

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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

**SETTLEMENT AGREEMENT**

This settlement and release agreement (the "Settlement Agreement") is made as of September 24, 2008, by and among (i) Gerard A. McHale, Jr. (the "Trustee"), chapter 11 trustee for the captioned debtors (the "1031 Debtors");<sup>1</sup> and (ii) Daniel E. McCabe, Shirley L. McCabe, Andrew C. McCabe, Chad J. Greenberg and J. Peter McCann (the "McCabe Group").

**RECITALS**

WHEREAS, on May 14, 2007 and June 11, 2007, the 1031 Debtors filed with the Bankruptcy Court for the Southern District of New York voluntary petitions for relief under chapter 11 of title 11 of the United States Code;

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

---

<sup>1</sup> The "1031 Debtors" means The 1031 Tax Group, LLC; 1031 Advance 132 LLC; 1031 Advance, Inc.; 1031 TG Oak Harbor LLC; Atlantic Exchange Company, Inc.; Atlantic Exchange Company LLC; Investment Exchange Group, LLC; National Exchange Accommodators, LLC; National Exchange Services QI, Ltd.; NRC 1031, LLC; Real Estate Exchange Services, Inc.; Rutherford Investment LLC; Security 1031 Services, LLC; Shamrock Holdings Group, LLC; and AEC Exchange Company LLC.

WHEREAS, prior to August 4, 2006, the McCabe Group, collectively, owned most or all of the membership interests in Investment Exchange Group, LLC, a Colorado limited liability company, Shamrock Holdings Group, LLC, a Colorado limited liability company and Rutherford Investment, LLC, a Colorado limited liability company (collectively, "IXG"). The McCabe Group's membership interests in IXG shall hereafter be referred to as the "IXG Ownership";

WHEREAS, on or about August 4, 2006, pursuant to a Purchase and Sale Agreement, the McCabe Group sold the IXG Ownership to The 1031 Tax Group, LLC in consideration of a payment of \$9,000,000, of which \$7,000,000 was paid at closing, with an additional \$1,000,000 to be paid on each of the first and second anniversary of the closing, with interest thereon to be paid monthly;

WHEREAS, following the closing of the Purchase and Sale Agreement, the McCabe Group remained at IXG as employees of The 1031 Tax Group, LLC. Contemporaneous with the closing of the Purchase and Sale Agreement, Daniel E. McCabe, Andrew C. McCabe, Chad J. Greenberg and J. Peter McCann executed Employment Agreements with The 1031 Tax Group, LLC;

WHEREAS, the 1031 Debtors filed for bankruptcy prior to the first anniversary of the closing of the Purchase and Sale Agreement and therefore, the McCabe Group never received the remaining consideration due to them (\$2,000,000 plus interest) under the Purchase and Sale Agreement;

WHEREAS, on August 24, 2007, the McCabe Group timely filed proofs of claim against the estates of the 1031 Debtors for amounts due to them pursuant to the Purchase and Sale Agreement, their individual Employment Agreements, unpaid wages and unreimbursed expenses in the following amounts, respectively: (i) Daniel E. McCabe: \$2,934,134.71; (ii) Shirley L.

McCabe: \$3,288.70; (iii) Andrew C. McCabe: \$54,054.30; (iv) Chad J. Greenberg: \$34,718.91; and (v) J. Peter McCann: \$28,957.48 (collectively, the "Proofs of Claim");

WHEREAS, the Trustee and his counsel have been conducting an investigation of the assets, liabilities and affairs of the 1031 Debtors, including any potential claims against third parties including members of the McCabe Group, as well as any potential claims creditors of the 1031 Debtors may have against the McCabe Group, and any potential claims any member of the McCabe Group may have against the 1031 Debtors;

WHEREAS, as a result of such investigation, the Trustee has concluded that potential claims exist against the McCabe Group and one or more of the 1031 Debtors;

WHEREAS, the McCabe Group believes that it has valid defenses to potential claims the Trustee may assert against it or members of the group individually;

WHEREAS, on November 14, 2007, Sergio S. Alvarez and others filed a lawsuit against the McCabe Group and others in the District Court, City and County of Denver, State of Colorado ("Alvarez Matter") based on the McCabe Group's actions while employed by The 1031 Tax Group, LLC;

