

**SETTLEMENT AGREEMENT AND RELEASE  
WITH TWIN CITY FIRE INSURANCE COMPANY**

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is made by and between the Trustee for The 1031 Tax Group, LLC, et al. and certain related entities as set forth below, on the one hand, and Twin City, on the other hand, 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 has 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. Twin City issued a certain excess insurance policy (the "Policy," as defined herein) under which one or more of the Debtors claim to be insured for the Misappropriations.

F. Twin City disputes the existence and extent of its obligations, if any, under the Policy 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. Pajonás, 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. Twin City 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 Policy, 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. 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 and any documents incorporated herein by reference. 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 Twin City 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 Twin City or its property and assets, including the Policy, 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 any 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 as a member of the certified class in the Class Action, (b) approving the Exchanger Release, and (c) barring and enjoining all Exchangers from prosecuting any Interests against Twin City.

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

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

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

1.17. "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 a Class Action Court.

1.18. "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.

1.19. "Execution Date" means the earliest date on which both of the Parties have executed and delivered this Agreement.

1.20. "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.

1.21. "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 Policy, the insurance relationship, actual or alleged, arising out of the Policy, any purported representations allegedly made by Twin City or acquiesced to by Twin City with respect to the Policy, the evidence of insurance documents referred to in the Class Action complaint, as amended, or the investigation, consideration, handling or adjustment of Claims made to Twin City under the Policy.

1.22. "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.

1.23. "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.

1.24. "Other Insurer Settlements" means the settlement agreements, if any, reached between the Trustee, on the one hand, and each of Continental Insurance Company ("CNA") and Federal Insurance Company ("Federal"), on the other hand, fully and finally resolving the obligations of CNA or Federal, as the case may be, to the Debtors for the Misappropriations.

1.25. "Payment Release Date" means seven (7) business days after the requirements set forth in Section 2.1 of this Agreement have been met.

1.26. "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.

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

1.28. "Policy" means Twin City Universal Excess Policy No. FA 0241088-07 issued for policy period February 21, 2007 to August 15, 2007, and under which one or more Debtors is insured, including all endorsements thereto.

1.29. "Settlement Amount" means the sum of three million two hundred and fifty thousand dollars (\$3,250,000), plus any and all interest earned on such three million two hundred

and fifty thousand dollars (\$3,250,000) 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 Twin City pursuant to Section 4.2 below.

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

1.31. "Twin City" means Twin City Fire Insurance Company, and its parents, subsidiaries, affiliates, predecessors, successors, and assigns, solely in their capacities as such.

## 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 a Party 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 a Party 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 a Party 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 CNA and Federal 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 the 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 Twin City's sole discretion, provided that Twin City provides notice to the Trustee declaring the Agreement null and void within thirty (30) days after any of the following occur:

(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 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 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 order has become a Final Order, or if 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 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 September 17, 2008 through the date that is eight (8) weeks after this Agreement becomes null and void.

**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 Twin City two (2) business days in advance of such filing. The Trustee shall seek entry of the: (i) Approval Order, (ii) Bankruptcy Court Contribution Order, and (iii) Bankruptcy Court Protection Order. The Trustee will cooperate with counsel for the Exchangers in the Class Action in seeking the entry of the Class Action Bar Order and the Class Action Good Faith Order. Twin City will cooperate with the Trustee to obtain entry of all of the foregoing orders. For avoidance of doubt, the Trustee may seek the foregoing 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 Twin City in its sole

discretion, may disclose that it has entered into this Agreement (and the terms thereof) 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 to the Bankruptcy Court, the Class Action Court and publicly 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, Twin City 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 Policy; 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), Twin City 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 Twin City from taking any appropriate action to defend itself in any action against it, or from asserting in the Bankruptcy Court that any action against Twin City 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. The Trustee and Twin City agree to cooperate in seeking an order from the Class Action Court staying the prosecution of the Class Action and discovery with respect to any and all Claims against Twin City until either this Agreement becomes null and void pursuant to Section 2.2 or a class action bar order is entered; provided, however, that any such stay shall not extend to prevent seeking the Class Action Bar Order or such other order or disposition

necessary to the fulfillment of this Agreement.

3.5. In the event that any additional litigation other than the Class Action is commenced against Twin City prior to the later of the Payment Release Date or the day on which the Confirmation Order becomes a Final Order, that relates to the Policy or Twin City's relationship with the Debtors, the Trustee shall, within thirty (30) days of receiving notice of such litigation from Twin City, move to stay such additional litigation.

