

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is made by and between the Trustee for The 1031 Tax Group, LLC, and certain related entities as set forth below, on the one hand, and CNA, on the other hand (the Trustee and CNA being referred to jointly hereinafter as the "Parties").

Recitals

WHEREAS:

- A. On May 14, 2007 and June 11, 2007, the Debtors filed in the United States Bankruptcy Court for the Southern District of New York voluntary petitions for relief under chapter 11 of Title 11 of the United States Code.
- B. On October 25, 2007, the Court entered an order appointing the Trustee as trustee for the Debtors, and the Trustee is duly qualified and is authorized to enter into this Agreement, subject to the approval of the Bankruptcy Court.
- C. Some or all of the Debtors were, at the relevant times, "qualified intermediaries" under Section 1031 of the Internal Revenue Code, which permits owners of investment property to defer capital gains taxes in certain circumstances by depositing sales proceeds of an investment property in a qualified intermediary pending timely application of the sales proceeds to the purchase of an identified replacement property.
- D. Edward H. Okun ("Okun") and others allegedly engaged in numerous misappropriations of the funds of the Debtors, including substantial amounts of Exchanger deposits (the "Misappropriations," as defined herein).
- E. CNA issued certain crime insurance policies (the "Policies," as defined herein) under which the Debtors claim to be insured for the Misappropriations.

F. CNA disputes the existence and extent of its obligations, under the Policies or otherwise, to the Debtors, Exchangers, or other creditors of the Debtors, arising out of or relating to the Misappropriations.

G. On or about May 30, 2007, Anita Hunter, on behalf of herself and "all others similarly situated," filed the Class Action, which was amended to assert claims against Lara D. Coleman, Robert D. Field II, J. Patrick Dowdall, Chares D. Subrt, James F. Livesey, Todd R. Pajonas, Marga Shefman, David Shefman, William D. Bennett, the McCabe Group, Janet Dashielle, Steven Allred, Wachovia Bank, NA, Continental Casualty Company, Federal Insurance Company, San Francisco Series of Lockton Companies, LLC, and Twin City Fire Insurance Company.

H. CNA contends that it has valid defenses to the claims asserted and potential claims in the Class Action.

I. The Parties wish to resolve their differences concerning the foregoing matters without resort to further investigation and discovery proceedings involving the Debtors' Claims under the Policies, or expensive and time-consuming litigation, the outcome of which would be uncertain.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

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. The above recitals are fully incorporated within this Agreement.

1.1. Unless otherwise expressly indicated, the definitions below apply to capitalized terms wherever those terms appear in this Agreement, including the prefatory paragraph and recitals above, this Section 1, the sections below, any exhibits hereto. If capitalized terms in the prefatory paragraph and recitals above, the sections below, and any exhibits hereto, are not defined in this Section 1, they have the meanings ascribed to them as set forth in the relevant sections of the Agreement. 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" means "including but not limited to." The word "herein" means the entirety of the Agreement, including any exhibits hereto.

1.2. "Approval Order" means one or more orders of the Bankruptcy Court, which may include the Confirmation Order, approving the terms of the settlement contained in this Agreement, collectively containing language in the form of Exhibit 1 hereto, including any non-material modifications thereto, or other language agreed to by the Parties, and entered by the Bankruptcy Court under and in accordance with Bankruptcy Rule 9019(a). A motion seeking approval of a disclosure statement relating to a Plan which seeks the Approval Order shall constitute a motion seeking the Approval Order.

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, captioned *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, and any other court exercising appellate jurisdiction over said courts.

1.6. “Bankruptcy Court Contribution Order” means one or more orders of the Bankruptcy Court, which may include the Confirmation Order, containing language in the form of Exhibit 2 hereto, including any non-material modifications thereto, or other language agreed to by the Parties, barring and enjoining claims for contribution or indemnification against CNA by “Non-Settling Defendants” as defined in Exhibit 2.

1.7. “Bankruptcy Court Protection Order” means one or more orders of the Bankruptcy Court, which may include the Confirmation Order, permanently enjoining, preventing, and precluding all Exchangers and other creditors of the Debtors from taking any action against CNA or its property and assets, including the Policies, for the purpose of directly or indirectly collecting, recovering, receiving, or asserting any Interests.