WHEREAS, on January 1, 2008, Ward Enterprises, LLC filed a substantially similar lawsuit against the McCabe Group, Reverse Lending Group, LLC and others in the District Court, City and County of Denver, State of Colorado ("Ward Matter");

WHEREAS, the Alvarez and Ward Matters have been consolidated into one action which is now pending in the District Court, City and County of Denver, State of Colorado as Alvarez, et al. v. McCabe, et al., Case No. 07-CV-11495;

WHEREAS, on or about May 30, 2007, Anita Hunter, on behalf of herself and "all others similarly situated," filed a class action lawsuit in the United States District Court for the

Northern District of California against Edward H. Okun and others, captioned Hunter v. Okun, et al., Case No. 5:07-CV-02795-JW (the "Hunter Class Action"); and, on September 11, 2008, Ms. Hunter moved to amend the class action lawsuit to assert claims against Lara D. Coleman, Robert D. Field II, J. Patrick Dowdall, Charles, D. Subrt, James, F. Livesey, Todd R. Pajonas, Marga Shefman, David Shefman, William D. Bennett, the McCabe Group, Janet Dashielle, Steven Allred, Wachovia Bank, N.A., Continental Casualty Company, Federal Insurance Corporation, San Francisco Series of Lockton Companies, LLC, and Twin City Fire Insurance Company;

WHEREAS, on or about September 12, 2008, MSN Properties, LLC and others filed a complaint in the District Court, City and County of Denver, State of Colorado against the McCabe Group, Reverse Lending Group, LLC and others, captioned MSN Properties, LLC, et al. v. McCabe, et al., Case No. 2008CV8144 (the "MSN Properties Matter");

WHEREAS, the McCabe Group believes that it has valid defenses to the claims and potential claims asserted in the Alvarez Matter, Ward Matter, Hunter Class Action and MSN Properties Matter (collectively, the "Pending Litigation");

WHEREAS, to the best of the parties' respective knowledge, other than the potential claims the Trustee may assert and the Pending Litigation disclosed herein, there is no other litigation or proceeding or governmental investigation pending against any member of the McCabe Group;

WHEREAS, certain insurance carriers (the "Carriers") issued the following Errors and Omissions Policies (the "E&O Policies") to certain of the 1031 Debtors: (1) policy number 0707-00066896C, with policy limits of \$1,000,000; (2) policy number 0706-00061771C, with policy

limits of \$1,000,000; (3) policy number 0707-000673002C, with policy limits of \$500,0000; and (4) policy number 0707-00071264C, with policy limits of \$1,000,000;

WHEREAS, on January 2, 2008, based on the filing of the Alvarez and Ward Matters, the McCabe Group filed a claim for payment (the "Coverage Claim") under the E&O Policies, policy number 0707-000673002C, and the Trustee has objected to that claim;

WHEREAS, the McCabe Group may, based on the filing of the Hunter Class Action and MSN Properties Matter have claims for payment under the E&O Policies, policy number 0707-000673002C;

WHEREAS, the McCabe Group contends that it may also have a claim under one or more of the remaining E&O Policies, numbers 0707-00066896C, 0706-00061771C, and 0707-00071264C;

WHEREAS, the 1031 Debtors are insureds under the E&O Policies and have made claims under the E&O Policies and the Trustee has objected to the claims of the McCabe Group under the E&O Policies;

WHEREAS, other possible insureds under the E&O Policies have made claims under the E&O Policies, to which the Trustee has objected;

WHEREAS, the Carriers have not yet taken a position regarding coverage under the E&O Policies and to date have not paid any of these claims;

WHEREAS, the parties hereto believe that the continued investigation of possible claims of the Trustee or of creditors of the 1031 Debtors or of plaintiffs in other related litigation against the McCabe Group and the defenses thereto, the possible claims of the McCabe Group against the 1031 Debtors in this action or other related litigation already pending or which may be later filed, the validity and extent of the claims asserted in the Proofs of Claim, and of the disputes

concerning the E&O Policies will be complex and expensive, and that the likelihood of ultimate success on the merits cannot be predicted with certainty;

