

Anita Hunter, et al.,  
Plaintiffs,  
v.  
Citibank, N.A.,  
Defendants.

Case No.: 09-cv-02079 JW

**SETTLEMENT AGREEMENT  
BETWEEN PLAINTIFFS AND THE  
CORDELL DEFENDANTS FOR WAVE  
IV IN SETTLEMENTS**

Case Filed: May 12, 2009

Judge: Hon. James Ware

Putative Class Representatives Anita Hunter, Johnna Bozzo (also known as Johnna Bozza), Celltex Site Services, Ltd., Grande Investment, LLC, Quirk Infiniti, Inc., Michael Whitton, and Sadi Suhweil (collectively, the "Class Representatives"), on behalf of themselves and the putative Class in the action captioned *Hunter, et al. v. Citibank, NA., et al.*, No. 09-CV-02079-JW (N.D. Cal.), and the "Cordell Defendants"<sup>1</sup> (collectively referred to as the "Parties"), enter into this stipulation and agreement of settlement (the "Agreement" or "Settlement Agreement"). This Agreement is intended by the Parties hereto to fully, finally, completely, and unconditionally compromise, resolve, forever discharge, release, acquit, waive, dismiss with prejudice and settle the Released Claims (as defined herein), subject to the terms and conditions set forth below and final approval by the Class Action Court (as defined herein). Gerard A. McHale, Jr., as Trustee for The 1031 Debtors Liquidation Trust (the "1031 Trust"), as successor to The 1031 Tax Group, LLC, *et al.* (the "1031 Debtors"),<sup>2</sup> has no objection to the settlement and consents to serving as Trustee of the Qualified Settlement Fund

---

<sup>1</sup> The Cordell Defendants include: CORDELL FUNDING, LLLP, a Florida Limited Liability Limited Partnership; CORDELL CONSULTANTS, INC., a New York Corporation; CORDELL MONEY PURCHASE PLAN, a QUALIFIED RETIREMENT PLAN TRUST; CORDELL CONSULTANTS, NEW YORK, LLC, a New York Limited Liability Company; ROBIN RODRIGUEZ, an individual and such other Cordell entities controlled by Robin Rodriguez (collectively, the "Wave IV Settling Defendants").

<sup>2</sup> The 1031 Debtors are one of the following Qualified Intermediaries in the Class Action and in the action entitled, *The 1031 Tax Group, LLC, et al.*, United States Bankruptcy Court for the Southern District of New York, Case No. 07-11448 (MG) and all related bankruptcy cases (the "Bankruptcy Cases"), which are: 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 (also known as National Exchange Accommodations, 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.

("QSF") for the deposit, retention, and disbursement of the settlement funds.

WHEREAS:

A. In May 2009, the Class Representatives filed *Hunter, et al. v. Citibank, N.A., et al.*, Case No. 09-CV -02079 (the " Class Litigation") in the United States District Court for the Northern District of California (the "Class Action Court"), against the Cordell Defendants, among other defendants. The Class Litigation is related to two other putative class actions that certain of the Class Representatives filed in May 2007 and November 2008 that do not name the Cordell Defendants as defendants: *Hunter, et al. v. Okun, et al.*, No. 07-CV-02795 (N.D. Cal.) and *Quirk Infiniti, Inc. v. Wachovia Bank, N.A.*, No. 08-CV-12060 (D. Mass.). The Class Representatives are seeking to proceed as a Class (as defined below) on behalf of themselves and all others similarly situated, including approximately 400 people located in various states each of whom allegedly lost substantial money (allegedly over \$150,000,000 combined) entrusted to certain intermediaries to facilitate their respective Internal Revenue Code Section 1031 exchanges.<sup>3</sup> This would be for settlement purposes only.

B. On May 14, 2007, all of the 1031 Debtors, except one,<sup>4</sup> filed with the Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. By Order of the Bankruptcy Court dated October 22, 2007, the 1031 Debtors' cases are being jointly administered as *In re The 1031 Tax Group, LLC, et al.*, No. 07-11448 (MG) (Bankr. S.D.N.Y.) (the "Bankruptcy Case").

C. On October 25, 2007, the Bankruptcy Court entered an Order appointing Gerard A. McHale Jr. as Chapter 11 Trustee (the "Chapter 11 Trustee") for the 1031 Debtors.

D. On or about January 20, 2009, the Trustee and the Class Representatives entered into

---

<sup>3</sup> The recitals in Paragraphs A-H are based on the representations of Class Counsel.

<sup>4</sup> One of the 1031 Debtors, AEC Exchange Company, LLC, subsequently filed its petition on June 11, 2007.

an agreement concerning the prosecution of claims by the Trustee and by the Class Representatives (as later amended, the "Class-Trustee Agreement"). The Class-Trustee Agreement provides for the sharing of recoveries between the Class and the Trustee, but specifically excludes the sharing of recoveries obtained by the Class from the Cordell Defendants.

E. On October 7, 2009, the Bankruptcy Court entered an Order which confirmed a Plan of Reorganization for the 1031 Debtors (the "Plan"), creating the 1031 Trust, which took title to all of the assets of the estates of the 1031 Debtors, and appointed Gerard A. McHale, Jr., as the Liquidation Trustee.

F. The Trustee commenced adversary proceedings against some of the Cordell Defendants in which he asserted various claims relating to some of the matters described above in the Class Litigation (the "Trustee's Claims"). The Trustee subsequently entered into a settlement agreement with those Cordell Defendants (hereinafter, the "Trustee/Cordell Settlement Agreement"). The Trustee does not object to this Settlement Agreement between the Cordell Defendants and the Class. The Trustee consents to serving as Trustee of the Qualified Settlement Funds ("QSF") for the deposit, retention and disbursement of the Settlement Funds, with no further duties or obligations, with payment of expenses and compensation on the same terms and conditions as he has served in that capacity for the Class.

G. The Cordell Defendants deny any wrongdoing, fault, liability, negligence, breach of duty, or damage to any member of the Class arising out of the Class Litigation. The Cordell Defendants further state that they believe that: (i) they acted properly at all times; and (ii) the claims asserted against them in the Class Litigation and any other Released Claims are without merit. The Cordell Defendants, by entering into this Settlement Agreement, do not concede the merit of any claims or the lack of merit of any defense to liability.

H. The Parties wish, on the terms set forth herein, to resolve their differences concerning

the foregoing matters without resort to further expensive and time-consuming litigation, the outcome of which would be uncertain. This Agreement shall not be construed or deemed to be a concession by Class Representatives of any infirmity in the Litigation Claims or as a concession by the Cordell Defendants of any wrongdoing, fault, liability or damage to Class Representatives, the Class, or any other person or entity, or any infirmity in any defense the Cordell Defendants asserted, could have asserted, or could assert.

I. The Class Representatives, by their counsel, have conducted discussions and an arm's-length negotiation with the Cordell Defendants in an attempt to settle the Litigation Claims and achieve the best relief possible consistent with the interests of the Class and the 1031 Trust. This Agreement has been entered into after a mediation and is the product of arm's-length negotiations conducted in good faith. The Parties have voluntarily agreed to settle the Litigation Claims and any other Released Claims after consultation with competent legal counsel. The Cordell Defendants, having taken into account the risk and expense of litigation and potential litigation, are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and in the best interests of the Cordell Defendants. Class Representatives and their counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Class and in their best interests.

J. Class Counsel state that they have conducted an extensive investigation relating to the Class Litigation Claims and the underlying events and transactions alleged in the operative complaint and have researched the applicable law with respect to the claims and potential claims against the Cordell Defendants and the potential defenses thereto; and that their investigation included, among other things, reviewing and analyzing relevant documents. Subject to the provisions herein, the Class Representatives, each agree to this Settlement under the terms and provisions of this Agreement, after considering: (a) the substantial benefits that Class

Representatives and the Class will receive from the Settlement; (b) the attendant risks of litigation in the Class Litigation; and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of this Agreement.