1.8. "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, consequential, punitive, exemplary, bad faith, extra-contractual or statutory 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).

1.9. "Class Action" means the class action lawsuit in the United States District Court of the Northern District for California, against Okun and others, captioned *Hunter v. Okun*, et al., Case No. 5:07-CV-02795-JW, and should that action be transferred to another court, also means that action by whatever title or style it may have in the transferee court. Class Action also means any other class action filed in any jurisdiction on behalf of a class of Exchangers.

1.10. "Class Action Bar Order" means one or more orders entered pursuant to Rule 23, F.R.Civ.P., by the Class Action Court (a) binding every Exchanger, including those who are members of a certified class in the Class Action Court, (b) approving and incorporating the Exchanger Release, (c) barring and enjoining claims for contribution or indemnification against CNA by Non-Settling Defendants as defined and in the form of Exhibit 2, including any non-material modifications thereto and (d) barring and enjoining all Exchangers from prosecuting any Interests against CNA.

1.11. "Class Action Court" means the United States District Court for the Northern District of California, any Court presiding over Exchangers asserting Interests by order of the United States Judicial Panel on Multidistrict Litigation, or any other court of competent jurisdiction presiding over a putative or certified class of Exchangers asserting Interests.

1.12. "Class Action Good Faith Order" means an order of any court of competent jurisdiction finding the settlement of the Class Action to be in good faith pursuant to California Code of Civil Procedure § 877.6 or, to the extent the Class Action is transferred to or filed in another state, pursuant to an equivalent provision, if any, of applicable law.

1.13. "Class Representative" means Anita Hunter or any other representative of a certified or putative class of Exchangers asserting Interests in a Class Action Court.

1.14. "CNA" means Continental Casualty Company and Continental Insurance Company, and their past, present and future predecessors, successors, subsidiaries, parents, affiliates, divisions, partnerships, joint ventures and assigns, solely in their capacities as such.

1.15. "Confirmation Order" means an order of the Bankruptcy Court that has become a Final Order confirming a Plan.

1.16. "Debtors" means all of the debtors in the Bankruptcy Case, and their successors and assigns.

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

1.18. "Exchanger" means every Person that (a) has asserted or may or could assert a Claim against one or more of the Debtors in the Bankruptcy Case or otherwise which 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 Schedules filed by a 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 capacities as "qualified intermediaries" pursuant to Section 1031 of the Internal Revenue Code.

"Exchangers" includes the Class Representatives and the individuals and entities within the putative class in the Class Action.

1.19. "Exchanger Release" means an irrevocable, non-avoidable and complete release of all Interests by each of the Exchangers, which may be obtained by operation of the Class Action Bar Order.

1.20. "Execution Date" means the earliest date on which both of the Parties have executed and delivered this Agreement. This Agreement shall be deemed delivered when the last Party sends an executed copy of this Agreement by electronic mail or overnight delivery in accordance with Section 10.

1.21. "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 and withdrawn in accordance with the applicable rules of the court.

1.22. "Interests" means any Claim, lien, encumbrance, or interest of any kind or nature based upon, arising out of, derived from, or attributable to, directly or indirectly, the Policies or the insurance relationship, or any purported representations allegedly made by CNA or acquiesced to by CNA with respect to the Policies, the evidence of insurance documents referred to in the complaint in the Class Action, or the investigation, consideration, handling or adjustment of Claims made to CNA under the Policies.

1.23. "Misappropriations" means all actual or alleged dishonest, fraudulent, or improper thefts, use, withdrawals, or transfers of funds by Okun and others from one or more Debtors, or allegedly from one or more Exchangers.

1.24. "Okun Entities" means Okun's interests in the entities that are described in the transfer agreement between the Debtors and Edward H. Okun dated October 11, 2007.

1.25. "Other Insurer Settlements" means the settlement agreements, if any, reached between the Trustee, on the one hand, and each of Federal Insurance Company ("Federal") and Twin City Insurance Company ("Twin City"), on the other hand, fully and finally resolving the obligations of Federal or Twin City, as the case may be, to the Debtors for the Misappropriations and relating to the policies issued by Twin City and Federal that are set forth in the proofs of losses filed by the Trustee.

1.26. "Payment Release Date" means seven (7) business days after the Trustee shall no longer have any right to declare the Agreement null and void and the requirements set forth in Section 2.1 of this Agreement have been met.