3.6. If subpoenaed by either the Class Action counsel or the Trustee, Twin City shall reasonably cooperate with the Class Action counsel or the Trustee in any insurance-related action by either of them against the San Francisco Series of Lockton Companies, LLC, in producing for testimony any current employee of Twin City who was involved in underwriting or issuing the Policy or handling Claims under the Policy. Twin City shall not object to any such subpoena on the ground that (a) an employee sought for trial testimony already has testified at a deposition, or (b) the location of such proposed testimony is more than 100 miles from the business or residence of the employee, but Twin City shall have and retain the right to object on any other ground. The requesting Party shall pay the reasonable travel and lodging expenses of the 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, Twin City shall pay the Settlement Amount to the Trustee, which shall be held in trust and 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 from the assets of the Estates, pending its release pursuant to Section 4.2. At Twin City'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 Twin City 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 any 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 Twin City promptly upon receipt of written 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, at Twin City's reasonable request, Twin City shall be provided with an accounting of any expenses paid prior to the Payment Release Date.

4.3. Twin City 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, any such reimbursement from Twin City; provided that nothing in this Section 4.3 shall preclude Twin City 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 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 such Settlement Amount is disbursed to the Exchangers in the Class Action or Class Action Court.

4.5. The Parties acknowledge and agree that the settlement amounts hereunder represent a compromise of all alleged damages, including lost exchange funds, tax liabilities, attorneys' fees, and any 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, their Estates and the Okun Entities against Twin City arising in the

Bankruptcy Case, or arising or which could arise out of or in connection with the Policy, including any and all such direct and derivative Claims the Trustee is legally entitled to release.

5.2. From and after the Payment Release Date, and without further action by any Party, Twin City 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 or which could arise out of or in connection with the Policy, including any and all such direct and derivative Claims Twin City is legally entitled to release.

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

5.4. Upon the 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 Policy shall be deemed fully and properly exhausted by payment 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, waive, or otherwise affect 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) Twin City's rights against their reinsurers in their capacities as such, (b) the Trustee's or the Debtors' rights against any Person other than Twin City or against any other insurer (including CNA or Federal), or (c) the Trustee's or the Debtors' rights with respect to any insurance policy other than the Policy.

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 to the Policy 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 Settlement 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 Settlement 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 Twin City 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 Twin City 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 by their counsel) in connection with the Trustee's efforts, or Twin City's cooperation with its efforts, to confirm a Plan (including in the disclosure statement), or 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 sought 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, Twin City, or any Debtor, any insurer of a Debtor, or any other Person.

9.3. 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 or 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 pursuant to an 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 Twin City:

William J. Bowman, Esq.  
Hogan & Hartson LLP

555 Thirteenth Street, NW  
Washington, D.C. 20004

with a copy to:

Carol A. Pisano, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter LLP  
88 Pine Street  
Wall Street Plaza  
New York, New York 10005

For the Debtors:

Michael S. Devorkin, Esq.  
Golenbock Eiseman Assor Bell & Peskoe LLP  
35<sup>th</sup> 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 Twin City to otherwise submit itself to the jurisdiction of the Bankruptcy Court for

any dispute relating to the Policy.

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 arms'-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.

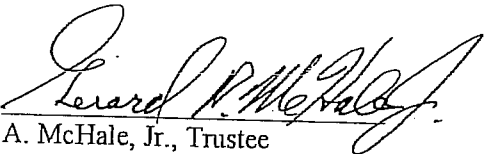
**Signatures Are On The Following Page**

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.

By:

Name:

  
Gerard A. McHale, Jr., Trustee

Date:

2/23/09

TWIN CITY FIRE INSURANCE COMPANY

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date:

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,

By:

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

Date:

TWIN CITY FIRE INSURANCE COMPANY

By: *Christopher D. Butte*

Name: *CSG* \_\_\_\_\_  
Title: *AVP-Claim*

Date: *2/23/09*

**Exhibit 1**  
**Terms of the Approval Order**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>1</sup>**

**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 Twin City Fire Insurance Company to otherwise submit itself to the jurisdiction of the Bankruptcy Court for any dispute relating to the Policy set forth in 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) 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

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<sup>1</sup> 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. Twin City issued the Policy, under which the Debtors claim to be insured for the Misappropriations.

G. The Parties dispute the existence and extent of Twin City's obligations to the Debtors under the Policy 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 Twin City 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 Twin City.

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 Policy, 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. Twin City 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 Twin City Insurance Company to otherwise submit itself to the jurisdiction of the Bankruptcy Court for any dispute relating to the Policy set forth in the Agreement.

It is so ORDERED.

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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 in 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 Twin City (or any other claim against Twin City 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 Class Action Court, 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").

Twin City 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 Twin City"); provided that nothing herein shall preclude Twin City from seeking reimbursement 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 Twin City's equitable and proportionate share of any joint, several, vicarious or other liability, as will be determined later by the Court in the allocation of recoverable damages or costs incurred by that Plaintiff.