NOW THEREFORE, in consideration of the foregoing, the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, without any admission or concession by the Parties, it is hereby STIPULATED AND AGREED, by and among the Parties, subject to the approval of the Class Action Court, as follows:

1. **Rules of Construction and Definitions.** As used in this Agreement, the following rules of construction and definitions apply to this Agreement, including the Exhibits to this Agreement:

1.1 The definitions contained in this Agreement apply to capitalized terms wherever those terms appear in this Agreement, including the prefatory paragraphs and recitals above, the sections below, and the Exhibits hereto. Capitalized terms in the prefatory paragraphs and recitals above, the sections below, and the Exhibits hereto have the meanings ascribed to them therein to the extent they are not otherwise defined in this Section. Each defined term stated in the singular shall include the plural and each defined term stated in the plural shall include the singular. Any pronoun stated in the masculine, feminine, or neutral gender shall include all genders. The word "including" when used in this Agreement means "including but not limited to," and the words "include," "includes," and "included" shall be similarly construed. The words "herein," "hereof," "hereunder," and any other words of similar import, when used in this Agreement refer to the entirety of the Agreement.

1.2 "Class" means, for purposes of the Settlement only, all Persons who were 1031 Exchange customers of The 1031 Tax Group, LLC; 1031 Advance, Inc.; AEC Exchange Company,

LLC; Investment Exchange Group, LLC; National Exchange Services QI, Ltd.; Real Estate Exchange Services Inc.; and Security 1031 Services, LLC; and including any predecessors, successors, parents, subsidiaries or affiliates of any of those entities named above engaged in business as Qualified Intermediaries pursuant to 26 U.S.C. § 1031 who suffered loss or damages related to or arising out of: (a) the failure of any of the entities listed above, including their predecessors, successors, parents, subsidiaries or affiliates; or (b) any of the events, acts or conduct alleged in the operative complaint, or any subsequent pleadings filed in *Anita Hunter, et al. v. Citibank, N.A., et al.*, United States District Court for the Northern District of California, Case No. 09-CV 02079 JW. The "Class" includes, but is not limited to, any Person who was a member of the Waves I, II and III Settlement Class. However, the "Class" excludes persons who have assigned their claims and includes the assignees of assigned claims.

1.3 "Class Action Approval Order" means one or more orders preliminarily and then finally approving the Settlement entered pursuant to Federal Rule of Civil Procedure 23 by the Class Action Court after notice to the class and a Fairness Hearing, which include(s) provisions (i) certifying the class for settlement purposes only; (ii) approving the terms of the Settlement Agreement as being in the best interest of the Class; (iii) staying all Class Litigation claims until the Settlement Agreement is consummated by the sale of the 4201 Millersville Road Property or the transfer of the Real Property to the Plaintiffs; (iv) appointing Gerard A. McHale ("McHale") as Trustee of the Qualified Settlement Fund ("QSF") for the deposit, retention and disbursement of the Settlement Funds.; and (v) a "bar" order barring and enjoining all Class Representatives and Class members from prosecuting any of the Released Claims against the Cordell Defendants as defined herein.

1.4 "Class Counsel" means Hollister & Brace.

1.5 "Effective Date" means the date by which all the following have occurred: (i) entry of the Preliminary Approval Order; (ii) notice of the Settlement Agreement is mailed to the class members; (iii) there are no opt outs from the Settlement Agreement by any class member; (iv ) the entry of a Final Approval Order; (v) the Cordell Defendants' counsel has received an Internal Revenue Service Form W-9 containing the taxpayer identification number for

the payee of the Settlement Fund; and (v) the 4201 Millersville Road Property has been sold and the Net Proceeds paid to McHale as Trustee of the QSF or marketable title to the 4201 Millersville Road Property is conveyed to the Class Representatives or their designated agent, for the benefit of the class.

1.6 "Execution Date" means the first date by which all 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 to the other party.

1.7 "Fairness Hearing" means the hearing held by the Class Action Court to consider final approval of the Settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

1.8 "Final" means the latest of: (i) the expiration of the time to appeal, petition for certiorari, move for reargument or rehearing or otherwise seek any review of the relevant order or judgment and as to which no appeal, petition for certiorari, or other proceedings for reargument, rehearing, or review shall then be pending; (ii) the final affirmance of the relevant order or judgment on an appeal or after reconsideration or other review, the expiration of the time for a petition or a denial of any petition, to review the affirmance of the relevant order or judgment on appeal, or if such petition is granted, the final affirmance of the relevant order or judgment following review pursuant to that grant; (iii) the final dismissal of any appeal from the relevant order or judgment or the final resolution of any proceeding to review any appeal from the relevant order or judgment without any material change thereto; or (iv) the date on which all rights to appeal, petition for certiorari, or move for reargument or rehearing as to the relevant order or judgment shall have been waived in writing. Any proceeding or order, or any appeal or petition for a review of a proceeding or order, pertaining solely to any application for, or award of attorneys' fees and/or expenses shall not in any way delay or preclude the Class Action Approval Order or the Judgment from becoming Final.

1.9 The term "Cordell Defendants" The term "Cordell Defendants" as referred to herein is defined as CORDELL FUNDING, LLLP, a Florida Limited Liability Limited Partnership;

CORDELL CONSULTANTS, INC., a New York Corporation; CORDELL MONEY PURCHASE PLAN, a QUALIFIED RETIREMENT PLAN TRUST; CORDELL CONSULTANTS, NEW YORK, LLC, a New York Limited Liability Company; ROBIN RODRIGUEZ, an individual and such other Cordell entities controlled by Robin Rodriguez and/or controlled by one or more of the other named Cordell Defendants, and all of their present or former subsidiaries, parents, successors, predecessors, officers, directors, general or limited partners including their representatives, affiliates, members, heirs, managers, agents, attorneys, principals, employees, insurers (only in their representative capacities) with respect to the Released Claims.

1.10 "Non-Settling Defendant" means any person (i) who has been or will be sued by any of the putative Class Representatives, any member of the putative Class in any action based on, in connection with, arising out of, pertaining to, concerning, or in any way related to the Released Claims, (ii) who has not settled and who will not have settled on or before the date that the Class Action Court enters the Class Action Approval Order. The term "Non-Settling Defendant" includes, but is not limited to, United Western Bank (f/k/a Matrix Capital Bank), Silicon Valley Law Group, and Edward H. Okun. The term "Non-Settling Defendant" does not include the Cordell Defendants.

1.11 "Okun Entities" means the 1031 Debtors; Investment Properties of America ("IPofA"); any entity that was directly or indirectly owned, controlled, or managed, in whole or in part, by Edward Okun or Simone Bolani; and any and all present or former subsidiaries, parents, successors, predecessors, representatives, affiliates, members, related companies, or assigns of any 1031 Debtor, IPofA, or any entity that was directly or indirectly owned, controlled, or managed, in whole or in part, by Edward Okun or Simone Bolani.

1.12 "Preliminary Approval Order" means the order of the Class Action Court preliminarily approving the Settlement and directing notice thereof to the Class substantially in the form utilized in the Waves I, II and III Settlements and approved by the Cordell Defendants.

1.13 "Plaintiffs" means all Class Representatives and every member of the Class.

1.14 "Released Claims" means any past present or future claim, cross-claim, counter-claim, cause of action, suit, or liability of any kind, nature, or description whatsoever, that



has been, could have been, may be, could be, or will be asserted against the Cordell Defendants, whether seeking damages or equitable relief, including costs, attorneys' fees, losses, and expenses of any nature whatsoever, whether at law<sup>5</sup> or in equity, whether known or Unknown (as defined below), asserted or unasserted, anticipated or unanticipated, foreseen or unforeseen, suspected or unsuspected, accrued or unaccrued, fixed or non-contingent or contingent, direct or derivative or indirect, arising out of, based on, in connection with, pertaining to, concerning, or directly or indirectly related in any way to (i) the subject matters of the Litigation Claims; (ii) Edward Okun ("Okun"); (iii) any of the 1031 Debtors, including their parents, subsidiaries, or affiliates; (iv) Investment Properties of America; (v) any Okun Entity; (vi) any entity that is or was related to any Okun Entity or Okun; or (vii) anything related to or arising under the events, allegations, facts, acts, omissions, advice, occurrences, conduct, or transactions stated or referred to in the operative complaints or any subsequent pleading or amended complaint in *Hunter, et al. v. Citibank, N.A., et al.*, No. 09-CV-02079-JW (N.D. Cal.); *Hunter, et al. v. Okun, et al.*, No. 07-02795-JW (N.D. Cal.); and *Quirk Infiniti, Inc. v. Wachovia Bank, N.A.*, No. 08-CV-12060-JLT (D. Mass.). However, Released Claims shall not include any claim arising out of the violation, nonperformance, or breach of this Agreement or any claim against Non-Settling Defendants in the Class Litigation.