1.27. "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, instrumentality thereof or any other legal entity that could sue or be sued.

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

1.29. "Policies" means the insurance policies set forth on Exhibit 3 hereto that were issued by CNA and under which one or more Debtors is insured.

1.30. "Settlement Amount" means the sum of thirteen million dollars (\$13,000,000), plus any and all interest earned on such thirteen million dollars (\$13,000,000) from the date it is paid to the Trustee as set forth in Section 4.1 below through the date that it is released to the Trustee for the benefit of the Debtors' Estates pursuant to Section 4.2 below or to CNA pursuant to Section 4.2 below.

1.31. "Tolled Obligations and Deadlines" means (1) any and all obligations as between the Parties under or with respect to the Policies to provide information, documents, or testimony pursuant to or in connection with any subpoena, obligation to "cooperate," obligation to provide or respond to proof(s) of loss(es), and any and all similar obligations, (2) any and all obligations to provide or respond to proof(s) of loss(es) and any and all similar obligations, and (3) any and all deadlines and statutes of limitations that arise from or relate to the foregoing or the Policies.

1.32. "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. **Payment Release Date And Void Ab Initio Provisions**

2.1. Provided that the Agreement is not null and void pursuant to Section 2.2 below, the Payment Release Date shall occur seven (7) days after the Approval Order has been entered and has become a Final Order and each of the following events have occurred:

- (a) the Class Action Bar Order has been entered and has become a Final Order, or CNA was entitled to declare the Agreement null and void pursuant to Section 2.2(c) and did not do so; and
- (b) the Class Action Good Faith Order has been entered and has become a Final Order, or CNA was entitled to declare the Agreement null and void pursuant to Section 2.2(c) and did not do so; and
- (c) the Bankruptcy Court Contribution Order has been entered and has become a Final Order or CNA was entitled to declare the Agreement null and void pursuant to Section 2.2(c) and did not do so; and
- (d) the Trustee and each of Federal and Twin City have entered Other Insurer Settlement Agreements, the Bankruptcy Court has entered orders approving such Other Insurer Settlement Agreements, and such orders have become Final Orders.

2.2. This Agreement, except for Sections 4 (other than 4.3), 9 and 10, shall become null and void ab initio and of no further force or effect ("null and void"):

- (a) upon the date that an order of the Bankruptcy Court refusing to enter the Approval Order becomes a Final Order; or
- (b) in either Party's sole discretion, if one year has passed from the date that the motion seeking the Approval Order was filed by the Trustee, and either of the following is true:
 - (i) the Bankruptcy Court has not ruled on the motion for entry of the Bankruptcy Court Contribution Order; or

(ii) the Class Action court has not ruled on the motion for entry of any class action bar order; or

(c) in CNA's sole discretion, if any of the following occur, and CNA provides notice to the Trustee declaring the Agreement null and void within thirty days of the following:

(i) one or more Exchangers has opted out of the Class Action settlement and has not otherwise agreed to be bound by the Class Action Bar Order on the date that is the later of sixty (60) days after the deadline set by the Class Action Court for opting out of the class action settlement or five (5) days prior to the fairness hearing set by the Class Action Court in connection with the settlement of the Class Action; or

(ii) the Bankruptcy Court has entered an order that does not approve the Bankruptcy Court Contribution Order, and such order has become a Final Order; or

(iii) the Class Action Court has entered an order refusing to enter the Class Action Good Faith Order, and such order has become a Final Order; or

(iv) the Class Action Court has entered an order refusing to enter any class action bar order, and such order has become a Final Order.

(d) in the Trustee's sole discretion, if the Bankruptcy Court has entered orders that do not approve one or more of the Other Insurer Settlement Agreements and such orders have become Final Orders, or either of the other Insurer Settlement Agreements has become null and void pursuant to its terms. The Trustee must declare this Agreement null and void within 30 days of the date that either of such orders become Final Orders or such Other Insurer Settlement Agreement becomes null and void.