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

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

#### THE AGREEMENT

1. Payment of the Settlement Amount: The McCabe Group shall pay a total of \$1,250,000 to the Trustee, on behalf of the estates of the 1031 Debtors (this sum, plus interest earned thereon, shall hereafter be referred to as the "Settlement Amount") on the following terms:

(a) Simultaneously with the execution of this Settlement Agreement, the McCabe Group shall deposit the Settlement Amount into an interest bearing, money market account to be held in escrow by Burns Figa & Will, P.C. ("BFW"), attorneys for the McCabe Group, under the terms hereof. In the event that the Settlement Amount is not deposited in accordance with the foregoing within one day of execution of this Settlement Agreement, the Settlement Agreement shall immediately become, and thereupon be, null, void and of no further force or effect.

(b) The Settlement Amount will be distributed as follows: (i) to the Trustee within ten (10) days of entry of the Final Injunction Order (as defined in Paragraphs 4 and 5) or

(ii) to the McCabe Group if either the Stay Order (defined in Paragraph 3) is not granted within sixty (60) days of the execution of this Settlement Agreement, the Final Approval Order (defined in Paragraphs 2 and 5), or the Final Injunction Order (defined in Paragraphs 4 and 5) is not entered.

2. Approval Order: Promptly upon execution of this Settlement Agreement by all parties hereto, the Trustee will file a motion in the Bankruptcy Court, pursuant to Bankruptcy Rule 9019, to obtain an order of the Bankruptcy Court (the "Approval Order") approving this Settlement Agreement.

3. Stay Order: Simultaneously with or immediately following the Trustee's motion in the Bankruptcy Court seeking an Approval Order of this Settlement Agreement, the Trustee will at his discretion either (a) file a motion in (i) the Bankruptcy Court, or (ii) the court where each Pending Litigation resides, for, or (b) obtain the consent of each of the plaintiffs in the Pending Litigation to, an order staying the Pending Litigation as against the McCabe Group and Reverse Lending Group, LLC (the "Stay Order"), until adjudication of the Final Injunction Order. So long as the Stay Order remains in effect until adjudication of the Final Injunction Order, however achieved, the Trustee shall be deemed in compliance with this Paragraph 3 and Paragraph 1(b) hereof. If any other litigation ("Additional Litigation") is commenced against any member of the McCabe Group, Reverse Lending Group, LLC, the McCabe Family, LLLP, or any entity now or ever owned by the McCabe Group relating to claims involving in any way the conduct of the McCabe Group concerning IXG, the 1031 Debtors, or otherwise related to The 1031 Tax Group, LLC, et al., the Trustee, within thirty (30) days after notification to the Trustee's counsel of the service of process in any Additional Litigation on any member of the McCabe Group, will obtain, either by motion or consent, a Stay Order with respect to such

Additional Litigation. Notwithstanding the foregoing sentence, the Trustee shall have no obligation to seek a Stay Order regarding any litigation or disputes between or among members of the McCabe Group or litigation wholly unrelated to the McCabe Group's ownership of or employment by IXG and/or the 1031 Debtors and the handling of or loss of client exchange funds. The Trustee's obligations hereunder with respect to a Stay Order are conditions that must be satisfied prior to a distribution to the Trustee under Paragraph 1(b) hereof and are not covenants by the Trustee.

4. Injunction Order: On or before one (1) year of the date that the Bankruptcy Court enters the Approval Order, the Trustee shall file a motion in the Bankruptcy Court, pursuant to Sections 105(a) and 363 of the Bankruptcy Code, for an order of the Bankruptcy Court, *inter alia*, permanently staying, restraining and enjoining all persons who have held or asserted, who hold or assert, or who may in the future hold or assert any claim against any of the McCabe Group, Reverse Lending Group, LLC, McCabe Family, LLLP, or any entity now or ever owned by the McCabe Group based upon, arising out of, derived from or attributable to the McCabe Group's involvement with IXG, the 1031 Debtors, or otherwise related to The 1031 Tax Group, et al. (the "Injunction Order"). Notwithstanding the foregoing sentence, the Trustee shall have no obligation to seek an Injunction Order regarding any litigation or disputes between or among members of the McCabe Group or litigation wholly unrelated to the McCabe Group's ownership of or employment by IXG and/or the 1031 Debtors and the handling of or loss of client exchange funds. Trustee's obligations hereunder with respect to the Injunction Order are conditions that must be satisfied prior to a distribution to the Trustee under Paragraph 1(b) hereof and are not covenants by the Trustee.

