

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X
In re:	:
	: Chapter 11
THE 1031 TAX GROUP, LLC, <i>et al.</i> ,	:
	: Case No. 07-11448 (MG)
Debtors.	: Jointly administered
	:
-----	X

SETTLEMENT AGREEMENT

This settlement and release agreement (the "Settlement Agreement") is made as of March 16, 2009 ("Effective Date"), by and among (i) Gerard A. McHale, Jr. (the "Trustee"), Chapter 11 trustee for the captioned debtors (the "1031 Debtors"),¹ (ii) David B. Shefman and (iii) Marga R. Shefman (the "Shefmans") (sometimes hereinafter referred to individually as a "party" and collectively as the "parties").

RECITALS

R.1. On May 14, 2007, and June 11, 2007, the 1031 Debtors filed with the Bankruptcy Court for the Southern District of New York voluntary petitions for relief under Chapter 11 of title 11 of the United States Code.

R.2. On October 25, 2007, the Court entered an order appointing the Trustee as trustee for the 1031 Debtors, and the Trustee has duly qualified and is authorized to enter into this Settlement Agreement.

¹ The "1031 Debtors" means 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; National Exchange Accommodators, LLC; National Exchange Services QI, Ltd.; NRC 1031, LLC; Real Estate Exchange Services, Inc.; Rutherford Investment LLC; Security 1031 Services, LLC; Shamrock Holdings Group, LLC; and AEC Exchange Company LLC.

R.3. The Shefmans represent that prior to June 9, 2006, the Shefmans owned 100% of Real Estate Exchange Services, Inc., a Florida corporation ("REES").

R.4. On or about June 9, 2006, the "Sale Date", pursuant to a Stock Purchase Agreement, the Shefmans sold REES to The 1031 Tax Group, LLC ("1031 Tax Group") in consideration of \$4,250,000, of which \$3,000,000 was paid at closing, with an additional \$625,000 to be paid on each of the first and second anniversary of the closing.

R.5. The Shefmans represent that following the closing of the Stock Purchase Agreement, the Shefmans remained at REES as employees of the 1031 Tax Group. Contemporaneous with the closing of the Stock Purchase Agreement, the Shefmans executed consulting agreements ("Consulting Agreements") with the 1031 Tax Group.

R.6. The Shefmans represent that they have the full power and authority to enter into this Settlement Agreement on behalf of themselves and REES and have taken all corporate action necessary to authorize the transactions effected hereby. The Shefmans represent that except as already obtained, no consents, approvals, orders, or authorization of any third party are required for the execution, delivery, or performance of the Settlement Agreement by The Shefmans and REES.

R.7. The Shefmans represent that on July 31, 2007, they timely filed (i) a joint proof of claim against the estates of the 1031 Debtors for \$1,250,000, the amount due to them pursuant to the Stock Purchase Agreement, and (ii) individual proofs of claim against the estates of the 1031 Debtors for \$67,451.39, the amount due to each of them pursuant to their Consulting Agreements (collectively, the "Proofs of Claim").

R.8. The Trustee and his counsel have been conducting an investigation of the assets, liabilities and affairs of the 1031 Debtors, including any potential claims against third parties including the Shefmans, as well as any potential claims creditors of the 1031 Debtors may have against the Shefmans, and any potential claims the Shefmans may have against the 1031 Debtors.

R.9. The Trustee has asserted that he may have claims against the Shefmans relating to the matters described herein, and the Shefmans assert that there is no merit to any such potential claims the Trustee may assert against either of them.

R.10. On or about May 30, 2007, Anita Hunter, on behalf of herself and "all others similarly situated," filed a class action lawsuit in the United States District Court for the Northern District of California against Edward H. Okun and others, captioned *Hunter v. Okun, et al.*, Case No 5:07-CV-02795-JW ("Hunter Litigation").

R.11. On or about September 11, 2008, the plaintiffs in the Hunter Litigation filed a motion to file a First Amended Complaint, adding the Shefmans, and others, as defendants in the Hunter Litigation. On or about November 19, 2008, the Court granted the plaintiffs' motion, and plaintiffs subsequently filed a First Amended Complaint adding the Shefmans and others as defendants.

R.12. The Shefmans assert that there is no merit to the claims asserted in the Hunter Litigation against them, and that they have potential claims for such actions as well as claims under the Stock Purchase Agreement and their Consulting Agreements with the 1031 Tax Group.