2.3. Notice declaring this Agreement null and void pursuant to Section 2.2 (b), (c), and (d) shall be provided by written notice pursuant to Section 10 below. If this Agreement becomes null and void pursuant to Section 2.2, then, except for Sections 4 (other than 4.3), 9 and 10, which shall not be null and void and shall remain in full force and effect, the Parties shall have all of the rights, defenses, and obligations under or with respect to the Policies that they would have had absent this Agreement, and the Tolloed Obligations and Deadlines will be tolled as set

forth in Section 9.3 below.

3. **Protections and Stand-down**

3.1. No later than 120 days after the Execution Date, or at such other time as the Bankruptcy Court may direct, the Trustee shall file a motion for the entry of the Approval Order. The Trustee shall provide a draft of such motion to CNA two (2) business days in advance of such filing. The Trustee shall seek: (i) entry of the Approval Order, (ii) entry of the Bankruptcy Court Contribution Order and (iii) entry of the Bankruptcy Court Protection Order, all as Final Orders. The Trustee shall provide CNA's counsel with a proposed draft of the Class Action Bar Order prior to the filing of a motion for entry of the Class Action Bar Order. The Trustee will cooperate with counsel for the Exchangers in the Class Action in seeking the entry of the Class Action Bar Order as a Final Order. CNA will cooperate with the Trustee to obtain entry of all of the foregoing Final Orders. For avoidance of doubt, the Trustee may seek the foregoing Final Orders at any time, including prior to or in conjunction with the Confirmation Order or in multiple orders.

3.2. From and after the Execution Date, the Trustee, in his sole discretion, may disclose that he has entered into this Agreement (and the terms thereof), and CNA, in its sole discretion, may disclose that it has entered in this Agreement (and the terms thereof) solely to its auditors and reinsurers, solely in their capacities as such. From and after the filing of the motion to obtain entry of the Approval Order by the Trustee, or the filing of the motion for the approval of the settlement of the Class Action, the Parties may disclose that they have entered into this Agreement (and the terms thereof).

3.3. From and after the Execution Date, and provided that the Trustee timely complies with his obligations under this Agreement, CNA shall not (a) pursue or prosecute any Claims, objections, motions, briefs, discovery requests, or pleadings in the Bankruptcy Court in or with respect to the Bankruptcy Case or the Policies; or (b) otherwise participate in the Bankruptcy Case (except to enforce or obtain relief under this Agreement); provided, however, that, notwithstanding the foregoing Sections 3.3(a) or (b), CNA shall fulfill its obligations under Section 3.1 above and shall have the right to make filings and appearances in connection with the Trustee's efforts pursuant to Section 3.1 above. Nothing in this Agreement shall bar CNA from taking any appropriate action to defend itself in any action or from asserting in the Bankruptcy Court that any action against CNA that the Trustee does not move to stay pursuant to Section 3.5 below is subject to the automatic stay in the Bankruptcy Case.

3.4. No later than fourteen (14) days after the Execution Date, the Trustee shall file a motion seeking a stay of the Class Action, or any class action brought by Exchangers pursuing Interests in a Class Action Court ("Other Class Action"), with respect to any and all claims against CNA, or, alternatively, obtain the consent of each of the Class Representatives to an order staying the Class Action or Other Class Action as against CNA until either the Payment Release Date occurs or this Agreement becomes null and void pursuant to Section 2.2; whichever is earlier. Such stay shall not extend to prevent the seeking of the Class Action Bar Order or any other such order or disposition necessary to the fulfillment of this Agreement.

3.5. In the event that any additional litigation is commenced against CNA prior to the later of the Payment Release Date or the date on which the Confirmation Order becomes a Final Order, that relates to the Policies or CNA's relationship with the Debtors, the Trustee shall,

within thirty (30) days of receiving notice of such litigation from CNA, move to stay such additional litigation.

3.6. If subpoenaed by either the Class Action counsel or the Trustee in any action related to the Misappropriations by either of them against any "Non-Settling Defendant" as defined in Exhibit 2, CNA shall, on behalf of any Testifying Employee (as defined below), waive any objection to providing live testimony at trial on the basis that the location of such testimony is more than 100 miles from the business or residence of the Testifying Employee (and regardless of whether such employees have also previously been deposed), but shall retain the right to object on any other basis. "Testifying Employees" shall include Lori Davern, Robert Hennelly, James Striniste, Lisa Ferrell, Kevin Donahoe, to the extent employed by CNA at the time of the testimony, and any other current CNA employee who performed in a similar capacity in connection with insurance policies issued to policyholders that are "qualified intermediaries" under Section 1031 of the Internal Revenue Code. The requesting party shall provide reasonable notice of request for attendance at trial and pay the reasonable travel and lodging expenses of the Testifying Employee in connection with any testimony requested pursuant to this Section 3.6. Any claimed breach of this Section 3.6 may be enforced by the Class Action Court or the Bankruptcy Court, but shall not constitute cause to invalidate or terminate this Agreement. Nothing in this Section 3.6 shall limit or extinguish any right to discovery that the Trustee or counsel in the Class Action would otherwise have under applicable law.