5. Final Orders: This Settlement Agreement and the consummation of the transactions contemplated hereby are subject to approval by the United States Bankruptcy Court for the Southern District of New York, upon motion by the Trustee pursuant to F.R.Bankr.P. 9019(a). It shall be binding upon the parties upon the entry of an Approval Order. The Approval Order and the Injunction Order shall become a final order upon either (i) the expiration of the time within which, pursuant to F.R.Bankr.P. 8002, appeal may be taken from such Order of said Court, no party in interest having appealed from the Order; or (ii) in the event of the timely filing of a notice of appeal, the entry of an Order on appeal, pursuant to F.R.Bankr.P. 8013, affirming the granting of the Approval Order or the Injunction Order, as the case may be, and the expiration of the time within which appeal, if any, may be taken from such Order on appeal (respectively, the "Final Approval Order", and the "Final Injunction Order").

6. Conditions Subsequent: In the event that (i) the Trustee fails to obtain the Stay Order within sixty (60) days of the execution of this Settlement Agreement, (ii) the motion for the Approval Order is denied by a Final Order, (iii) the Trustee fails to file a timely motion required by Paragraph 4, or (iv) the motion for the Injunction Order is denied by a Final Order, then the McCabe Group shall, within sixty (60) days of the occurrence of any of such events, have the option to notify the Trustee and BFW in writing that the McCabe Group is exercising this option to terminate this Settlement Agreement and obtain the return of the Settlement Amount. Upon receipt of such notification, this Settlement Agreement shall terminate, BFW shall return the Settlement Amount to the McCabe Group, and the parties shall return to *status quo ante*, reserving all rights, claims and defenses, except as specifically provided herein, and in that event, the McCabe Group specifically reserves its rights and claims against the E&O Policies. If the McCabe Group does not timely exercise its option to terminate, the option shall

expire and the conditions shall be deemed satisfied. The right to terminate the Settlement Agreement shall be exercised only by Daniel E. McCabe, acting on behalf of the McCabe Group, and time is of the essence. However, in the event, for whatever reasons, Daniel E. McCabe is unavailable, Shirley L. McCabe shall have the authority to act on behalf of the McCabe Group. In the event that neither Daniel E. McCabe nor Shirley L. McCabe is available, Andrew C. McCabe is authorized to act on behalf of the McCabe Group. The McCabe Group and each member thereof waives any contest or dispute regarding the authority of the parties designated above to so act.

7. Non-Compete Agreement: Upon entry of a Final Injunction Order, the Trustee shall be deemed to have released, without any further action required, the McCabe Group from any non-compete agreements to which both they and any of the 1031 Debtors are parties in connection with their employment with the 1031 Debtors.

8. Releases and Claims: Effective upon entry of the Final Injunction Order,

(a) Each member of the McCabe Group shall dismiss all filed and scheduled claims against the Trustee and the 1031 Debtors with prejudice, and such claims shall be deemed dismissed with prejudice;

(b) Each member of the McCabe Group forever releases and discharges the Trustee and the 1031 Debtors, and their parents, subsidiaries, affiliates, successors, assigns, members, shareholders, officers, directors, employees, agents, attorneys, licensors, licensees, and customers and all those in privity with any one or more of them from the Proofs of Claim, and from all claims, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims, and demands whatsoever, in law

or in equity, which either party ever had against the other, now has or hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever relating to the claims asserted by the McCabe Group or anything else related to The 1031 Tax Group LLC, et al.

(c) Each member of the McCabe Group irrevocably assigns to the Trustee the Coverage Claims, and each and every claim each may have under the E&O Policies and any other insurance policies of any kind.