R.13. The Trustee asserts that certain insurance carriers (the "Carriers") issued the following Errors and Omissions Policies (the "E&O Policies") to certain of the 1031 Debtors: (1) policy number 0707-00066896C, with policy limits of \$1,000,000; (2) policy number 0706-00061771C, with policy limits of \$1,000,000; (3) policy number 0707-000673002C, with policy

limits of \$500,000; (4) policy number 0707-00071264C, with policy limits of \$1,000,000; and (5) policy number 0706-00067331B, with policy limits of \$2,000,000.

R.14. The 1031 Debtors have made claims under the E&O Policies. The Shefmans may have claims under the E&O Policies.

R.15. Other possible insureds under the E&O Policies have made claims under the E&O Policies, to which the Trustee has objected.

R.16. The Carriers have not yet taken a position regarding coverage under the E&O Policies and to date have not paid any of these claims.

R.17. The parties hereto believe that the continued investigation and potential litigation of (i) possible claims of the Trustee against the Shefmans and others, and the defenses thereto; (ii) possible claims of the Shefmans against the 1031 Debtors and (iii) the disputes concerning the E&O Policies, will be complex and expensive, and that the likelihood of ultimate success on the merits cannot be predicted with certainty.

R.18. After balancing the possible benefit that could be obtained from a wholly successful outcome in any potential litigation, against the risk, cost, complexity, and delay involved in litigating these matters to final judgment, and, in addition, after considering the ability to recover on any judgments obtained, the parties hereto have determined that settlement of these disputes would be prudent and appropriate.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and described herein, the parties agree as follows:

THE AGREEMENT

1. **Rules of Construction and Definitions.** The following rules of construction and definitions apply only to this Agreement, including the Exhibits to the Agreement.

1.1. The definitions below apply to capitalized terms whenever those terms appear in this Agreement, including the prefatory paragraph and recitals above, the sections below, and any attachments hereto. Capitalized terms in the prefatory paragraph and recitals above, the sections below, and any attachments hereto have the meanings ascribed to them therein to the extent they are not otherwise defined in this Section. Each defined term stated in the singular shall include the plural and each defined term stated in the plural shall include the singular. The word “including” when used in this Agreement means “including but not limited to.” The word “herein” when used in this Agreement refers to the entirety of the Agreement, including any attachments hereto.

1.2. “Approval Order” means one or more Final Orders, which may include the Confirmation Order, that collectively contain language substantially in the form of Exhibit 1 hereto, or other language agreed to by the Parties, and are entered by the Bankruptcy Court under and in accordance with Bankruptcy Rule 9019(a).

1.3. “Bankruptcy Case” means the chapter 11 proceedings filed on May 14, 2007, and June 11, 2007, by The 1031 Tax Group, LLC, and related debtors in the United States Bankruptcy Court for the Southern District of New York, *In re The 1031 Tax Group, LLC, et al.*, jointly administered under Case No. 07-11448 (MG).

1.4. “Bankruptcy Code” means Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended from time to time.

1.5. "Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of New York and, to the extent it exercises jurisdiction over the Bankruptcy Case, the United States District Court for the Southern District of New York.

1.6. "The Shefmans" means Marga Shefman and David Shefman.

1.7. "Claim" means any past, present, or future claim, demand, action, cause of action, suit, or liability of any kind or nature whatsoever, whether at law or in equity, known or unknown, asserted or unasserted, anticipated or unanticipated, accrued or unaccrued, or fixed or contingent, that has been or may be asserted, whether seeking damages (including compensatory, punitive or exemplary damages) or equitable, mandatory, injunctive, or any other type of relief, including cross-claims, counterclaims, third-party claims, suits, lawsuits, administrative proceedings, notices of liability or potential liability, or arbitrations. To the extent not included in the preceding sentence, "Claim" also includes "claim" as defined in Bankruptcy Code Section 101(5).

1.8. "Class Action" means the class action lawsuit in the United States District Court for the Northern District of California against Okun and others, captioned *Hunter v. Okun*, et. al., Case No. 5:07-CV-02795-JW.

1.9. "Class Action Court" means the United States District Court of the Northern District of California, or any other court of competent jurisdiction presiding over a certified class of Exchangers, including the Class Action.

1.10. "Confirmation Order" means an order of the Bankruptcy Court confirming a Plan.

1.11. "Debtors" means all of the debtors in the Bankruptcy Case, and their successors and assigns, each such entity being a "Debtor."

1.12. "Estate" means the estate of a Debtor created pursuant to Section 541 of the Bankruptcy Code.