1.15 "Released Parties" means the Cordell Defendants (as defined above). "Released Parties" does not include any Non-Settling Defendants.

1.16 "Settled Defense Claims" 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, whether known or Unknown (as defined below), asserted or unasserted, anticipated or unanticipated, accrued or unaccrued, fixed or contingent, held at any point from the beginning of time to the date of this Agreement, that have been or could have been asserted by the Cordell Defendants or any of them individually, against any of the Class Representatives, or their legal representatives, and all their successors, predecessors, officers, directors, general or limited partners, representatives, affiliates, members, heirs, managers, agents, attorneys, and insurers

---

<sup>5</sup> This includes federal, state, local, statutory, or common law, or any other law, rule, or regulation.

(only in those representatives' capacities as representatives for any of the Class Representatives, or their counsel), arising out of, connected with, or in any way relating, directly or indirectly, to (i) the prosecution of the Litigation Claims; and (ii) anything related to the events or facts stated in the operative Complaint, or any subsequent pleading or amended complaint in *Hunter, et al. v. Citibank, N.A., et al.*, No. 09-CV-02079-JW (N.D. Cal.), provided, however, Settled Defense Claims shall not include any claim arising out of the violation, nonperformance, or breach of this Agreement.

1.17 "Settlement Agreement" or "Settlement" means the terms of this settlement as described herein.

1.18 "Settlement Fund" means the net proceeds of sale of certain real property known as 4201 Millersville Road, Indianapolis, Indiana (Tax Parcel #8062980 and #8007009)(hereinafter, the "Millersville Road Property" or the "Real Property") as more fully described in the legal description attached hereto as Exhibit A. "Net Proceeds" shall mean the residue received for the sale of 4201 Millersville Road Property after payment of any current liens and taxes not to exceed \$18,000 and costs of sale including sales commission, and costs of publication and advertising, if any. The Cordell Defendants warrant and agree that the 4201 Millersville Road Property will be free of any mortgage liens and will not be subject to any other known claims by any third parties.

1.19 "Unknown Claims" means any and all (i) Released Claims which any Class Representative does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Parties, and any and all (ii) Settled Defense Claims which the Cordell Defendants do not know or suspect to exist in their favor at the time of the release of the Settled Defense Claims, which, in each case of (i) and (ii), if known by them, it might have affected their decision(s) with respect to this Settlement Agreement. With respect to any and all Released Claims and Settled Defense Claims, the Parties stipulate and agree that upon the Effective Date, the Class Representatives and the Cordell Defendants shall expressly waive and relinquish to the fullest extent permitted by law, and each Class member shall be deemed to have waived and relinquished any and all provisions, rights and benefits conferred by California Civil Code § 1542 and any federal law,

any law of any state or territory of the United States, or any principle of common law, which is similar, comparable, or equivalent to California Civil Code § 1542. California Civil Code § 1542 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 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

It is the intention of the Parties that, notwithstanding the provisions of Section 1542 or any similar provisions, rights and benefits conferred by law, and notwithstanding the possibility that the Class Representatives, the Cordell Defendants, or their counsel may discover or gain a more complete understanding of the facts, events or law that, if presently known or fully understood, would have affected the decision to enter into this Agreement, any and all Released Claims and Settled Defense Claims, including Unknown Claims, shall be fully, finally, and forever settled. 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. The Class Representatives, and the Cordell Defendants acknowledge, and Class members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definitions of Released Claims and Settled Defense Claims was separately bargained for and was a key element of this Settlement Agreement.

## **2. Scope and Effect of Settlement**

2.1 The obligations incurred under this Agreement shall be in full and final resolution and disposition of the Litigation Claims and any and all Released Claims against all Released Parties and all Settled Defense Claims.

2.2 Upon the Effective Date, the Class Representatives and the Class members,

on behalf of themselves and each of their past or present officers, directors, employees, agents, representatives, general or limited partners, managers, members, affiliates, parents, subsidiaries, heirs, executors, administrators, successors and assigns, shall, to the fullest extent of their authority to do so, with respect to each and every Released Claim, fully, finally, completely, and unconditionally release, acquit, forever discharge, dismiss with prejudice, compromise, resolve, settle, and waive any Released Claim against any Released Party.

2.3 Upon the Effective Date, each of the Released Parties shall release and forever discharge each and every one of the Settled Defense Claims, and shall forever be enjoined from prosecuting the Settled Defense Claims.

2.4 As of the Execution Date, the putative Class Representatives (on behalf of themselves and the putative Class) hereby agree not to sue any Cordell Defendant with regard to any any Released Claims nor to voluntarily assist, advise, entice, solicit, or otherwise encourage any persons to bring a claim, lawsuit, action, or demand against any Cordell Defendant. In the event that this Agreement becomes null and void such that the consideration for settlement will not be paid, any and all obligations under this Section 2.4 shall cease.

2.5 The Parties hereby agree not to seek to advance any legal or factual position against another Party to this Agreement between the Execution Date and the Payment Date.

2.6 The Parties acknowledge and agree that the Settlement Fund represents a compromise of all alleged or possible damages including but not limited to lost exchange funds, tax liabilities, attorneys' fees, costs, and any other consequential, emotional distress, and/or punitive damages.

2.7 Nothing in this Section 2 is intended to, or shall be construed to, affect the Parties' ability to enforce this Agreement.

2.8 Nothing in this Agreement shall constitute a release, waiver, or assignment

of any of the Class's rights against any person or entity other than the Cordell Defendants.

### **3. Bar Order**

3.1 To the extent permitted by applicable law, the Class Action Approval Order shall contain provisions enjoining and barring all Class members, Non-Settling Defendants, and Settling Defendants from commencing any action or asserting any claim against the Cordell Defendants substantially similar in form and effect to those claims, cross claims and third party claims asserted by one or more of the parties to this action.

### **4. Class Certification**

4.1 For purposes of this Settlement only, the Parties stipulate to the certification of the Class Litigation as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3), on behalf of the Class as defined herein strictly for the purposes of approving this settlement for the benefit of the class. The Class Representatives shall also be certified as the representatives of the Class for this limited purpose. Such certification shall be conditioned on the approval and effectiveness of this Settlement. The parties otherwise acknowledge that the Court has entered an Order denying Class Action Certification for any other purpose in this case, and it is expressly understood and agreed that the Cordell Defendants do not waive any of their rights pursuant to said Order in the event the Settlement is not consummated, becomes null and void pursuant to any provision of this Agreement, or is terminated.

### **5. Court Approval**

5.1 As soon as practicable, following the Execution Date, the Class Representatives shall seek all approval of the Settlement Agreement from the Class Action Court.

5.2 Any filings relating to efforts to obtain preliminary and final court approval for this Agreement shall be submitted to the Cordell Defendants for review and approval before being filed with the court. As soon as practicable the Class Representatives and the Cordell

Defendants shall jointly apply to the Class Action Court for entry of a Preliminary Approval Order and Class Counsel shall move for approval of the settlement as a class-wide settlement. To the extent necessary, the Class Representatives will seek certification of the settlement Class solely for purposes of this Settlement and shall provide Notice to the Class as prescribed by the Preliminary Approval Order, pursuant to Federal Rule of Civil Procedure 23. In addition, as soon as practicable, the Class Representatives (on behalf of themselves and the Class) and the Cordell Defendants shall jointly apply to the Class Action Court for entry of the Class Action Approval Order, substantially in the form attached as Exhibit B. The Cordell Defendants and the Class Representatives will reasonably cooperate to obtain entry of the foregoing as expeditiously as practicable.

5.3 Upon notice from any Cordell Defendant to the Class Representatives that a claim based on, or in any way related to the Released Claims has been asserted in any litigation against a Cordell Defendant before the Class Action Approval Order is Final, the Class Representatives, (on behalf of themselves and the Class), shall (a) file a motion in the Class Action Court, or the court where the litigation is pending, and (b) seek the consent of each of the plaintiffs in the litigation to, an order staying the litigation as against the Cordell Defendants (either an order granting such a stay or consent to such a stay shall constitute the "Stay Order"), until the Class Action Approval Order is final. In particular, the attorneys for the Class Representative has filed a new lawsuit against the Cordell Defendants and the Silicon Valley Law Group entitled *ASM Capital, et al. v. Okun, et al.*, Case No. 11-04825. It is agreed that this lawsuit will be stayed as to the Cordell Defendants pending the approval of this Class Settlement and dismissed upon the completion of the approval process and entry of final Judgment by the Class Action Court after payment by the Cordell Defendants to the Settlement Fund.