(d) The Trustee, for himself and on behalf of all the 1031 Debtors, forever releases and discharges the McCabe Group, Reverse Lending Group, LLC, McCabe Family, LLLP and any other entity now or ever owned by the McCabe Group, and their parents, subsidiaries, affiliates, successors and assigns from all claims, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims, and demands whatsoever, in law or in equity, which now has or hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever relating to the claims asserted by the Trustee or anything else related to the The 1031 Tax Group LLC, et al.

9. Third Party Claims: Nothing in this Settlement Agreement, including the releases contained herein, constitutes a release of any claims that the Trustee acting on behalf of the 1031 Debtors may have against third parties (other than the McCabe Group, Reverse Lending Group, LLC, McCabe Family, LLLP and any other entity now or ever owned by the McCabe Group).

10. Admission of Liability: The parties each acknowledge that this Settlement Agreement is a compromise of a disputed claim, and is not to be construed as an admission of liability by either party.

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

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

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

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

(d) The terms of this Settlement Agreement are contractual and not merely a recital.

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

12. Neutral Construction of the Settlement Agreement: This Settlement Agreement shall not be construed against the party preparing it, but shall be construed as if both

parties jointly prepared it and any uncertainty or ambiguity shall not be interpreted against any party.

13. Agreement Binding on Successors: The terms and conditions of this Settlement Agreement shall be binding on the parties hereto and their heirs, successors and assigns.

14. Choice of Law: The validity, construction and enforcement of this Settlement Agreement shall be governed by the law of the State of Colorado without regard to choice of law principles. If legal action is initiated relative to this Settlement Agreement or rights or obligations of the parties thereunder, the parties hereto stipulate that such action must be initiated, maintained and continued in the Bankruptcy Court.

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

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

17. Counterpart Signatures: This Settlement Agreement may be signed in counterparts, each of which taken together shall constitute an original.

18. Entire Agreement and Integration: This Settlement Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof. Except as expressly provided in this Settlement Agreement, this Settlement Agreement is the final written expression and complete and exclusive statement of all the agreements, conditions, promises and covenants among the parties with respect to the specific subject matter hereof, and supersedes all

prior or contemporaneous agreements, negotiations, representations, understanding and discussions among the parties and/or their respective counsel with respect the subject matter covered hereby. Any amendment or modification of this Settlement Agreement, in order to be legally binding, must be in a writing specifically referring to the Settlement Agreement and signed by the duly authorized representative of all parties hereto. In the event any material provision of this Settlement Agreement is not approved and is not in full force and effect, this Settlement Agreement shall be null and void unless the parties agree otherwise in writing.

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

If to Trustee:

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

and:

If to the McCabe Group:

Michael J. Norton, Esq.  
Jennifer M. Osgood, Esq.  
Burns Figa & Will, P.C.  
6400 S. Fiddler's Green Circle  
Plaza Tower One, Suite 1000  
Greenwood Village, CO 80111

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

20. Further Assurances: Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other

agreements, certificates, instruments and documents that the other party may reasonably request in order to carry out the intent and accomplish the purposes of the Settlement Agreement.

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

GERARD A. MCHALE, JR. TRUSTEE  
By: *Gerard A. Mchale, Jr.*  
Dated: 9/29/08

DANIEL E. MCCABE  
By: *D McCabe*  
Dated: 9-29-08

SHIRLEY L. MCCABE  
By: *Shirley L. McCabe*  
Dated: 9.24.08

ANDREW C. MCCABE  
By: *Andrew C. McCabe*  
Dated: 9/21/08

CHAD J. GREENBERG  
By: \_\_\_\_\_  
Dated: \_\_\_\_\_

J. PETER MCCANN  
By: \_\_\_\_\_  
Dated: \_\_\_\_\_

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

GERARD A. MCHALE, JR. TRUSTEE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

DANIEL E. MCCABE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

SHIRLEY L. MCCABE

By: \_\_\_\_\_

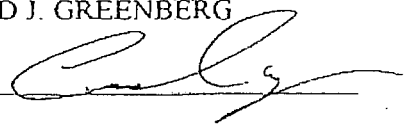
Dated: \_\_\_\_\_

ANDREW C. MCCABE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

CHAD J. GREENBERG

By: 

Dated: 9-24-08

J. PETER MCCANN

By: \_\_\_\_\_

Dated: \_\_\_\_\_

agreements, certificates, instruments and documents that the other party may reasonably request in order to carry out the intent and accomplish the purposes of the Settlement Agreement.