1.13. "Exchanger" means every Person that (a) has asserted or may assert a Claim against one or more of the Debtors in the Bankruptcy Case or otherwise that arises out of their deposit of funds with one or more Debtors in their capacity as "qualified intermediaries" pursuant to Section 1031 of the Internal Revenue Code, or (b) is listed as a creditor on any Schedule filed by any Debtor with the Bankruptcy Court as a result of the deposit of funds by the creditor (or other party affiliated with the creditor) with one or more Debtors in their capacity as "qualified intermediaries" pursuant to Section 1031 of the Internal Revenue Code. "Exchangers" include the Class Representatives and the individuals and entities included within the putative class in the Class Action.

1.14. "Exchanger Release" means the transfer to the Trustee, or complete release of the Shefmans by each of the Exchangers of all Interests and Claims against the Shefmans arising from or related in any way to the 1031 Debtors, whether by way of settlement of the Class Action or otherwise.

1.15. "Exchanger Release Order" means one or more Final Orders of the Bankruptcy Court or the Class Action Court, which may be the Confirmation Order, approving or ordering the Exchanger Release.

1.16. "Execution Date" means the first date on which all of the Parties have executed this Agreement.

1.17. "Final Order" means an order as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending, or as to which any such right to appeal, petition for certiorari, reargue, or rehear shall have been waived in writing.

1.18. "Interests" means any Claim, lien, encumbrance, or interest of any kind or nature based upon or derivative of any claim or cause of action that could have been asserted against the Shefmans, by, or injury to, the estates of the 1031 Debtors.

1.19. "Misappropriations" means improper withdrawals of funds by Edward Okun and others from various bank accounts owned by or in the name of one or more Debtors.

1.20. "Payment Date" means five (5) days after the requirements set forth in Section 2.1 of this Agreement have been met.

1.21. "Person" means an individual, a corporation, a partnership, a joint venture, an association, a joint stock company, a limited liability company, a limited liability partnership, an estate, an unincorporated organization, a trust, a class or group of individuals, or any other entity or organization, including any federal, state, or local governmental or quasi-governmental body or political subdivision, department, agency, or instrumentality thereof.

1.22. "Plan" means a chapter 11 plan of reorganization with respect to the Debtors and their Estates.

1.23. "Protection Order" means one or more Final Orders of the Bankruptcy Court or the Class Action Court, which may be the Confirmation Order, permanently preventing and precluding all Exchangers and other creditors of the Debtors, who have held or asserted, who hold or assert, or who may in the future hold or assert any Claim against the Shefmans based upon or derivative of any claim or cause of action that could have been asserted against the Shefmans, by, or injury to, the estates of the 1031 Debtors from taking any action against the Shefmans and their property and assets for the purpose of directly or indirectly collecting, recovering, receiving, or asserting any Interests.

1.24. "Settlement Amount" means the sum of ten thousand dollars (\$10,000), plus any and all interest earned on such ten thousand dollars (\$10,000), from the date it is deposited pursuant to Section 1(a).1 below through the date that it is paid to the Trustee pursuant to Section 1(b) below.

1.25. "Trustee" means Gerard A. McHale, Jr., solely in his capacity as chapter 11 Bankruptcy Trustee for the Debtors' Estates, and his successors or assigns.

2. Bankruptcy Obligations

2.1. This Section and Sections 3, 4, 6, and 19 below, shall be effective as of the Effective Date. All other rights and obligations under this Agreement, including the Payment Date, shall be deemed to take effect, if at all, when the following events have occurred:

- (a) the Approval Order has been entered, and become a Final Order;
- (b) the Protection Order or the Exchanger Release Order has been entered and has become a Final Order.

2.2. (a) This Agreement, except for Sections 2.2, 4, 9 and 19, shall become null and void *ab initio* and of no further force or effect (“null and void”):

(i) if a court of competent jurisdiction enters an order that denies approval of this Agreement and such order becomes a Final Order;

(ii) if the Trustee, in his sole discretion, provides written notice to the Shefmans declaring the Agreement null and void at any time on or after the date one year after the Effective Date, if the conditions set forth in Section 2.1(a) and (b) of this Agreement have not been met.

(b) If this Agreement becomes null and void and pursuant to this Section 2.2, then, except for Sections 2.2, 9, and 19, which shall not be null and void and shall remain in full force and effect, (i) the Parties shall have all of the rights, defenses, and obligations under or with respect to any and all Policies that they would have had absent this Agreement; and (ii) any and all otherwise applicable statutes of limitations or repose, or other time-related deadlines or limitations, shall be deemed to have been tolled by virtue of this Agreement for the period from the Execution Date through the date that is ten days after this Agreement becomes null and void.

