-performance or non-observance or of any notice of acceptance of this Guaranty or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives; and Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall not be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by the Co-Owners and/or the Manager, as applicable, against the Company of any of the rights or remedies reserved to the Co-Owners and/or the Manager, as applicable, pursuant to the provisions of the Agreement or by relief of the Company from any of the Company's obligations under the Agreement or otherwise (including, but not by way of limitation, the rejection of the Agreement in connection with proceedings under the bankruptcy laws now or hereafter in effect).

This Guaranty shall be a continuing guaranty and the liability of Guarantor hereunder shall not be affected, modified or diminished by reason of any assignment, amendment or modification, renewal or extension of the Agreement or by reason of any modification, amendment, or waiver of or change in any of the terms, covenants, conditions or provisions of the Agreement, or by reason of any extension of time that may be granted to the Company, or by reason of any dealings or transactions or matters or things occurring among the Company and the Co-Owners and/or the Manager, whether or not notice thereof is given to Guarantor and, to the extent permitted by

applicable law, the Guarantor waives and relinquishes any and all common law or statutory defenses, including but not limited to, defenses based on any of the foregoing. The liability of Guarantor shall continue during any extension or renewal of the term of the Agreement, whether or not notice thereof is given to Guarantor.

Guarantor further agrees that if at any time all or any part of any payment theretofore applied by the Co-Owners and/or the Manager, as applicable, to any of the Obligations is or must be rescinded or returned by the Co-Owners and/or the Manager, as applicable, for any reason whatsoever (including, without limitation, the insolvency, bankruptcy or reorganization of the Company), such Obligations shall, for the purposes of this Guaranty, to the extent that such payment is or must be rescinded or returned be deemed to have continued in existence, notwithstanding such application by the Co-Owners and/or the Manager, as applicable, and this Guaranty shall continue to be effective or be reinstated, as the case may be, as to such Obligations, all as though such application by the Co-Owners and/or the Manager, as applicable, had not been made. Guarantor shall indemnify, defend and hold harmless the Co-Owners and/or the Manager, as applicable, from and against any and all loss, damage, cost, or expense (including, without limitation, reasonable attorneys' fees) arising out of any claim for rescission or return of all or any part of any payment theretofore applied by the Co-Owners and/or the Manager, as applicable, to any of the Obligations.

Any amounts received by the Co-Owners and/or the Manager, as applicable, from whatever source, on account of the Obligations may be applied by it toward the payment of such of the Obligations, and in such order of application as the Co-Owners and/or the Manager, as applicable, may from time to time elect.

The consent by the Co-Owners and/or the Manager, as applicable, to any assignment or assignments, and successive assignments by the Company of its interest in the Property, and assumption by such assignee(s) of the Agreement, made either with or without notice to Guarantor, shall in no manner whatsoever release Guarantor from any liability as Guarantor.

The assignment by the Co-Owners and/or the Manager, as applicable, of the Agreement and/or the avails and proceeds thereof made either with or without notice to Guarantor shall in no manner whatsoever release Guarantor from any liability as Guarantor.

All references herein to the Company shall be deemed to mean "the Company and its successors and assigns," but the Company shall not hereby be permitted to assign the Agreement except as expressly provided in the Agreement.

This Guaranty shall be binding upon Guarantor and its successors and assigns, and shall inure to the benefit of the Co-Owners and the Manager and its and their successors and assigns. In no event, however, may this Guaranty be relied on or enforceable by third parties other than the Manager or other Co-Owners (and their successors and assigns). Without limiting the foregoing, this Guaranty may not be relied on or enforced by the Financing Documents or any other third party

creditor of the Property.

If there be more than one (1) party identified herein as Guarantor, the liability of such parties shall be joint and several.

Guarantor warrants to the Co-Owners and the Manager that execution of this Guaranty is within the power and authority of Guarantor, and that this Guaranty has been duly and validly executed by Guarantor.

This Guaranty is intended to run for the benefit of the Co-Owners, the Co-Owner Indemnified Parties and the Manager. Accordingly, as used throughout this Guaranty, all references to the Co-Owners shall include the Co-Owner Indemnified Parties.



STATE OF )  
 ) ss.  
COUNTY OF )

I, \_\_\_\_\_, a Notary Public in and for  
said County, in the State aforesaid, do hereby certify that  
\_\_\_\_\_, personally known to me to be the  
\_\_\_\_\_ sole member of \_\_\_\_\_, a Delaware limited  
liability company duly licensed to transact business in the State of \_\_\_\_\_, 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 s/he signed and  
delivered the said instrument as the sole member of said limited liability company, as his/her free  
and voluntary act and as the free and voluntary act and deed of said company, for the uses and  
purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of  
\_\_\_\_\_, 200\_\_\_\_.

**Document is NOT OFFICIAL!**  
**This Document is the property of the Lake County Recorder!**

\_\_\_\_\_  
Notary Public