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

GERARD A. MCHALE, JR. TRUSTEE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

DANIEL E. MCCABE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

SHIRLEY L. MCCABE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

ANDREW C. MCCABE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

CHAD J. GREENBERG

By: \_\_\_\_\_

Dated: \_\_\_\_\_

J. PETER MCCANN

By: J. Peter McCann

Dated: 9/24/2008

AMENDMENT 1

In exchange for mutual consideration, the sufficiency of which is hereby acknowledged, the Settlement Agreement and Release made by and among Gerard A. McHale, Jr., solely in his capacity as Chapter 11 Bankruptcy Trustee for The 1031 Tax Group, LLC and related debtors (the "Debtors") and the McCabe Group, executed as of September 24, 2008, ("Settlement Agreement"), is hereby amended as follows.<sup>1</sup>

1. All references to "Reverse Lending Group, LLC" are deleted.

2. The phrase "or any entity now or ever owned by the McCabe Group" in Paragraphs 3, 4, 8(d), and 9 of the Settlement Agreement is deleted.

3. The following is added as Paragraph 1(c):

"The McCabe Group may withdraw and use up to \$50,000 from the Settlement Amount to the extent necessary to pay bills for reasonable legal fees and expenses incurred hereafter to defend Reverse Lending Group, LLC ("Reverse Lending") in the Pending Litigation or in Additional Litigation brought against Reverse Lending on similar claims ("Defense Fees"). BFW must provide written notice to the Trustee of the request for Defense Fees and copies of each legal bill. If the Trustee does not serve on the McCabe Group a written objection to the payment of the Defense Fees within ten (10) days of receipt of the request, BFW may release the funds. Any objections by the Trustee to the Defense Fees will be submitted to the Bankruptcy Court for resolution, and

---

<sup>1</sup> All terms used herein shall have the same meaning as defined in the Settlement Agreement.

if the Bankruptcy Court does not hear the matter, the parties agree to submit the matter to arbitration in Colorado before a single arbitrator. To the extent that the McCabe Group prevails in any dispute over Defense Fees, the McCabe Group is entitled to withdraw against the above \$50,000 their reasonable attorney fees and costs expended in the fee dispute, which amount shall be determined by the court or arbitrator as appropriate. In no event shall the total withdrawals from the Settlement Amount exceed \$50,000.

[The remainder of this page was intentionally left blank.]

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

GERARD A. MCHALE, JR. TRUSTEE

By: *Gerard A. McHale, Jr.*

Dated: 1/25/08

DANIEL E. MCCABE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

SHIRLEY L. MCCABE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

ANDREW C. MCCABE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

CHAD J. GREENBERG

By: \_\_\_\_\_

Dated: \_\_\_\_\_

J. PETER MCCANN

By: \_\_\_\_\_

Dated: \_\_\_\_\_

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

GERARD A. MCHALE, JR. TRUSTEE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

DANIEL E. MCCABE

By: *[Signature]*

Dated: 11-25-08

SHIRLEY L. MCCABE

By: *[Signature]*

Dated: 11.25.08

ANDREW C. MCCABE

By: *[Signature]*

Dated: 11-25-08

CHAD J. GREENBERG

By: \_\_\_\_\_

Dated: \_\_\_\_\_

J. PETER MCCANN

By: \_\_\_\_\_

Dated: \_\_\_\_\_

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

GERARD A. MCHALE, JR. TRUSTEE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

DANIEL E. MCCABE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

SHIRLEY L. MCCABE

By: \_\_\_\_\_


Dated: \_\_\_\_\_

ANDREW C. MCCABE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

CHAD J. GREENBERG

By:  \_\_\_\_\_

Dated: 11-26-03

J. PETER MCCANN

By: \_\_\_\_\_

Dated: \_\_\_\_\_

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

GERARD A. MCHALE, JR. TRUSTEE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