**6. Creation and Payment of the Settlement Fund and Entry of Judgment of Dismissal**

6.1 Upon the preliminary approval of this settlement by the Class Action Court,

the Cordell Defendants shall cause the 4201 Millersville Road Property to be listed through CB Richard Ellis or other similar realty company. Class Counsel shall be included as a contracting party with the realty company for the sale of the 4201 Millersville Road Property. If the 4201 Millersville Road Property is not sold to a third party before the entry of the final approval order, upon entry of the final approval order, the Cordell Defendants shall transfer the Real Property to the Plaintiffs as their designated agent and assign all leases to the Real Property. All costs of sale shall be deducted from the proceeds. The proceeds for the sale of the 4201 Millersville Road Property shall be held in escrow with Class Counsel as a contracting party and the Net Proceeds will be paid to the plaintiffs by check or wire transfer from escrow to the Trustee of the QSF to be held as a Settlement Fund for the benefit of the Class. In the event this settlement does not obtain final approval or one or more the Class members opt-out of the settlement, Class counsel will transfer sale proceeds to the attorney for the Cordell Defendants.

6.2 If the Real Property is not sold between the time of the entry of the preliminary approval order and the entry of the final approval order, upon entry of the final approval order the Cordell Defendants shall transfer marketable title to the Plaintiffs, provided the Plaintiffs pay for the \$18,000 to satisfy liens and taxes. If \$18,000 will not satisfy all liens and taxes, the Cordell Defendants must satisfy the remainder owing on all liens and taxes. If the Class Plaintiffs acquire the property, the Cordell Defendants will transfer the 4201 Millersville Road Property to the Class Representatives or their assigns free and clear of all mortgage liens and third party claims and the Real Property shall constitute the Settlement Funds as defined herein.

6.3 Class members shall look solely to the Settlement Fund for settlement and satisfaction of any and all Released Claims against any and all of the Released Parties. None of the Released Parties shall be responsible for any fees and expenses of Class Counsel, experts, consultants, and agents, or any administrative or other approval expenses of the Settlement, including Taxes, if any. None of the Released Parties shall be responsible for any administration expenses, including but not limited to costs and expenses of providing notice to members of the putative Class, costs and expenses associated with the administration of the Settlement Fund, escrow fees, taxes, and custodial fees. None of the Released Parties shall have any liability with respect to

any taxes, expenses and/or costs incurred in connection with the taxation of the Settlement Fund or the payment or withholding of taxes, or the preparation or filing of any returns.

6.4 Upon Payment of the Settlement Fund, the Class Representatives shall enter a Final Judgment of Dismissal in favor of the Cordell Defendants.

6.5 Operation and Maintenance of Property Prior to Effective Date. Unless the Real Property is sold in accordance with this Agreement, the Cordell Defendants hereby retain all rights to own, operate, lease, contract or otherwise exercise the rights of ownership of the property interests prior to the Effective Date without the consent or approval of Plaintiffs, provided, however, that the Cordell Defendants shall maintain the property in substantially the same condition as now maintained and will operate the property in the same manner as they have operated the property in the past. The Cordell Defendants shall also maintain and keep (or caused to be maintained and kept) in full force and effect hazard and liability insurance coverage for the property in the same amounts as presently in effect.

6.6 If the Property is not sold prior to final Court approval of this Settlement Agreement, upon final approval being obtained, the Cordell Defendants agree to convey and transfer 100% ownership interest in and to the Real Property described in Exhibit A and all rights, privileges and easements, appurtenances thereto, which are owned by the Cordell Defendants, including:

(a) the buildings and any other improvements located on the Real Property (collectively, the "Improvements"); and

(b) all right, title and interest of the Cordell Defendants in and to any and all service contracts and intangible property pertaining to the Real Property and the Improvements, including any warranties and guarantees.

6.7 If the Real Property is not sold in accordance with this Agreement, the Cordell Defendants shall assign or cause to be assigned, to a buyer or the Plaintiffs, the 100% interest of the Cordell Defendants as landlord in and to any applicable lease of the Real Property. The Cordell Defendants shall assign or cause to be assigned, to a buyer or the Plaintiffs, the 100% interest of the Cordell Defendants as landlord in and to any applicable lease of the Real Property.

6.8 The Cordell Defendants shall transfer, assign and convey to a buyer or the



Plaintiffs a 100% interest ownership in and to the Real Property free and clear of all liens and encumbrances, including, but not limited to, the mortgage from IPofA Parkway Complex, LLC to LK Holdings, LLC, in the amount of \$2,000,000, recorded on April 6, 2005 as Instrument Number 2005-0052129 of the County Recorder.

## **7. Rights of Exclusion or Objection**

7.1 Any prospective Class member may seek to be excluded from the Class and the Settlement provided for by this Agreement by submitting a written request for exclusion in conformity with the requirements stated in the Notice. Any Class member so excluded shall not be bound by any Class Action Approval Order entered pursuant to this Agreement. In the event a Class member is excluded, the Cordell Defendants may declare the settlement is null and void and the parties would then be restored to their prior position.

7.2 Any Class member who does not exclude himself, herself, or itself from the Class and Settlement shall have the right to submit written objections concerning the Settlement, which objections shall state all of the reasons for the objections (*e.g.*, a mere statement that "I object" shall not be deemed sufficient). All entities desiring to send a representative to attend the Fairness Hearing and be heard as objectors must have filed written objections as provided herein as a condition of appearing and being heard at such hearing. In the event the Court sustains any such objection, the settlement may be voided by the Cordell Defendants and the parties will be restored to their prior position.

7.3 Class Counsel shall provide any submitted requests for exclusion to the Cordell Defendants' Counsel by e-mail within five (5) business days after receipt. The Cordell Defendants shall have the right to terminate the Settlement as to all Parties if any prospective member or members of the Class timely and validly request exclusion from the Class in accordance with the Notice. If the Cordell Defendants exercise the termination right under this paragraph, (i) the Agreement shall become null and void and of no further force and effect as among all Parties, (ii) all Parties shall revert to their respective litigation positions as to each other as of the day before the Settlement Agreement was executed, (iii) the Parties' obligations to each other under the Settlement shall become null and void and of no further force and effect, (iv) the Settlement Fund, if

previously paid, shall be returned to the Cordell Defendants within five (5) business days, and (v) the fact and terms of the Settlement shall not be offered or construed or deemed as evidence against any of the Parties, in accordance with the terms of the Agreement.

7.4 The Cordell Defendants shall notify Class Counsel in writing of their decision to terminate the Settlement within ten (10) business days (unless such time is extended by written agreement) of the Cordell Defendants' Counsel's receipt of any submitted requests for exclusion (the "Termination Notice"). If the Cordell Defendants provide the Termination Notice to Class Counsel, Class Counsel shall have thirty (30) calendar days (unless such time is extended by written agreement) after receipt of the Termination Notice to cause any prospective Class members to retract their requests for exclusion. If all prospective Class members who timely and validly request exclusion retract their requests for exclusion, then the Termination Notice shall become null and void and of no further force or effect.

7.5 Any Class member who does not participate in the Settlement Fund's distribution, but who does not request exclusion from the Class, shall not be considered excluded for the purposes of the Agreement.

## **8. Representations and Warranties of the Parties**

8.1 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 Class Representatives' case to the Class Action Court approving this Agreement.

8.2 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 Class Representatives' case to the Class Action Court approving this Agreement.

8.3 Each of the Parties shall execute this agreement. The Cordell Defendants may execute the Agreement through its representative Cordell Funding, LLLP and the other named defendants in this lawsuit. The plaintiff may execute this Agreement through the Class Representatives.

8.4 The Class Representatives represent that they have not sold, transferred or assigned any potential claims or claims of the Class against the Cordell Defendants to any third party who has not signed this Agreement.

8.5 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.

