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

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| <p>In re:<br/><br/>         THE 1031 TAX GROUP, LLC, et al.<br/><br/>         Debtors.</p>  | <p>Chapter 11<br/>         Case No. 07-11448 (MG)<br/>         Jointly Administered</p> |
| <p>In re:<br/>         INVESTMENT PROPERTIES OF<br/>         AMERICA, LLC, et al.<br/><br/>         Debtors.</p>  | <p>Chapter 11<br/>         Case No. 07-13621 (MG)<br/>         Jointly Administered</p> |
| <p>CORDELL CONSULTANTS, INC., MONEY<br/>         PURCHASE PLAN, A QUALIFIED<br/>         RETIREMENT TRUST, AND CORDELL<br/>         FUNDING, LLLP,<br/><br/>         Appellants,<br/><br/>         v.<br/><br/>         ANITA HUNTER, an individual; JOHNNA<br/>         BOZZA, an individual; CELLTEX SITE<br/>         SERVICES, LTD., a Texas Limited Company;<br/>         GRANDE INVESTMENT, LLC, a Colorado<br/>         Limited Liability Company; QUIRK<br/>         INFINITI, INC., a Massachusetts corporation;<br/>         MICHAEL WHITTON, an individual; DOE<br/>         PLAINTIFF, an individual; and all others<br/>         similarly situated, and GERARD A.<br/>         MCHALE, JR., trustee,<br/><br/>         Appellees.</p> | <p>Case No.</p>   |

**APPELLANT’S DESIGNATION OF RECORD ON APPEAL AND  
STATEMENT OF ISSUES**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, Cordell

Counselors, Inc., Money Purchase Plan, A Qualified Retirement Plan Trust, and Cordell Funding LLLP (collectively “Cordell” or the “Appellant”) respectfully (i) designate the following items as the record on appeal from the Order Denying Motion of Cordell Counselors, Inc. and Cordell Funding LLLP To Enforce Channeling Injunction and Confirmation Order, entered by the United States for the Southern District of New York (the “Bankruptcy Court”) (Honorable Martin Glenn, United States Bankruptcy Judge) on February 9, 2010, Docket No. 2039 (the “Order Denying Motion to Enforce”); and (ii) presents the following Statement of Issues on Appeal:

**I. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL<sup>1</sup>**

| <b>Item No.:</b> | <b>Docket<sup>2</sup>/Document No.:</b> | <b>Docket Date:</b> | <b>Description:</b>   |
|------------------|---|---------------------|---|
| 1.               | 1 (filed) <sup>3</sup>                  | 5/14/2007           | Voluntary Petition for relief under chapter 11, title of the United States Code of the 1031 Debtors <sup>4</sup> , with the exception of AEC Exchange Company LLC |
| 2.               | 311 (filed)                             | 6/28/2007           | The 1031 Debtor's Consolidated Schedules of Assets and Liabilities  |
| 3.               | 465 (filed)                             | 7/30/2007           | Order Establishing Bar Dates for Filing Proofs of Claim and Applications for Administrative Expenses and Approving Form and Manner of Notice Thereof              |

<sup>1</sup> All items designated herein by the Appellant include all exhibits, declarations, transcripts, excerpts, attachments or other papers included within each docket entry for such item.

<sup>2</sup> Unless indicated otherwise, all the items designated herein have been filed in the *In re The 1031 Tax Group, LLC, et al.*, proceedings, Case No. 07-11448.

<sup>3</sup> Items designated as “filed” are already filed in applicable the docket pursuant to Local Rule 8007-1.

<sup>4</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in Cordell’s Motion to Enforce Channeling Injunction and Confirmation Order filed with this Court on January 19, 2010, Docket No. 2011.

| <b>Item No.:</b> | <b>Docket<sup>2</sup>/Document No.:</b> | <b>Docket Date:</b> | <b>Description:</b>  |
|------------------|---|---------------------|--|
| 4.               | 500 (filed)                             | 8/08/2007           | Affidavit of Service of (1) Notice of Deadline for Filing Proofs of Claim and Applications for Allowance of Administrative Expense Claims; (2) Notice of Hearing on Approval of Joint Disclosure Statement Filed by the Debtors and the Official Committee of Unsecured Creditors; (3) Proof of Claims Form(s); and (4) Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors & Deadlines |
| 5.               | 820 (filed)                             | 10/25/2007          | Amended Order Approving the Appointment of Gerard A. McHale, Jr., as Chapter 11 Trustee  |
| 6.               | 1 (filed)<br>[Case No. 07-13621]        | 11/15/2007          | Voluntary Petition for relief under chapter 11, title of the United States Code of Investment Properties America, LLC  |
| 7.               | 29 (filed)<br>[Case No. 07-13621]       | 11/22/2007          | Cordell's Motion for Order Granting Relief from Stay, Dismissing Chapter 11 Cases, Directing Adequate Protection, and Granting Related Relief  |
| 8.               | 62 (filed)<br>[Case No. 07-13621]       | 2/01/2008           | IPofA Debtors' and Chapter 11 Trustee's Objection to Cordell's Motion for Dismissal, Lifting of the Automatic Stay and/or Adequate Protection  |
| 9.               | 107 (filed)<br>[Case No. 07-13621]      | 3/07/2008           | So Ordered Stipulation signed on Modifying the Automatic Stay and Establishing Scheduling and Related Relief   |
| 10.              | 151 (filed)<br>[Case No. 07-13621]      | 4/16/2008           | Amended So Ordered Stipulation Resolving Conditions and Granting Related Relief.   |
| 11.              | 169 (filed)<br>[Case No. 07-13621]      | 6/10/2008           | Chapter 11 Trustee's Rule 60(b) Motion to Vacate in part (I) Stipulation and Order Modifying Automatic Stay and Establishing Schedule and Related Relief, and (II) Amended Stipulation and Order Resolving Conditions and Related Relief   |