DANIEL E. MCCABE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

SHIRLEY L. MCCABE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

ANDREW C. MCCABE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

CHAD J. GREENBERG

By: \_\_\_\_\_

Dated: \_\_\_\_\_

J. PETER MCCANN

By: *J. Peter McCann*

Dated: *11/25/2008*

**AMENDMENT 2 TO AGREEMENT  
BETWEEN TRUSTEE AND THE MCCABE GROUP**

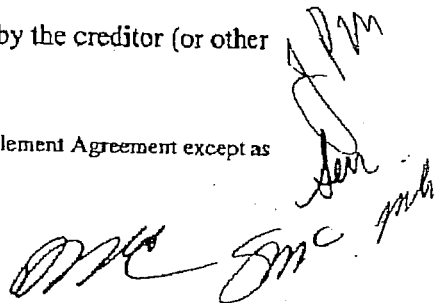
In exchange for mutual consideration, the sufficiency of which are hereby acknowledged, the Settlement Agreement and Release made by and among Gerard A. McHale, Jr., solely in his capacity as Chapter 11 Bankruptcy Trustee for The 1031 Tax Group, LLC and related debtors (the "Debtors") and the McCabe Group, executed as of September 24, 2008, ("Settlement Agreement"), amended on or about November 26, 2008, is hereby amended as follows.<sup>1</sup>

**DEFINITIONS**

1.1. "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, a limited liability limited 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 and each of their successors and/or assigns.

1.2. "Exchanger" means every Person that (a) has asserted, or could have asserted, or may assert a claim against one or more of the Debtors in the Bankruptcy Case or otherwise arising out of or relating to a deposit of funds with one or more Debtors in their capacity as "qualified intermediaries" pursuant to Section 1031 of the Internal Revenue Code, or (b) is listed as a creditor on any Schedule filed by any Debtor with the Bankruptcy Court as a result of the deposit of funds by the creditor (or other

<sup>1</sup> All terms used herein shall have the same meaning as defined in the Settlement Agreement except as specifically amended herein.



Handwritten signatures and initials at the bottom right of the page, including a large signature that appears to be 'JPM' and other initials like 'SMC' and 'mhb'.

party affiliated with the creditor) with one or more Debtors in their capacity as "qualified intermediaries" pursuant to Section 1031 of the Internal Revenue Code, or (c) has asserted, or could have asserted, or may assert a Claim against any of the McCabe Group, McCabe Family, LLP, or any entity now or ever owned by the McCabe Group, arising out of or relating to a deposit of funds on or after the McCabe Group's sale of IXG to The 1031 Tax Group, LLC, made to or maintained by one or more Debtors in their capacity as "qualified intermediaries" pursuant to Section 1031 of the Internal Revenue Code.

"Exchangers" include the class representatives and the Persons included within the putative class in the Hunter Class Action.

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

1.4. "Class Action" shall mean the Hunter Class Action or any other court of competent jurisdiction presiding over a certified class of Exchangers, including the Hunter Class Action.

Handwritten signatures and initials, including what appears to be 'DMK', 'SMF', and 'J/M'.

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

1.6. "Final Order" shall include a "Final Order as defined in the Settlement Agreement and any 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.

**TERMS**

1. The Trustee's obligation under paragraph 4 of the Settlement Agreement shall be fully satisfied if prior to one year after the date the Bankruptcy Court enters the Approval Order, the Trustee obtains entry of an order of the United States District Court in the Class Action ("Class Action Order"), which becomes a final order, permanently staying, restraining and enjoining each Exchanger who has held or asserted, who holds or asserts, or who may in the future hold or assert any claim against any of the McCabe Group, McCabe Family, LLLP, or any entity now or ever owned by the McCabe Group based upon, arising out of, derived from or attributable to the McCabe Group's involvement with IXG, the 1031 Debtors, or otherwise related to The 1031 Tax Group, *et al.*

2. The Class Action Order and either the Approval Order, or the Injunction Order shall (a) find that the Settlement Agreement is in good faith, and (b) contain language substantially similar in form and substance to Exhibit I hereto, or as otherwise agreed by the Parties.