3. **Protections and Stand-down**

3.1. No later than 120 days after the Execution Date, the Trustee shall file a motion for entry of the Approval Order and shall use his reasonable best efforts to obtain (i) entry of the Approval Order as a Final Order, and (ii) entry of the Protection Order or the Exchanger Release-Order, as referred to in Section 2.1 (a) above. The Shefmans will cooperate with the Trustee to obtain entry of the foregoing. For avoidance of doubt, the Trustee may seek

the foregoing Final Orders in whole or in part at any time, including prior to or in conjunction with the Confirmation Order or in multiple orders.

3.2. Immediately upon the Execution Date, the Trustee, in his sole discretion, may disclose to anyone that he has entered into this Agreement (and the terms thereof). Immediately upon the filing of the motion to obtain entry of any part of the Approval Order by the Trustee, the Parties may disclose to the Bankruptcy Court and publicly that they have entered into this Agreement (and the terms thereof).

3.3. Immediately upon the Execution Date, the Shefmans shall be precluded from (a) pursuing or prosecuting any Claims, objections, motions, briefs, discovery requests or pleadings in the Bankruptcy Court in or with respect to the Bankruptcy Case except to protect his interests under the E & O Policies or as to Proofs of Claim they had filed; or (b) otherwise participating in the Bankruptcy Case; provided, however, that, notwithstanding the foregoing, the Shefmans shall fulfill his obligations under Section 3.1 above.

3.4. Promptly after the Effective Date, the Trustee shall file and pursue in good faith a motion seeking a stay of the Class Action with respect to any and all Claims against the Shefmans or, alternatively, obtain the consent of each of the class representatives named in the Class Action to an order staying the Class Action as against the Shefmans, in either case until either the Payment Date occurs or this Agreement becomes null and void pursuant to Section 2.2, whichever is earlier. Any order effecting the foregoing stay shall be consistent with the provisions of this Agreement.

3.5. In the event that any litigation is commenced by an Exchanger against the Shefmans prior to the Payment Date, which litigation is subject to the automatic stay under the

Bankruptcy Code or asserts claims that are the same or substantially similar to any claims with respect to which the Bankruptcy Court in this case has entered a stay for the benefit of other settling parties, the Trustee shall, within thirty (30) days of receiving notice of such litigation, move to stay such additional litigation.

3.6. Effective as of the Effective Date, any and all statutes of limitations or repose or other time-related deadlines or limitations that apply or could apply to any of the parties to this Agreement with respect to (a) any claims by the Trustee, for himself and on behalf of all the 1031 Debtors, against REES or the Shefmans, (b) any claims by REES or the Shefmans against the Trustee or any of the 1031 Debtors, and (c) the E & O Policies, shall be deemed to have been tolled by virtue of this Agreement for the period from the Effective Date through the date that is 10 business days after this Agreement becomes null and void pursuant to Section 2.2. The Trustee has represented that counsel for the Underwriters on the E & O Policies has represented to the Trustee that (i) the respective rights and obligations of any non-Debtors and Underwriters, if any, in connection with the various E & O Policies which are the subject of the settlement agreement between the Trustee and the Underwriters (which includes the REES Policy) are reserved and tolled until such time as a Final Order of the Bankruptcy Court is entered with respect to approval of the settlement agreement between the Trustee and the Underwriters; and (ii) the Underwriters consent to the assignment by any third parties to the Trustee of any and all interests in the E & O Policies covered by the settlement agreement between the Trustee and the Underwriters, and to any claims thereunder. Counsel to the Underwriters have represented that they have authority to make such representations and agree that the Trustee and non-debtors whom may claim an interest in the E & O Policies are relying thereon.

3.7. The Protection Order and any Exchanger Release Order shall (a) to extent that California Code of Civil Procedure § 877.6 is applicable and requires such a finding, find that this Settlement Agreement is in good faith, and (b) contain language substantially similar in form and substance to Exhibit 2 hereto, or as otherwise agreed by the Parties.

3.8. The Parties acknowledge and agree that the settlement amounts hereunder represent a compromise of all alleged damages including but not limited to lost exchange funds, tax liabilities, attorneys' fees, and any other consequential damages.