4. **Payment and Release of Settlement Amount**

4.1. No later than twenty-one (21) days after the Execution Date, CNA shall pay the

Settlement Amount to the Trustee, which shall be held in trust and in escrow. The Trustee shall, within five (5) business days invest the Settlement Amount in securities backed by the United States Treasury, which Settlement Amount shall be segregated from any other settlement and the assets of the Estates, pending its release of the Settlement Amount pursuant to Section 4.2. At CNA's reasonable request, the Trustee will provide an accounting of the Settlement Amount during the period it is held by the Trustee pursuant to this Section 4.1. The Settlement Amount shall not become property of the Debtors' Estates or property of CNA during the period prior to the Payment Release Date.

4.2. The Settlement Amount (including any earnings thereon and less any customary expenses of any depository or financial institution or tax liabilities ("Expenses") or investment losses ("Losses") incurred in connection with holding the Settlement Amount) shall be released to the Trustee for the benefit of the Debtors' Estates immediately upon the Payment Release Date. If this Agreement becomes null and void pursuant to Section 2.2 above, the Trustee shall release the Settlement Amount (including any earnings thereon and less any expenses or losses incurred in connection with holding the Settlement Amount) to CNA immediately upon receipt of notice as set forth in Section 2.2 above. Any Expenses incurred in connection with holding the Settlement Amount shall be paid out of the Settlement Amount and CNA shall be provided with an accounting of any expenses paid prior to the Payment Release Date at CNA's reasonable request.

4.3. CNA shall not seek reimbursement of the Settlement Amount or any part thereof, directly or indirectly, from any Person, including the Trustee, the Debtors, any non-Party insurers of the Debtors, or any other Person, whether by way of a Claim for contribution,

indemnification, subrogation, retrospective premium, deductible, or otherwise, to the extent that other Person has agreed not to seek, or is enjoined or prevented by order of a court from seeking same; provided that nothing in this Section 4.3 shall preclude CNA from seeking reimbursement of such amounts from its reinsurers, solely in their capacities as such.

4.4. The releases provided and orders entered pursuant to this Agreement shall be effective regardless of any Losses or diminution in value of the Settlement Amount while being held by the Trustee pursuant to Section 4.1, or whether or not the Trustee disburses any portion of the Settlement Amount to the Estate or Exchangers in the Bankruptcy Case, or whether or not any portion of the Settlement Amount is disbursed to the Exchangers in the Class Action Court.

4.5. The Parties acknowledge and agree that the Settlement Amount represents a compromise of all alleged damages, including lost exchange funds, tax liabilities, attorneys' fees, pre-judgment interest and other consequential damages.

5. Termination of Policy Rights and Releases.

5.1. From and after the Payment Release Date, and without further action by any Party, the Trustee, on behalf of himself and each of the Debtors' Estates and the Okun Entities, shall fully, finally, and completely release and waive any and all Claims and Interests of the Trustee, the Debtors or their Estates, and the Okun Entities against CNA arising in the Bankruptcy Case or arising out of or in connection with the Policies, including any and all such direct and derivative Claims and Interests the Trustee is legally entitled to release.

5.2. From and after the Payment Release Date, and without further action by any

Party, CNA shall fully, finally, and completely release and waive any and all Claims against any of the Debtors, the Trustee, the Okun Entities or the Estates arising in the Bankruptcy Case or arising out of or in connection with the Policies, including any and all such direct and derivative Claims that CNA is legally entitled to release.

5.3. The Parties mutually warrant and covenant not to sue one another or assign any rights in connection with the Claims released in Sections 5.1 and 5.2 above.