8.6 The Cordell Defendants represent that they are able to deliver title to a buyer of the premises known as 4201 Millersville Road, Indianapolis, Indiana as described more specifically in Exhibit A attached hereto, free and clear of any mortgages or claims by third parties. Tax liens not to exceed \$18,000 would be satisfied from sale proceeds and the net residue, after deduction for the costs of the sale. The Cordell Defendants promise to deliver to the buyer of the 4201 Millersville Road Property or the Class Representatives clear title, free from any third party claims or encumbrances. 8.6 The Cordell Defendants represent that they are able to deliver title to a buyer of the premises known as 4201 Millersville Road, Indianapolis, Indiana as described more specifically in Exhibit 1 attached hereto, free and clear of any mortgages or recorded claims by third parties. Tax liens not to exceed \$18,000 would be satisfied from sale proceeds and the net residue, after deduction for the costs of the sale. The Cordell Defendants promise to deliver to the buyer of the 4201 Millersville Road Property or the Class Representatives clear title, free from any known third party claims or encumbrances.

## **9. Entire Agreement**

9.1 This Agreement and its Exhibit constitutes a single integrated written contract that expresses the entire agreement and understanding between and among the Parties with respect to matters that are the subject of this Agreement. If any material provision hereof is deemed unenforceable by a court of competent jurisdiction, then the Agreement as a whole shall be deemed terminated and null and void by written notice, and the rights and obligations of the Parties shall be the same as if the Agreement were terminated and became null and void by written notice. Except as otherwise expressly provided herein, this Agreement supersedes all prior communications, discussions, negotiations, agreements, settlements, and understandings between the Parties and their

representatives regarding the matters addressed by this Agreement, whether oral or written, all of which are merged herein. 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.

#### **10. No Admissions by Parties**

10.1 This Agreement, whether or not consummated and any act performed or document executed pursuant to or in furtherance of it does not constitute and shall not be offered against any Released Parties for any reason including, without limitation, as evidence of or construed as or deemed to be evidence of any concession or admission by any or all Released Parties with respect to the truth of any fact alleged by Class Representatives, or the validity or merit of any claim that has been, was, could be, or could have been asserted in the Class Litigation, or the deficiency, lack of merit, or infirmity of any defense that has been, was, could be, or could have been asserted in the Class Litigation, or of any liability, negligence, fault, damage, or wrongdoing of any or all Released Parties.

#### **11. Notice**

11.1 Any and all statements, communications, or notices to be provided pursuant to this Agreement shall be in writing and shall be deemed to have been given when sent by electronic mail or overnight delivery service, in each case to the appropriate address or electronic mail address set forth below. Such notices shall be sent to the individuals listed below, or to such other individuals as the respective Party may designate in writing by notice to the other Parties from time to time.

**For the Cordell Defendants:**

Irwin R. Gilbert, Esq.  
Gilbert | Yarnell  
11000 Prosperity Farms Road  
Palm Beach Gardens, FL 33410  
(561) 622-1252  
[igilbert@bizlit.net](mailto:igilbert@bizlit.net)

**For the Trustee:**

Jonathan L. Flaxer, Esq. and Michael S. Devorkin, Esq.  
Golenbock Eiseman Assor Bell & Peskoe LLP  
437 Madison Avenue New York, NY 10022  
(212) 907-7300  
[jflaxer@golenbock.com](mailto:jflaxer@golenbock.com)  
[mdevorkin@golenbock.com](mailto:mdevorkin@golenbock.com)

**For the Class:**

Robert L. Brace, Esq. Michael Denver, Esq.  
Hollister & Brace  
1126 Santa Barbara Street  
Santa Barbara, CA 93101  
(805) 963-6711  
[rlbrace@hbsb.com](mailto:rlbrace@hbsb.com)  
[mpdenver@hbsb.com](mailto:mpdenver@hbsb.com)

**12. Attorneys' Fees and Expenses**

12.1 Class Counsel will apply to the Class Action Court for an award of attorneys' fees in an amount as the Class Action Court may approve. Such attorneys' fees, expenses, and interest as the Class Action Court awards, including any fees and expenses related to administration of the Settlement, shall be paid exclusively from the Settlement Fund to Class Counsel immediately upon award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof. Class Counsel unconditionally guarantees to refund or repay to the Settlement Fund up to the entire amount of such attorneys' fees and expenses award, plus accrued interest at the same net rate earned by the Settlement Fund, if and when the attorneys' fees and expenses award is reduced or reversed. Any decision by the Class Action Court or any other court concerning the amount of any fee award shall

not affect the validity or finality of the Settlement, this Agreement, or the Class Action Approval Order. Class Counsel hereby agrees that it will be subject to the continuing jurisdiction of the Class Action Court in connection with the award of any attorneys' fees and/or the reimbursement of expenses. The Cordell Defendants take no position on Class Counsel's application for attorneys' fees and reimbursement of expenses. The Cordell Defendants shall have no responsibility for or liability relating to (i) the award or allocation of attorneys' fees and/or (ii) the reimbursement of expenses to or among Class Counsel and/or Trustee's Counsel.

12.2 The Class Action Court's granting any application by Class Counsel for attorneys' fees and reimbursement of expenses is not a condition of the Settlement. Class Counsel's request for attorneys' fees and reimbursement of expenses is to be considered separately from the Court's consideration of whether the Settlement is fair, reasonable, adequate and in the Class's best interests. Any order or proceedings related to any request for attorneys' fees or reimbursement of expenses, or any appeal from any order or proceedings related thereto, shall not affect or delay the Effective Date and the finality of the Class Action Approval Order.

13.3 Notwithstanding the foregoing, the plaintiffs shall not look to the Cordell Defendants for the payment of any legal fee nor the reimbursement of any cost. In turn, the Cordell Defendants shall not look to the Class plaintiffs for the payment of any legal fee or reimbursement of any cost.

### **13. Dispute Resolution**

13.1 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 thirty (30) days after written notification of such dispute unless, in any Party's good faith belief, more immediate judicial relief is required.

13.2 If any Party to this Agreement fail(s) to honor any of the material

provisions, covenants, or representations contained in this Agreement, any other Party to this Agreement shall have the right to seek any appropriate remedy, including but not limited to termination of the Settlement and this Agreement.

13.3 The Parties agree to submit disputes relating to this Agreement to the Class Action Court.

#### **14. Miscellaneous**

14.1 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 Entity 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.

14.2 The Parties have already engaged in extensive discovery, and have had ample time to investigate all relevant factual issues.

14.3 None of the Parties shall be considered the drafter of this Agreement. 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.

14.4 All of the exhibits attached hereto are hereby incorporated by reference as if fully set forth herein.

14.5 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.

14.6 Except as expressly set forth herein, all Parties shall bear their own costs

and expenses incurred in connection with the Litigation Claims and/or this Agreement.

14.7 No breach of any provision hereof can be waived by any Party unless in writing. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

14.8 This Agreement cannot be amended, altered or modified except by a written agreement duly executed by each Party to be charged or its heirs, successors, duly authorized representative, or assigns.

14.9 The terms and conditions of this Agreement shall be binding on the Parties hereto and their heirs, successors and assigns.

14.10 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 email (as a pdf attachment), and an emailed signature shall have the same force and effect as an original signature.

14.11 The Parties have not transferred or assigned any claims within the scope of the releases in this Agreement.

14.12 This Settlement Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors, assignees, heirs, assigns, and personal representatives.

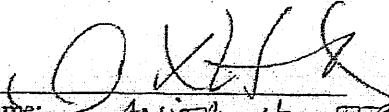
14.13 None of the payments made under this Agreement represent fines, civil money penalties, or similar charges.

**Signatures are on the following pages**

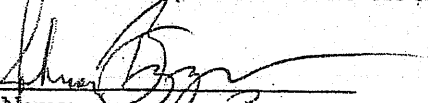
**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date(s) indicated below.