3.9. The Shefmans shall not seek reimbursement directly or indirectly from any Person, including the Trustee, the Debtors, or any other Person (other than the Shefmans), for any payment the Shefmans are required to make under this Agreement, whether by way of a Claim for contribution, indemnification, subrogation, retrospective premium, deductible, or otherwise.

4. **Payment of Settlement Amount**

4.1. The Shefmans shall pay the Settlement Amount to the Trustee, for the benefit of the estates of the 1031 Debtors.

4.2. Simultaneously with the execution of this Settlement Agreement, the Shefmans shall deliver the Settlement Amount to the Trustee, who shall keep it in an interest bearing, money market account to be held in escrow under the terms hereof. In the event that the Settlement Amount is not deposited in accordance with the foregoing within five (5) days of execution of this Settlement Agreement, the Settlement Agreement shall immediately become, and thereupon be, null, void and of no further force or effect.

4.3. The Settlement Amount will be distributed as follows: (i) to the Trustee by wire transfer, as directed by the Trustee in writing, immediately upon notice from the Trustee to the Shefmans that the Payment Date has occurred, or (ii) to the Shefmans if this Agreement becomes null and void pursuant to Section 2.2 above, immediately upon receipt of notice from the Shefmans and the Trustee that this Agreement is null and void pursuant to Section 2.2 above.

4.4. The Protection Order and any Exchanger Release Order shall (a) to the extent that California Code of Civil Procedure § 877.6 is applicable and requires such a finding, find that this Settlement Agreement is in good faith, and (b) contain language substantially similar in form and substance to Exhibit 2 hereto, or as otherwise agreed by the Parties.

5. **Non-Compete Agreement.** Upon the Payment Date, the Trustee shall be deemed to have released, without any further action required, the Shefmans from any non-compete agreement to which both he and any of the 1031 Debtors are parties in connection with his employment with the 1031 Debtors or its affiliates.

6. **Cooperation.** The Shefmans shall provide reasonable cooperation to the Trustee in his investigation of the assets and liabilities of the Estates. At the request of either the Class Action counsel or the Trustee, the Shefmans shall appear and testify at deposition and trial in the Hunter Litigation and the Bankruptcy Court, provided that the requesting party pays the reasonable travel and lodging expenses of doing so. This obligation to appear at trial shall be in addition to appearing for deposition. Nothing in this section shall affect the Shefman's right to assert any constitutional right with request to testifying.

7. **Mutual Releases and Claims.** Effective upon the Payment Date and as further consideration,

7.1. Upon the Payment Date, the Shefmans irrevocably assign to the Trustee the Coverage Claim, and each and every claim they may have under the E&O Policies and any other insurance policies of any kind related to REES.

7.2. Upon entry of the Payment Date, the Trustee, for himself and on behalf of all the 1031 Debtors, forever releases and discharges the Shefmans and their heirs, successors and assigns, from any and all actions, complaints, claims, debts, liens, payments, security interests, offsets, demands, damages, losses allegations, suits in equity, counterclaims, third-party actions, and/or causes of action of whatever kind or nature, whether direct or indirect, absolute or contingent, in tort, contract, common law, under state or federal constitution or state or federal statute or regulation, that the Trustee or 1031 Debtors has or may have in the future relating to or in any way directly or indirectly arising out of, resulting from, or in connection with, or attributable to (i) the claims asserted by the Trustee herein, (ii) the Shefmans' sale of REES to the 1031 Tax Group, (iii) the Shefmans involvement with REES or (iv) anything else related to the 1031 Debtors including, without limitation, any claim or cause of action for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, negligence, breach of contract or any debts, claims, demands, damages, losses, actions or causes of action, under Chapter 5 of Title 11 of the United States Code, from the beginning of time through the Effective Date of this Agreement.

7.3. Upon the Payment Date, the Shefmans, for themselves and their respective officers, employees, managers, members, partners, owners, representatives, and attorneys, forever release and discharge the Trustee, the 1031 Debtors, their respective bankruptcy Estates, and the Trustee's representatives, attorneys, and advisors in all capacities from any and all actions, complaints, claims, debts, liens, payments, security interests, offsets, demands, damages,

losses, allegations, suits in equity, counterclaims, third-party actions, proofs of claim, and/or causes of action of whatever kind or nature, whether direct or indirect, absolute or contingent, in tort, contract, common law, under state or federal constitution or state or federal statute or regulation, that the Shefmans have or may have in the future relating to or in any way directly or indirectly arising out of, resulting from, or in connection with, or attributable to (i) the claims asserted by the Trustee herein, (ii) the Shefmans' sale of REES to the 1031 Tax Group, (iii) the Shefmans' involvement with REES or (iv) anything else related to the 1031 Debtors, from the beginning of time through the Effective Date of this Agreement, and any proofs of claim filed against the 1031 Debtors' estates are deemed withdrawn with prejudice.