5.4. Upon occurrence of the Payment Release Date in accordance with the terms of this Agreement, and without further action by any Party, the limits of liability of the Policies shall be deemed fully and properly exhausted for all purposes.

5.5. 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.

5.6. Nothing in this Agreement is intended to, or shall, release or waive the Parties' rights and obligations under this Agreement.

5.7. Nothing in this Agreement shall constitute a release, waiver, or assignment of any of (a) CNA's rights against their reinsurers in their capacities as such, (b) the Trustee's or the Debtors' rights against any Person other than CNA, or against any other insurer (including Twin City or Federal) or (c) the Trustee's or the Debtors' rights with respect to any insurance policy other than the Policies.

5.8. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall waive any right, obligation, privilege, defense, or position that the Parties may have asserted or might assert in connection with any Claim, matter, Person, or insurance policy outside the scope of this Agreement.

6. Allocation of Settlement Amount

6.1. Each of the Parties shall be entitled to allocate the Settlement Amount among the Policies in any manner it sees fit. Such allocation shall not bind the other Party or in any way affect the Parties' rights or obligations under this Agreement.

7. Representations and Warranties of the Parties

7.1. Each of the Parties separately represents and warrants that it has the requisite power and authority to enter into this Agreement and to perform the obligations imposed on it by this Agreement, subject in the Trustee's case to the entry of the Approval Order.

7.2. Each of the Parties separately represents and warrants that the execution and delivery of, and the performance of the obligations contemplated by, this Agreement has been approved by duly authorized representatives of the Party, subject in the Trustee's case to the

entry of the Approval Order.

7.3. Each of the Parties separately represents and warrants that the Party has expressly authorized its undersigned representative to execute this Agreement on the Party's behalf as its duly authorized agent, subject in the Trustee's case to the entry of the Approval Order.

7.4. Each of the Parties separately represents and warrants that this Agreement has been thoroughly negotiated and analyzed by its counsel and has been executed and delivered in good faith, pursuant to arms'-length negotiations, and for good and valuable consideration.

8. **Entire Agreement.** This Agreement (and exhibits hereto) constitutes a single integrated written contract that expresses the entire agreement and understanding between the Parties with respect to matters that are the subject of this Agreement. Except as otherwise expressly provided, this Agreement supersedes all prior communications, settlements, and understandings between the Parties and their representatives regarding the matters addressed by this Agreement. Except as explicitly set forth in this Agreement, there are no representations, warranties, promises, statements, or inducements, whether oral, written, expressed, or implied, that in any way affect or condition the validity of this Agreement or alter or supplement its terms. Any representations, warranties, promises, statements, or inducements, whether made by any Party or any agents of any Party, that are not contained in this Agreement shall not be valid or binding. If the facts or law related to the subject matter of this Agreement are found hereafter to be other than is now believed by any of the Parties, then each of them expressly accepts and assumes the risk of such possible difference of fact or law and agrees that this Agreement nonetheless shall be and remain effective according to its terms.

9. No Admissions by Parties.

9.1. This Agreement represents a compromise of disputed Claims and, except as necessary to enforce any undertakings set forth in this Agreement, this Agreement shall not be deemed an admission or concession by any Party with respect to any factual or legal contention or position; nothing contained in this Agreement shall be deemed an admission by CNA that the Trustee or any Debtor was or is entitled to any insurance coverage with respect to any Claim or as to the validity of any of the coverage positions that have been or could have been asserted by the Trustee or any Debtor; and nothing contained in this Agreement shall be deemed an admission by the Trustee or any Debtor as to the validity of any of the coverage positions or defenses to coverage that have been or could have been asserted by CNA or any other insurer.

9.2. The Parties agree that, in the event this Agreement becomes null and void pursuant to Section 2.2, no statement made by or on behalf of any of them (including their counsel) in connection with the Trustee's efforts, or CNA's cooperation with its efforts, to confirm a Plan (including in the Disclosure Statement), to obtain entry of the Approval Order, the Bankruptcy Court Protection Order, the Bankruptcy Court Contribution Order, the Class Action Bar Order, or any other approval order, protection order, contribution order, or class action bar order in connection with any Other Insurer Settlement Agreement, whether or not such statements would otherwise be confidential, shall be used by any Party or Person in any future proceeding for any purpose, including as a purported admission or concession with respect to any factual or legal contention or position or as to the validity of any of the coverage positions that have been or could have been asserted by the Trustee, CNA, or any Debtor, any insurer of a Debtor, or any other Person.