**ANITA HUNTER**

By:   
Name: ANITA HUNTER  
Date: 12-12-11

**JOHNNA BOZZO (ALSO KNOWN AS JOHNNA BOZZA)**

By:   
Name: JOHNNA BOZZO  
Date: 1-5-12

**CELL TEX SITE SERVICES, LTD.**

By: \_\_\_\_\_  
Name:  
Date:

**GRANDE INVESTMENT, LLC**

By: \_\_\_\_\_  
Name:  
Date:

**QUIRK INFINITI, INC.**

By: \_\_\_\_\_  
Name:  
Date:

**SADI SUHWEIL**

By: \_\_\_\_\_  
Name:  
Date:

**ANITA HUNTER**

By: \_\_\_\_\_  
Name:  
Date:

**JOHNNA BOZZO (ALSO KNOWN AS JOHNNA BOZZA)**

By: \_\_\_\_\_  
Name:  
Date:

**CELL TEX SITE SERVICES, LTD.**

By: *CELLTEX GP, LLC*  
*ITS GENERAL PARTNER*  
By: *Carl Huber, President*  
Name: *CARL G. Huber*  
Date: *Dec 16, 2011*

**GRANDE INVESTMENT, LLC**

By: \_\_\_\_\_  
Name:  
Date:

**QUIRK INFINITI, INC.**

By: \_\_\_\_\_  
Name:  
Date:

**SADI SUHWEIL**

By: \_\_\_\_\_  
Name:  
Date:

**ANITA HUNTER**

By: \_\_\_\_\_  
Name:  
Date:

**JOHNNA BOZZO (ALSO KNOWN AS JOHNNA BOZZA)**

By: \_\_\_\_\_  
Name:  
Date:

**CELL TEX SITE SERVICES, LTD.**

By: \_\_\_\_\_  
Name:  
Date:

**GRANDE INVESTMENT, LLC**

By: Abhis Rajan, manager  
Name:  
Date: 12/5/11

**QUIRK INFINITI, INC.**

By: \_\_\_\_\_  
Name:  
Date:

**SADI SUHWEIL**

By: \_\_\_\_\_  
Name:  
Date:

**ANITA HUNTER**

By: \_\_\_\_\_  
Name:  
Date:

**JOHNNA BOZZO (ALSO KNOWN AS JOHNNA BOZZA)**

By: \_\_\_\_\_  
Name:  
Date:

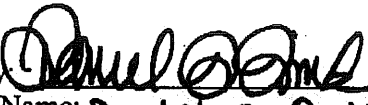
**CELL TEX SITE SERVICES, LTD.**

By: \_\_\_\_\_  
Name:  
Date:

**GRANDE INVESTMENT, LLC**

By: \_\_\_\_\_  
Name:  
Date:

**QUIRK INFINITI, INC.**

By:   
Name: Daniel S. Quirk  
Date: 12/3/11

**SADI SUHWEIL**

By: \_\_\_\_\_  
Name:  
Date:

**ANITA HUNTER**

By: \_\_\_\_\_  
Name:  
Date:

**JOHNNA BOZZO (ALSO KNOWN AS JOHNNA BOZZA)**

By: \_\_\_\_\_  
Name:  
Date:

**CELL TEX SITE SERVICES, LTD.**

By: \_\_\_\_\_  
Name:  
Date:

**GRANDE INVESTMENT, LLC**

By: \_\_\_\_\_  
Name:  
Date:

**QUIRK INFINITI, INC.**

By: \_\_\_\_\_  
Name:  
Date:

**SADI SUHWEIL**

By: Sadi Suhweil  
Name:  
Date: 12/8/2011

**CORDELL FUNDING, LLLP**

By: Robin Rodriguez  
Name: Robin Rodriguez, GP  
Date: 1/19/12

**CORDELL CONSULTANTS, INC.,**

By: Robin Rodriguez  
Name: Robin Rodriguez, President  
Date: 1/19/12

**CORDELL MONEY PURCHASE PLAN,**

By: Robin Rodriguez  
Name: Robin Rodriguez, Trustee  
Date: 1/19/12

**CORDELL CONSULTANTS, NEW YORK, LLC**

By: Robin Rodriguez  
Name: Robin Rodriguez  
Date: 1/19/12

**ROBIN RODRIGUEZ**

Robin Rodriguez  
Date: 1/19/12

## Property Description

Part of the East Half of the Southwest Quarter, part of the West Half of the Southeast Quarter, part of the West Half of the Northeast Quarter and part of the East Half of the Northwest Quarter of Section 17, Township 16 North, Range 4 East, Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of the East Half of the Southwest Quarter of Section 17, Township 16 North, Range 4 East; thence North 00 degrees 30 minutes 06 seconds West along the West line of said East Half of the Southwest Quarter, a distance of 2,049.18 feet to the centerline of Southerland Drive (also known as Millersville Road), as now located and established; thence North 52 degrees 03 minutes 45 seconds East, along said centerline, a distance of 550.92 feet to the POINT OF BEGINNING; thence continuing North 52 degrees 03 minutes 45 seconds East, along said centerline, a distance of 918.90 feet to the centerline of East 42nd Street, as now located and established; thence South 62 degrees 23 minutes 10 seconds East, along said centerline a distance of 261.34 feet to the Northwest corner of "The Meadows, First Section" as recorded in Plat Book 28, pages 269-272 in the Office of the Recorder of Marion County, Indiana; thence South 00 degrees 36 minutes 52 seconds East, along the West line of said plat and the amendment thereto shown in Plat Book 28, pages 381-383 in the Office of said Recorder, a distance of 581.10 feet to the Southwest corner of said First Section; thence South 52 degrees 03 minutes 45 seconds West along the boundary of the property conveyed by the Roberts family to J. Emmett McMammon, as Trustee for re-conveyance, and described in Town Lot Record 1268, Instrument 42054 in the Office of said Recorder, a distance of 674.74 feet; thence North 37 degrees 56 minutes 15 seconds West, also along said boundary, a distance of 700.01 feet to the point of beginning.

EXCEPTING THEREFROM: Part of the Southwest corner of the East Half of the Southwest Quarter of Section 17, Township 16 North, Range 4 East; thence North 00 degrees 30 minutes 05 seconds West, along the West line of said East Half of the Southwest Quarter, a distance of 2,049.17 feet to the centerline of Southerland Drive (also known as Millersville Road), as now located and established; thence North 52 degrees 03 minutes 45 seconds East along said centerline 550.92 feet; thence South 37 degrees 56 minutes 15 seconds East 565.71 feet to the point of beginning of this description; thence North 52 degrees 01 minutes 15 seconds East along a seven foot tall chain fence with razor wire 321.10 feet; thence South 38 degrees 20 minutes 59 seconds East along a seven foot tall chain fence with razor wire 134.54 feet; thence South 52 degrees 03 minutes 45 seconds West along a seven foot tall chain fence with razor wire 322.07 feet; thence North 37 degrees 56 minutes 15 seconds West 134.30 feet to the point of beginning.

## EXHIBIT A

### Description of the Millersville Road Property

EXHIBIT B

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 -----X  
4 ANITA HUNTER, *et al.*, :  
5 :  
6 Plaintiffs, : Case No. 09-CV-02079-JW  
7 :  
8 -v- :  
9 :  
10 CITIBANK, N.A., *et al.*, :  
11 :  
12 Defendants. :  
13 -----

14 **[REVISED PROPOSED] ORDER PRELIMINARY APPROVING THE**  
15 **WAVE IV CLASS SETTLEMENT WITH THE CORDELL DEFENDANTS**

16 WHEREAS, Class Representatives, on behalf of themselves and the Settlement Class (as  
17 defined below), have entered into a Stipulation and Agreement of Settlement (the “Settlement”)  
18 with the Cordell Defendants.<sup>1</sup>

19 WHEREAS, the Settlement is intended to settle and release any claims that the Class  
20 Representatives and the Settlement Class have against the Cordell Defendants and the Released  
21 Parties as defined in the Settlement;

22 WHEREAS, the Settlement is subject to review and Court approval under Rule 23 of the  
23 Federal Rules of Civil Procedure;

24 WHEREAS, the parties to the Settlement have consented to the entry of this Order; and

25 WHEREAS, the Court having read and considered the Settlement, the Memorandum in  
26 Support of the Motion for Preliminary Approval and the supporting Declaration,

27 **NOW, THEREFORE, IT IS HEREBY ORDERED, THAT:**

28 1. Plaintiffs’ Motion for Preliminary Approval is GRANTED. Pursuant to Rules  
23(a) and (b)(3) of the Federal Rules of Civil Procedure, and for the purposes of this Settlement

<sup>1</sup> The Cordell Defendants include: CORDELL FUNDING, LLLP, a Florida Limited Liability Limited Partnership; CORDELL CONSULTANTS, INC., a New York Corporation; CORDELL MONEY PURCHASE PLAN, a QUALIFIED RETIREMENT PLAN TRUST; CORDELL CONSULTANTS, NEW YORK, LLC, a New York Limited Liability Company; ROBIN RODRIGUEZ, an individual and such other Cordell entities controlled by Robin Rodriguez (collectively, the “Wave IV Settling Defendants”).