7.4. The Parties acknowledge they have been advised by their respective legal counsel and are familiar with the provisions of Section 1542 of the California Civil Code, which provides:

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

In furtherance of this Agreement, the Parties expressly waive any and all rights they may have under any contract, statute, code, regulation, ordinance, or the common law, which may limit or restrict the effect of a general release as to Claims that they do not know or suspect to exist in their favor at the time of the execution of this Agreement.

7.5. Nothing in this Section is intended to, or shall be construed to, release, waive, or otherwise affect the Parties' rights and obligations under this Agreement.

8. **Third Party Claims.** Nothing in this Settlement Agreement, including the releases contained herein, constitutes a release of any claims that the Trustee acting on behalf of the 1031 Debtors may have against third parties.

9. **Admission of Liability**

9.1. The parties hereby acknowledge and stipulate that each denies any liability to any other party on any claim and that all parties enter into this Settlement Agreement only to avoid the expense and inconvenience of litigation. Nothing in this Settlement Agreement should ever be construed as an admission or assignment of liability by any party or as a declaration against the interests of any party to this Settlement Agreement.

9.2. Settlement negotiations leading up to this Agreement and all related discussions and negotiations are confidential and shall be deemed to fall within the protection afforded to compromises and to offers to compromise by Rule 408 of the Federal Rules of Evidence and any similar state law provisions. Except as necessary in the Trustee's sole discretion with respect to the motion seeking the Approval Order or any appeal therefrom, any evidence of the terms of this Agreement or negotiations or discussions associated with this Agreement shall be inadmissible in any action or proceeding for purposes of establishing any rights, duties, or obligations of the Parties, except in an action or proceeding to enforce the terms of this Agreement.

10. **Representations and Warranties.** The parties hereto further represent and warrant to each other as follows:

10.1. Each party hereto has received independent legal advice from attorneys of that party's choice with respect to the advisability of executing this Settlement Agreement, and prior to the execution of this Settlement Agreement by each party, that party's attorney reviewed this Settlement Agreement and discussed the Settlement Agreement with the party and the party has made all desired changes.

10.2. Except as expressly stated in this Settlement Agreement, no party hereto has made any statement or representation to any other party hereto regarding the facts relied upon by said party in entering into this Settlement Agreement, and each party hereto specifically does not rely upon any statement, representation or promise of any other party hereto in executing this Settlement Agreement, except as expressly stated in this Settlement Agreement.

10.3. Each party and its attorneys has made such investigation of the facts pertaining to this Settlement Agreement, and all the matters pertaining thereto, as they deem necessary.

10.4. The terms of this Settlement Agreement are contractual and not merely a recital.

10.5. This Settlement Agreement has been carefully read by, the contents hereto are known and understood by, and is signed freely by each party executing this Settlement Agreement.

11. **Neutral Construction of the Settlement Agreement.** This Settlement Agreement shall not be construed against the party preparing it, but shall be construed as if both parties jointly prepared it and any uncertainty or ambiguity shall not be interpreted against any party.

12. **Agreement Binding on Successors.** The terms and conditions of this Settlement Agreement shall be binding on and accrue to the benefit of, the parties hereto and their heirs, successors and assigns.

13. **Choice of Law.** The validity, construction and enforcement of this Settlement Agreement shall be governed by the law of the State of Florida without regard to choice of law principles. By agreeing to Florida law, no representation is given as to the substantive law that may govern each of the claims and causes of action that are being released herein or that legal action must be initiated in Florida relative to this Settlement Agreement or the rights or obligations provided for therein.

14. **Dispute Resolution.** The Parties and any third party beneficiaries shall submit any disputes relating to this Agreement to the Bankruptcy Court, which shall have exclusive jurisdiction over all disputes relating to this Agreement, and each party hereto and any third party beneficiary hereof consents to the exclusive jurisdiction and personal jurisdiction and venue of the Bankruptcy Court for that purpose and waives any claims of forum non convenience. If the Bankruptcy Court refused to exercise jurisdiction over any such dispute, the Parties may submit such dispute to any court of competent jurisdiction.

15. **Headings.** The headings set forth herein are inserted for convenience of the parties only, and shall not be used to interpret, construe or in any way affect the meaning of the terms and provisions of this agreement.