9.3. Notwithstanding anything in this Agreement to the contrary, any and all Tolloed Obligations and Deadlines shall be tolled for the period from September 17, 2008, through the Payment Release Date or the date eight (8) weeks after this Agreement becomes null and void pursuant to Section 2.2, whichever is earlier (the "Tolling Period"). In the event this Agreement becomes null and void pursuant to Section 2.2, each Party shall respond to any outstanding requests for information or documents from the other Party within three (3) weeks of the date on which this Agreement becomes null and void by either providing such information or documents or access to the same or informing the other Party in writing that it will not do so. The Trustee shall have no obligation to seek or obtain CNA's consent to or approval of any settlement entered into during the Tolling Period, and CNA shall not assert that the Trustee's entry into any settlement during the tolling period constitutes a breach of any obligation of the Trustee under or in connection with the Policies or any other right of CNA; provided, however, that notwithstanding the foregoing, CNA retains all rights it may have to assert that the amount and financial terms (but not the fact) of any settlement entered into by the Trustee during the tolling period that affects CNA's subrogation rights is not reasonable and that CNA has been prejudiced thereby, and the Trustee retains his rights to oppose any such assertion..

9.4. 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, or in either Party's sole discretion to establish in either the Bankruptcy Court of the Class Action Court that such

settlement negotiations were in good faith, arms'-length, and non-collusive, 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 or by order of any court of competent jurisdiction.

10. **Notice.** Any and all statements, communications, or notices to be provided pursuant to this Agreement shall be in writing and sent by electronic mail or overnight delivery service. Such notices shall be sent to the individuals listed below, or to such other individuals as the respective party may designate in writing from time to time:

For CNA:

Michael P. Warnick, Esq.
Senior Vice President, General Counsel, Claims
CNA Center
333 South Wabash - 43rd Floor
Chicago, IL 60604
(t) 312.222.8219
(f) 312.755.3088
michael.warnick@cna.com

with a copy to:

Jack Gerstein, Esq.
Troutman Sanders LLP
401 9th Street, N. W.
Suite 1000
Washington, DC 20004-2134
(t) 202.662.2009
(f) 202.654.5814
jack.gerstein@troutmansanders.com

and a copy to:

Eileen King Bower, Esq.
Troutman Sanders LLP

55 West Monroe Street
Suite 3000
Chicago IL 60603-5758
(t) 312.759.1924
(f) 312.759.1939
eileen.bower@troutmansanders.com

For the Debtors:

Michael S. Devorkin, Esq.
Golenbock Eiseman Assor Bell & Peskoe LLP
35th Floor
437 Madison Avenue
New York, N.Y. 10022

with a copy to:

Richard Shore, Esq.
Gilbert Oshinsky LLP
1100 New York Avenue, NW
Suite 700
Washington, DC 20005

11. Dispute Resolution.

11.1. The Parties agree that before resorting to litigation they will attempt to resolve informally any disputes arising under this Agreement through good faith negotiations for a period of sixty (60) days after written notification of such dispute.

11.2. The Parties agree to submit all disputes relating to the enforcement of this Agreement to the jurisdiction of the Bankruptcy Court. If the Bankruptcy Court refuses to exercise jurisdiction over any such dispute, the Parties may submit such dispute to any court of competent jurisdiction. The foregoing shall not constitute a general consent, waiver, estoppel, or agreement by CNA to otherwise submit itself to the jurisdiction of the Bankruptcy Court for any dispute relating to the Policies.

12. Miscellaneous.

12.1. Each Party agrees to take such steps and to execute any documents as may be reasonably necessary or proper to effectuate the purpose and intent of this Agreement and to preserve its validity and enforceability. In the event that any action or proceeding of any type whatsoever is commenced or prosecuted by any Person not a Party hereto to invalidate, interpret, or prevent the validity, enforcement, or carrying out of all or any of the provisions of this Agreement, the Parties mutually agree, represent, warrant, and covenant to cooperate fully in opposing such action or proceeding.

12.2. The Parties agree that they negotiated this Agreement at arm's-length and in good faith, with each Party receiving advice from independent legal counsel, and that no part of this Agreement should be construed against a particular Party because of the identity of the drafter.