| <b>Item No.:</b> | <b>Docket<sup>2</sup>/Document No.:</b>       | <b>Docket Date:</b> | <b>Description:</b>   |
|------------------|---|---------------------|---|
| 12.              | 183 (filed)<br>[Case No. 07-13621]            | 6/20/2008           | Cordell's Omnibus Objection to Chapter 11 Trustee's Rule 60(b) Motion to Vacate in part (I) Stipulation and Order Modifying Automatic Stay and Establishing Schedule and Related Relief, and (II) Amended Stipulation and Order Resolving Conditions and Related Relief   |
| 13.              | 224 (filed)<br>[Case No. 07-13621]            | 8/11/2008           | Transcript of Hearing Held on June 25, 2008 regarding Chapter 11 Trustee's Rule 60(b) Motion to Vacate in part (I) Stipulation and Order Modifying Automatic Stay and Establishing Schedule and Related Relief, and (II) Amended Stipulation and Order Resolving Conditions and Related Relief  |
| 13.              | 1348 (filed)                                  | 10/31/2008          | Motion for Entry of an Order Approving a Settlement of the Dispute Between the Trustee and Cordell Funding LLLP and Cordell Consultants, Inc., Money Purchase Plan, a Qualified Retirement Plan Trust Pursuant to 11 U.S.C. § 105(a) and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure ("Motion to Approve Settlement Agreement") |
| 14.              | 1350 (filed)                                  | 11/05/2008          | Certificate of Service of the Motion to Approve Settlement Agreement  |
| 15.              | 1370 (filed)                                  | 11/19/2008          | Joint Statement of Trustee and Cordell in Further Support of Approval of the Settlement Agreement   |
| 16.              | Requested and received<br>[Case No. 07-13621] | 12/1/2008           | Transcript of the Hearing Held on December 1, 2008 on the Motion to Approve Settlement Agreement  |
| 17.              | 1401 (filed)                                  | 12/2/2008           | Order signed on Granting Motion to Approve Settlement Agreement   |
| 18.              | 1470 (filed)                                  | 2/23/2009           | Notice of Second Amended Appointment of Official Committee of Unsecured Creditors   |

| <b>Item No.:</b> | <b>Docket<sup>2</sup>/Document No.:</b> | <b>Docket Date:</b> | <b>Description:</b>  |
|------------------|---|---------------------|--|
| 19.              | 1827 (filed)                            | 10/7/2009           | Order signed on 10/7/2009 Confirming Second Amended Chapter 11 Plan of Reorganization of Gerard A. McHale, Jr. as Chapter 11 Trustee For Each of the 1031 Debtors, and IPofA Shreveport Industrial Park, LLC                     |
| 20.              | 2011 (filed)                            | 1/19/2010           | Cordell's Motion to Enforce Channeling Injunction and Confirmation Order, including all exhibits filed therewith   |
| 21.              | 2018 (filed)                            | 1/28/2010           | Anita Hunter and Class Representative's Opposition to Cordell Consultants, Inc. and Cordell Funding LLP's Motion to Enforce Channeling Injunction and Confirmation Order, including all exhibits filed therewith                 |
| 22.              | 2026 (filed)                            | 2/3/2010            | Response of Gerard A. McHale, Jr., P.A., as Liquidation Trustee for the 1031 Debtors Liquidation Trust, to the Motion of Cordell to Enforce Channeling Injunction and Confirmation Order, including all exhibits filed therewith |
| 23.              | 2035 (filed)                            | 2/5/2010            | Cordell's Reply in Further Support of its Motion to Enforce Channeling Injunction and Confirmation Order, including all exhibits filed therewith   |
| 24.              | Requested and Received                  | 2/9/2010            | Transcript of Hearing Held on February 9, 2010 on Cordell's Motion to Enforce Channeling Injunction and Confirmation Order   |
| 25.              | 2039 (filed)                            | 2/9/2010            | Order Denying Cordell's Motion to Enforce Channeling Injunction and Confirmation Order   |

## **II. STATEMENT OF ISSUES ON APPEAL**

1. Did the Bankruptcy Court, in the Order Denying Motion to Enforce, correctly interpret, apply and decide the facts in this case and the law, including, without limitation,

Sections 105, 1141 and 1142 of title 11 of the United States Code?

2. Did the Bankruptcy Court err in the Order Denying Motion to Enforce, in declining to take jurisdiction over disputes relating to the interpretation and/or enforcement of the Injunction Order and Confirmation Order entered by the Bankruptcy Court?

3. Is the Bankruptcy Court, rather than the District Court for the Northern District of California, the appropriate forum for determining whether Class Plaintiffs' claims against Cordell are barred by the Injunction Order approved by the Bankruptcy Court, and subsequently incorporated into the Confirmation Order?

4. Did the Bankruptcy Court otherwise commit reversible error in or through the Order Denying Motion to Enforce?

5. Does the Bankruptcy Court's prior ruling in *McHale v. Alvarez*, 397 B.R. 670 (Bankr. S.D.N.Y. 2008) constitute law of the case precluding collateral attack on issues relating to the scope of a channeling injunction by another court, and, consequently, did the Bankruptcy Court err by entering the Order Denying Motion to Enforce?

Dated: March 9, 2010

Respectfully submitted,

FOLEY & LARDNER LLP

By: /s/ Douglas E. Spelfogel

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