1 only, this action is hereby certified as a class action with class members consisting of the  
2 Settlement Class, defined as follows:

3 All Persons who were customers of The 1031 Tax Group, LLC; 1031  
4 Advance, Inc.; AEC Exchange Company, LLC.; Investment Exchange  
5 Group, LLC; National Exchange Services QI, Ltd; Real Estate  
6 Exchange Services Inc.; and Security 1031 Services, LLC and  
7 including any predecessors, successors, parents, subsidiaries, or  
8 affiliates of any of those entities engaged in the business as Qualified  
9 Intermediaries pursuant to 26 U.S.C. § 1031 who suffered loss or  
10 damages related to or arising out of: (a) the failure of any of the  
11 entities listed above, including their predecessors, successors, parents,  
12 subsidiaries or affiliates; or (b) any of the events, acts or conduct  
13 alleged in the operative complaint, or any subsequent pleadings filed  
14 in *Anita Hunter, et al. v. Citibank, N.A., et al.*, United States District  
15 Court for the Northern District of California, Case No. 09-CV02079  
16 JW. "Class" includes, but is not limited to, any Person who was a  
17 member of the Wave I, II and III Settlement Class. "Class" excludes  
18 persons who have assigned their claims and includes the assignees of  
19 assigned claims.

20 2. The Court finds, for the purposes of this Settlement only, that the prerequisites of  
21 Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the  
22 number of Settlement Class members is so numerous that joinder of all members thereof is  
23 impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the  
24 claims of the named representatives are typical of the claims of the Settlement Class they seek to  
25 represent; (d) the Class Representatives will fairly and adequately represent the interests of the  
26 Settlement Class; (e) questions of law and fact common to the Settlement Class members  
27 predominate over any questions affecting only individual Settlement Class members; and (f) a  
28 class action is superior to other available methods for the fair and efficient adjudication of the  
controversy.

3 Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes  
of the Settlement only, Anita Hunter, Johnna Bozzo (also known as Johnna Bozza), Celltex Site  
Services, Ltd., Grande Investment, LLC, Quirk Infiniti, Inc., Michael Whitton, and Sadi Suhweil  
are certified as Class Representatives.

4. A hearing (the "Fairness Hearing") pursuant to Rule 23(e) of the Federal Rules of

1 Civil Procedure is hereby scheduled to be held before the Court on June 25, 2012 at 9:00 a.m., to  
2 consider Class Counsel's motion for final approval, and for the following purposes:

3 (a) to finally determine whether this action satisfies the applicable  
4 prerequisites for class action treatment for settlement purposes only under Rules 23(a) and (b)(3)  
5 of the Federal Rules of Civil Procedure;

6  
7 (b) to determine whether the Settlement is fair, reasonable, and adequate, and  
8 should be approved by the Court;

9 (c) to determine whether the Order Approving Settlement and a Final  
10 Judgment should be entered, dismissing the action as against the Cordell Defendants and the  
11 Released Parties to be released by the Class Representatives and the Settlement Class, on the  
12 merits and with prejudice;

13  
14 (d) to determine whether the Bar Order described in the Settlement should be  
15 issued in favor of the Cordell Defendants and the Released Parties to be released by the Class  
16 Representatives and the Settlement Class; and

17 (e) to rule upon such other matters as the Court may deem appropriate.

18 5. The Court reserves the right to approve the Settlement with or without further  
19 notice of any kind and, subject to the consent of the parties to the Settlement, with or without  
20 modification.

21 6. The Court further reserves the right to enter Judgment and dismiss the action as  
22 against the Cordell Defendants and the Released Parties to be released by the Class  
23 Representatives and the Settlement Class, on the merits and with prejudice regardless of whether  
24 it has approved any distribution of the Settlement funds to Settlement Class members or  
25 applications for attorneys' fees and expenses.

26 7. The Court approves as sufficient notice to Settlement Class members, pursuant to  
27 Rule 23(c)(2)(B) of the Federal Rules of Civil Procedure, the Notice of Pendency of Class Action  
28

1 and Proposed Settlement (the “Notice”) attached hereto as Exhibit 1 and this Order (collectively,  
2 the “Notice Documents”).

3 8. The Court finds that the mailing and distribution of the Notice Documents and  
4 publishing of the Summary Notice substantially in the manner and form set forth in this Order  
5 meets the requirements of Fed. R. Civ. P. 23 and due process, is the best notice practicable under  
6 the circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

7 9. The Court sets the following schedule:

8 (a) The deadline for mailing the Notice Documents shall be ten (10) days from  
9 the date of this Order, or February 2, 2012.

10  
11 (b) The deadline for requesting exclusion from the Settlement Class and the  
12 deadline for filing objections to the Settlement, including any objections to the proposed bar  
13 orders in favor of the Cordell Defendants, shall be March 3, 2012 (30 days after the deadline for  
14 mailing in paragraph 9(a) above). Settlement Class members shall be bound by the Settlement  
15 unless such persons request exclusion from the Settlement Class by that date. Requests for  
16 exclusion and objections to the Settlement must be served upon counsel for the Class  
17 Representatives at the addresses set forth in the Notice Documents. Objections to the Settlement  
18 shall also be filed with the Court.

19 (c) The deadline for Class Counsel to file a motion for the payment of Wave  
20 IV attorneys’ fees and the reimbursement of costs shall be thirty-five (35) days before the  
21 Fairness Hearing, or May 21, 2012.

22  
23 (d) The deadline for Settlement Class members or any other interested party to  
24 file and serve objections, if any, to Class Counsels’ request for the payment of Wave IV  
25 attorneys’ fees and the reimbursement of costs shall be twenty-one (21) days before the Fairness  
26 Hearing, or June 4, 2012. Such Objections must be served upon counsel for the Class  
27 Representatives at the addresses set forth in the Notice Documents and also be filed with the  
28 Court.

1           10. Pending final determination of whether the Settlement should be approved,  
2 persons releasing claims pursuant to the Settlement, including Settlement Class members who  
3 have not requested exclusion from the Settlement Class, and each of them, and anyone who acts  
4 or purports to act on their behalf, shall not institute, commence or prosecute any of the claims to  
5 be released against any of the parties to be released.

6           11. If pursuant to the Settlement terms, the Settlement is terminated, then this Order  
7 shall be null and void and of no further force or effect, and may not be introduced as evidence or  
8 referred to in any actions or proceedings (including the related actions) by any person or entity,  
9 and each party to the terminated Settlement shall be restored to his, her or its respective position  
10 as existed prior to execution of the terminated Settlement. Without limiting the foregoing, if the  
11 Settlement is terminated, the Settlement Class certification shall automatically be vacated.

12  
13 DATED: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
HONORABLE JAMES WARE  
UNITED STATES DISTRICT JUDGE

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Hunter, et al.

v.

Citibank, N.A., et al.

Case No. 09-CV-2079-JW

SUMMARY NOTICE OF PENDENCY OF CLASS ACTION AND WAVE IV SETTLEMENT

To: All Persons who were 1031 Exchange customers of The 1031 Tax Group, LLC; 1031 Advance, Inc.; AEC Exchange Company, LLC.; Investment Exchange Group, LLC; National Exchange Services QI, Ltd; Real Estate Exchange Services Inc.; and Security 1031 Services, LLC and including any predecessors, successors, parents, subsidiaries, or affiliates of any of those entities named above that were engaged in the business as Qualified Intermediaries pursuant to 26 U.S.C. §1031 who suffered loss or damages related to or arising out of: (a) the failure of any of the entities listed above, including their predecessors, successors, parents, subsidiaries or affiliates; or (b) any of the events, acts or conduct alleged in the operative complaint, or any subsequent pleadings filed in *Anita Hunter, et al. v. Citibank, N.A., et al.*, United States District Court for the Northern District of California, Case No. 09-CV02079 JW. The "Class" includes, but is not limited to, any Person who was a member of the Wave I, II and III Settlement Class. However, the "Class" excludes persons who have assigned their claims and includes the assignees of assigned claims.

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the Court, that, in the above-captioned action, a settlement with the Cordell Defendants<sup>1</sup> (the "Wave IV Settlement") has been preliminarily approved by the Court and a Settlement Class (the "Class") has been certified with respect to this Settlement.