3. The Class Action Order shall also constitute the Injunction Order required in the Settlement Agreement.

4. 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 actual and consequential damages.

5. The McCabe Group shall provide reasonable cooperation to the Trustee in his investigation of the assets and liabilities of the 1031 Debtors' estates. At the request of either the Class Action counsel or the Trustee and upon reasonable advance notice, the McCabe Group shall appear and testify at deposition in Colorado and at trial in the Hunter Class Action at the place of the Class Action Court and the Bankruptcy Court, provided that the requesting party pays in advance the reasonable travel and lodging expenses of doing so. This obligation to appear at trial shall be in addition to appearing for deposition. Nothing in this Section shall limit or extinguish any right to discovery that the Trustee or counsel in the Class Action would otherwise have under applicable law.

*[Handwritten signatures and initials]*

6. At the sole discretion of the McCabe Group, to be exercised as provided by Section 6 of the Settlement Agreement, the McCabe Group may declare the Agreement null and void within thirty (30) days after any of the following occur:

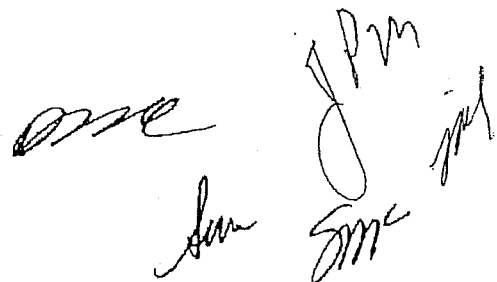
- (a) one or more Exchangers has opted out of the Class Action settlement and has not otherwise agreed to be bound by the Class Action Order, on the date that is the later of sixty (60) days after the deadline set by the Class Action Court for opting out of the class action settlement, or five (5) days prior to the fairness hearing set by the Class Action Court in connection with the Class Action; or
- (b) the Bankruptcy Court has entered an order that does not approve the terms of Exhibit 1, and such order has become a Final Order.

7. If the Settlement Agreement become null and void pursuant to Section 6 above, (a) the Parties shall return to the status quo ante, which includes the immediate return of the Settlement Amount to the McCabe Group, (b) the McCabe Group reserves its rights and claims against the E & O Policies, and (c) any and all otherwise applicable statute of limitations or repose, or other time-related deadlines or limitations pertaining to the McCabe Group, shall be deemed to have been tolled by virtue of this Agreement for the period from the execution date of the Settlement Agreement through the date that is ten days after the Settlement Agreement becomes null and void. If the

Handwritten signatures and initials, including a large signature at the top, and initials 'msh', 'Jen', and 'DM' below.

McCabe Group does not timely exercise its option to terminate, the option shall expire and the conditions shall be deemed satisfied.

[Signatures on next page]



Handwritten signatures and initials, including "one", "JPM", "one", and "JPM".

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

GERARD A. MCHALE, JR. TRUSTEE

By: *Gerard A. McHale, Jr.*

Dated: 2/23/09

DANIEL E. MCCABE

By: *[Signature]*

Dated: 2-20-09

SHIRLEY L. MCCABE

By: *[Signature]*

Dated: 2.20.09

ANDREW C. MCCABE

By: *[Signature]*

Dated: 2.20.09

CHAD J. GREENBERG

By: \_\_\_\_\_

Dated: \_\_\_\_\_

J. PETER MCCANN

By: *[Signature]*

Dated: 2/20/2009

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

GERARD A. MCHALE, JR. TRUSTEE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_

DANIEL E. MCCABE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

SHIRLEY L. MCCABE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

ANDREW C. MCCABE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

CHAD J. GREENBERG

By: 

Dated: 2-20-09

J. PETER MCCANN

By: \_\_\_\_\_

Dated: \_\_\_\_\_

**Exhibit 1 to McCabe Amendment 2**

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

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

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

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 McCabe

*[Handwritten signatures and initials]*

Group, McCabe Family, LLLP, and any entity now or ever owned by the McCabe Group equitable and proportionate share of any joint and several liability, as will be determined later by the Court in the allocation of recoverable costs and damages incurred by that Plaintiff.

*Handwritten signature and initials*