12.3. Titles and captions contained in this Agreement are inserted only as a matter of convenience and are for reference purposes only. Such titles and captions in no way are intended to define, limit, expand, or describe the scope of this Agreement, nor the intent of any provision thereof.

12.4. This Agreement cannot be amended, altered, or modified except by a written agreement duly executed by each then-existing Party or its successors or assigns.

12.5. This Agreement may be executed in counterpart originals, all of which, when so executed and taken together, shall be deemed an original and all of which shall constitute one and the same instrument. 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.

Signatures Are On The Following Page

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) indicated below.

**GERARD A. MCHALE, JR., SOLELY IN HIS CAPACITY AS
CHAPTER 11 BANKRUPTCY TRUSTEE FOR THE 1031 TAX
GROUP, LLC, ET AL.**

Name: Gerard A. McHale, Jr.
Gerard A. McHale, Jr., Trustee

Date: 2/23/09

CNA (as defined herein):

By:

Name: _____
Title: _____

Date: _____

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. The foregoing shall not constitute a general consent, waiver, estoppel, or agreement by CNA to otherwise submit itself to the jurisdiction of the Bankruptcy Court for any dispute relating to the Policies.

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) the United States Trustee; and (iii) all other Persons that, as of the date the Motion was filed, had filed a notice of appearance and demand for service of

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.

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

The Insurance Coverage Claims

F. CNA issued, subscribed to, or is otherwise responsible for the Policies, under which the Debtors claim to be insured for the Misappropriations.

G. The Parties dispute the existence and extent of CNA's obligations to the Debtors under the Policies for the Misappropriations.

Sound Business Judgment and Reasonableness

H. 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 CNA embodied in the Agreement are 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 CNA.

I. 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. CNA 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. The foregoing shall not constitute a general consent, waiver, estoppel, or agreement by CNA to otherwise submit itself to the jurisdiction of the Bankruptcy Court for any dispute relating to the Policies.

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 CNA (or any other claim against CNA 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").

CNA is 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 CNA"); provided that nothing herein shall preclude CNA from seeking reimbursements of any amounts paid in settlement of such claims or allegations by the Plaintiffs from its reinsurers, solely in their capacities as such.

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 CNA's equitable and proportionate share of any joint and several liability, as will be determined later by the Court in the allocation of recoverable damages or costs incurred by that Plaintiff.

This order is vacated and becomes null and void in the event either Party declares the Agreement null and void pursuant to the terms of the Agreement.

Exhibit 3

NAMED INSURED	INSURER	POLICY TYPE / NUMBER	POLICY PERIOD
Investment Exchange Group, LLC	Continental Insurance Company	Commercial Crime No. 268024755	8/15/2005- 8/15/2006
National Intermediary, Ltd.; National Exchange Service QI Ltd.; National Exchange Accommodators, LLC, et al.	Continental Insurance Company	Commercial Crime No. 268024531	8/15/2005- 8/15/2006
Real Estate Exchange Services, Inc.	Continental Insurance Company	Commercial Crime No. 268024335	8/15/2005- 8/15/2006
Atlantic Exchange Company, LLC	Continental Insurance Company	Commercial Crime No. 268026103	8/15/2005- 8/15/2006
Investment Exchange Group, LLC	Continental Casualty Company	Crime Pack No. 268024755	8/15/2006- 8/15/2007 (cancelled 11/6/06)
Real Estate Exchange Services, Inc.	Continental Casualty Company	Crime Pack No. 268024335	8/15/2006- 8/15/2007 (cancelled 11/6/06)
1031 Advance Inc.	Continental Casualty Company	Crime Pack No. 287014434	8/15/2006- 8/15/2007
1031 Tax Group, LLC (originally issued to Security 1031 Services; through a series of endorsements, 1031 became the named insured)	Continental Casualty Company	Crime Pack No. 268117856	8/15/2006- 8/15/2007
1031 Advance Inc.	Continental Casualty Company	Crime Pack No. 287014434	3/31/2006- 8/15/2006
Security 1031 Services, Inc.; SOS1031 Holdings, Inc.	Continental Insurance Company	Commercial Crime No. 268117856	8/15/2005- 8/15/2006