This settlement will add to the Wave I, Wave II and Wave III Settlements of which you were previously notified. The Wave IV Settling Defendants (the "Cordell Defendants") deny any wrongdoing, fault, liability or damage to the Class and deny that they acted improperly in any way. In view, however, of the uncertainty and expense of litigation, the Wave IV Settling Defendants have agreed to pay consideration in exchange for,

---

<sup>1</sup> The Cordell Defendants include: CORDELL FUNDING, LLLP, a Florida Limited Liability Limited Partnership; CORDELL CONSULTANTS, INC., a New York Corporation; CORDELL MONEY PURCHASE PLAN, a QUALIFIED RETIREMENT PLAN TRUST; CORDELL CONSULTANTS, NEW YORK, LLC, a New York Limited Liability Company; ROBIN RODRIGUEZ, an individual and such other Cordell entities controlled by Robin Rodriguez (collectively, the "Wave IV Settling Defendants").

among other things, a full, final and complete release of, among other claims, all asserted and unasserted claims against them and a Rule 23 Bar Order (the “Order and Final Judgment”) protecting them from any further or potential claims.

A hearing will be held before United States District Judge James Ware, at the United States District Court for the Northern District of California, United States Courthouse, 450 Golden Gate Avenue, San Francisco, California at 9:00a.m. on June 25, 2012 to determine, among other things, whether the Wave IV Settlement should be approved by the Court as fair, reasonable, and adequate.

**IF YOU ARE A MEMBER OF THE CLASS DESCRIBED ABOVE, YOUR RIGHTS WILL BE AFFECTED AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT.**

This notice provides a brief description of the Wave IV Settlement and may address some of your questions. The settlement agreement between the Class Representatives and the Wave IV Settling Defendants (the “Wave IV Settlement Agreement”) sets forth the settling parties’ entire agreement, and is available for your review at [www.hbsb.com](http://www.hbsb.com), under the link for “Class Actions.” The Court’s Order granting preliminary approval to the Wave IV Settlement, which is included herewith, sets forth specific deadlines by which you must act and procedures for you to follow should you not wish to participate in the Wave IV Settlement or if you wish to raise objections. You should review all of the documents provided with this notice and, if you have any questions that remain unanswered, you should contact counsel for the Class at the address listed below for additional information.

1. Why did I get this notice package?
---------------------------------------

Records indicate that you may be a member of the Class described above and may have suffered injury based on the events alleged in this lawsuit.

2. What is this lawsuit about?
--------------------------------

This lawsuit arises from the failure of certain Qualified Intermediaries owned and controlled by Edward Okun and their failure to complete Internal Revenue Code Section 1031 exchange transactions.

3. What are the terms of the settlement?
--

The Cordell Defendants are contributing to the Class a piece of real property they own, known as the Millersville Road Property (the “Real Property”), located in Indianapolis, Indiana. The Real Property was appraised in 2008 for \$1.1 million, but the real estate market has declined since the date of the last appraisal. The Cordell Defendants have listed the Real Property for sale and will contribute the proceeds from the sale to the Class. If the Real Property is not sold before final Court approval of the Settlement, then the Cordell Defendants will transfer the Real Property to the Plaintiffs to sell. The

amount recovered from the sale of the Real Property is uncertain. Once the property is sold, fees and expenses will be deducted and you will receive a pro rata distribution as you did in the Waves I, II and III of Settlements.

In exchange for the Real Property, the Wave IV Settling Defendants (the “Cordell Defendants”) will each obtain a full release from the Class Representatives and the Class, of all asserted and unasserted claims and a bar order precluding further claims, both known and unknown, against the Wave IV Settling Defendants arising out of, related to, or in any way connected to the litigation claims.

The Wave IV Settlement is conditioned on the occurrence of certain events described in the Wave IV Settlement Agreement, which are available for your review at [www.hbsb.com](http://www.hbsb.com). Those events include, among others: (i) the Court’s entry of the Order and Final Judgment, and (ii) exhaustion of all rights to appeal from or alter or amend the Order and Final Judgment, or expiration of the time to appeal from or alter or amend the Order and Final Judgment. If, for any reason, any one of the conditions described in the Wave IV Settlement Agreement is not met, the Wave IV Settlement might be terminated and, if terminated, will become null and void, and the parties to the agreement will be restored to their respective pre-settlement litigation positions. The full terms of the Wave IV Settlement is set forth in the Wave IV Settlement Agreement, which is available for your review at [www.hbsb.com](http://www.hbsb.com). You should read the Wave IV Settlement Agreement in its entirety. It contains other important terms.

4. If I do not want to share in the settlement, how do I exclude myself?
--

To exclude yourself, you must notify the Court through Plaintiffs’ counsel at the addresses identified below *in writing no later than March 3, 2012*.

Your request for exclusion *must* contain: (1) the name of the lawsuit which is: *Anita Hunter, et al. v. Citibank, N.A., et al.*, Case No. 09-CV-2079-JW; (2) your full name and current address; (3) a clear statement of intention to exclude yourself such as “I wish to be excluded from the Wave IV Settlement”; (4) the addresses of your relinquished and replacement properties; (5) the amount of money you lost; and (6) your signature and the date you signed the request. Requests for exclusions *must be postmarked 1<sup>st</sup> Class Mail no later than March 3, 2012* and sent to:

United States District Court for the Northern District of California  
Re: Hunter v. Citibank Litigation  
c/o Hollister & Brace, P.O. Box 630, Santa Barbara, CA 93102

5. Can I object to the terms of the Wave IV Settlement?
---

If you exclude yourself, or “opt-out” of the Wave IV Settlement you are not entitled to object. If you do not exclude yourself, or “opt-out,” from the Wave IV Settlement, you are entitled to object to the terms of the Wave IV Settlement to explain to the Court why

it should not be approved. The Court will consider your views. To object, you must write a letter stating: (1) that you object to the Wave IV Settlement in the matter styled *Hunter, et al. v. Citibank, N.A., et al.*, Case No. 09-CV-2079-JW; (2) your full name and current address; (3) a clear statement of why you object; (4) the addresses of your relinquished and replacement properties; (5) the amount of money you lost; and (6) your signature and the date you signed the objection.

Objections ***must be postmarked 1<sup>st</sup> Class Mail no later than March 3, 2012*** and mailed to all of the below:

Clerk of the Court  
United States District Court for the Northern District of California,  
United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102

Robert L. Brace  
Michael P. Denver  
Hollister & Brace  
P.O. Box 630, Santa Barbara, CA 93102

6. If I participate in the partial settlement, how much money will I get?
---

To settle the case, the Cordell Defendants are contributing to the Class a piece of real property they own, known as the Millersville Road Property (the “Real Property”), located in Indianapolis, Indiana. The Real Property was appraised in 2008 for \$1.1 million, but the real estate market has declined since the date of the last appraisal. The Cordell Defendants have listed the Real Property for sale and will contribute the proceeds from the sale to the Class. If the Real Property is not sold before the entry of the final approval order, upon the entry of the final approval order, the Cordell Defendants will transfer the Real Property to the Plaintiffs to sell. The amount recovered from the sale of the Real Property is uncertain. Once the property is sold, fees and expenses will be deducted and you will receive a pro rata distribution as you did in the Waves I, II and III of Settlements.

7. How much of the settlement might be allocated to fees or other expenses?
---

After the Millersville Road Property is sold by the Cordell Defendants or the Class Representatives, the proceeds of the sale will be used to pay fees and costs approved by the Court. The attorneys’ fees paid to Class Counsel shall not exceed 25% of the net funds recovered. The net funds recovered is calculated first by deducting litigation costs approved by the Court. Class Counsel represents that litigation costs shall not exceed \$250,000. Any payment of Class Counsel’s fees and expenses must be approved by the Court. You have the right to object to fees and expenses awarded to Class Counsel.



8. What should I do if I have questions?

Certain documents and other information are also available on the Internet at the website of Hollister & Brace.

If you have any questions concerning any matter raised in this notice, or wish to provide us with your current name or address, please visit Hollister & Brace's website or write to Class Counsel at:

HOLLISTER & BRACE  
Robert L. Brace and Michael P. Denver  
P.O. Box 630  
Santa Barbara, CA 93102  
(805) 963-6711

**PLEASE DO NOT CALL OR WRITE TO THE COURT  
FOR INFORMATION OR ADVICE**

**BY ORDER OF THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**