16. **Power of Representatives.** Each party executing this Settlement Agreement in a representative capacity represents that it is duly authorized and empowered to do so.

17. **Counterpart Signatures.** This Settlement Agreement may be signed in counterparts, each of which taken together shall constitute an original. Each counterpart may be delivered by facsimile or email (as a pdf attachment), and a faxed or emailed signature shall have the same force and effect as an original signature.

18. **Entire Agreement and Integration.** This Settlement Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof. Except as expressly provided in this Settlement Agreement, this Settlement Agreement is the final written expression and complete and exclusive statement of all the agreements, conditions, promises and covenants among the parties with respect to the specific subject matter hereof, and supersedes all prior or contemporaneous agreements, negotiations, representations, understanding and discussions among the parties and/or their respective counsel with respect the subject matter covered hereby. The parties further represent that, in executing this Settlement Agreement, they have not relied on any inducements, promises, or representations other than those expressly set forth in this Settlement Agreement. Any amendment or modification of this Settlement Agreement, in order to be legally binding, must be in a writing specifically referring to the Settlement Agreement and signed by the duly authorized representative of all parties hereto. In the event any material

provision of this Settlement Agreement is not approved and is not in full force and effect, this Settlement Agreement shall be null and void unless the parties agree otherwise in writing.

19. **Notices.** Notices shall be sent by certified mail return receipt requested as follows:

If to Trustee:

Michael S. Devorkin, Esq.
Golenbock Eiseman Assor Bell & Peskoe LLP
437 Madison Avenue
New York, New York 10022

and:

If to the Shefmans:

Marga Shefman
212 North Bay Hills Boulevard
Safety Harbor, Florida 34695

David Shefman
218 North Bay Hills Boulevard
Safety Harbor, Florida 34695

Any party may change its address for purposes of this paragraph upon delivery to the other parties of a written notice of change of address.

20. **Further Assurances**


20.1. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents that the other party may reasonably request in order to carry out the intent and accomplish the purposes of the Settlement Agreement.

20.2. The Parties agree that they negotiated this Agreement at arm's length and in good faith. The Shefmans have had the opportunity to consult with legal counsel of their choice but have expressly determined not to consult with counsel and the Trustee and his counsel had nothing to do with the Shefmans' decision about counsel.


IN WITNESS WHEREOF, the parties hereto execute this Settlement Agreement as of the date indicated above

[Remainder of the page left intentionally blank. Signatures on next page]

The parties hereby execute this Settlement Agreement on the dates indicated below, but shall be effective as of March 16, 2009 (the "Effective Date").


GERARD A. MCHALE, JR., TRUSTEE

Dated: 3/16/09


DAVID B. SHEFMAN

Dated: 3/11/09


MARGA R. SHEFMAN

Dated: 3/11/09

Exhibit 1

Terms of the Approval Order

FINDINGS OF FACT AND CONCLUSIONS OF LAW:¹

Jurisdiction, Final Order and Statutory Predicates

A. The Court has jurisdiction over the motion to approve the Agreement (the "Motion") and the relief requested therein, including responses and objections thereto, if any, pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. This Order constitutes a final and immediately appealable order within the meaning of 28 U.S.C. § 158(a).

C. The predicate for the relief sought in the Motion is Bankruptcy Rule 9019.

Retention of Jurisdiction

D. It is necessary and appropriate for the Court to retain jurisdiction to, among other things, interpret and enforce the terms and provisions of this Order and the Agreement, and to adjudicate, if necessary, any and all disputes arising under or relating in any way to, or affecting, any of the transactions contemplated under the Agreement.

Notice of the Motion

E. The Debtor has provided due and adequate notice of the Motion, the Hearing, the Agreement and the subject matter thereof to all parties in interest pursuant to Bankruptcy Rules 2002 and 6004. Such notice was good and sufficient under the particular circumstances, and no further notice is necessary. Without limiting the generality of the foregoing, adequate notice of the Motion, the Hearing and the Agreement has been provided, and a reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded, to all parties in interest, including without limitation (i) the Official Committee of Unsecured Creditors appointed in this case; (ii) all other entities known to have provided professional liability or theft insurance to the Debtors; (iii) all other Persons, known to the Trustee, which actually or allegedly are insured or claim to be entitled to any rights or benefits under any of the Policies; (iv) the United States Trustee; and (v) all other Persons that, as of the date the Motion was filed, had filed a notice of appearance and demand for service of papers in the Bankruptcy

¹ The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Case or were otherwise listed on the 2002 Service List maintained by the Trustee in the Bankruptcy Case.

The Shefman Claims

F. Pursuant to the Stock Purchase Agreement, the Shefmans sold certain assets of REES to the 1031 Debtors and the Shefmans entered into consulting agreements with one or more of the 1031 Debtors.

G. On behalf of the 1031 Debtors, the Trustee contends he has claims against REES, and/or the Shefmans, and the Shefmans contend they have claims against the 1031 Debtors.

H. The Parties dispute the existence and validity of the claims of the Trustee and the Shefmans.

Sound Business Judgment and Reasonableness

I. The relief requested in the Motion is in the best interests of the Debtors' bankruptcy Estates and the Debtors' creditors. The Trustee has demonstrated good, sufficient and sound business purposes and justifications for the relief requested in the Motion and the approval of the transactions contemplated thereby. The settlement and compromise with the Shefmans embodied in the Agreement is consistent with the reasonable range of litigation outcomes if Debtors were to litigate the matters resolved pursuant to this Order. The Agreement was negotiated in good faith and the consideration and payments to be made thereunder are found to be made for reasonably equivalent value and for fair consideration by and among the Debtors and the Shefmans.

J. The Trustee has demonstrated that the probability of success for the Trustee and the Debtors in litigation over the matters resolved by the Agreement, including litigation over claims for coverage under the Policies, is uncertain; that the litigation of the matters resolved by the Agreement would be complex and costly to the Debtors' bankruptcy Estates; that the entry into the Agreement is consistent with the reasonable range of potential litigation outcomes; and that entry into the Agreement is in the best interests of the Debtors, their bankruptcy Estates and their creditors.

For all of the foregoing and after due deliberation, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

The Motion is GRANTED and APPROVED.

1. The Trustee, on behalf of the Debtors, is authorized and directed to enter into the Agreement and undertake all acts as are necessary to consummate the transactions contemplated by the Agreement in accordance with its terms, and to execute and deliver all documents as may be required to effectuate the transactions contemplated by the Agreement, subject only to the conditions specified herein and in the Agreement.

2. For the reasons set forth herein and on the record at the Hearing, all objections to the Motion and the relief requested therein and/or granted in this Order that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections, are overruled on the merits.

3. Pursuant to Bankruptcy Rule 9019, the settlement and mutual release of claims as set forth in the Agreement are hereby approved as of the Effective Date of the Agreement. This Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing and shall not be stayed under Bankruptcy Rule 6004(g).

4. The Shefmans shall pay the Settlement Amount as set forth in the Agreement pursuant to the terms thereof.

5. This Court shall retain jurisdiction to interpret and enforce the provisions of this Order and the Agreement in all respects, and to adjudicate, if necessary, any and all disputes arising under or relating in any way to, or affecting, any of the transactions contemplated under the Agreement.

It is so ORDERED.

UNITED STATES BANKRUPTCY JUDGE

Exhibit 2

For purposes of this section, (1) the term "Defendant" includes any party now or hereafter named as a defendant by the Class Action or any action brought by the Trustee, and (2) the term "Plaintiff" includes the plaintiffs in the Class Action and the Trustee.

Each of the non-settling Defendants ("Non-Settling Defendants") is hereby permanently barred, enjoined, and restrained from commencing, prosecuting, or asserting any claim for indemnity or contribution against the Shefmans (or any other claim against the Shefmans where the injury to the Non-Settling Defendant is the Non-Settling Defendant's liability to the Plaintiff), arising out of the claims or allegations asserted by the Plaintiff, whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, or third-party claims, in the Class Action, in the Bankruptcy Court, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States, Canada or elsewhere (collectively, the "Barred Claims of Non-Settling Defendants").

The Shefmans are hereby permanently barred, enjoined, and restrained from commencing, prosecuting, or asserting any claim for indemnity or contribution against any person arising out of the claims or allegations by the Plaintiff, whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, or third-party claims, in the Class Action, in the Bankruptcy Court, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States, Canada or elsewhere (collectively, the "Barred Claims of Shefmans").

The recovery of the Plaintiff, if any, on their respective asserted and assertable claims against any Non-Settling Defendants shall be reduced by the amount of the Shefmans' equitable and proportionate share of any joint and several liability, as will be determined later by the Court in the allocation of recoverable costs and damages incurred by that Plaintiff.

EXHIBIT 12

EXHIBIT 12