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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: )  
) Chapter 11  
THE 1031 TAX GROUP, LLC, et al.,<sup>1</sup> )  
) Case No. \_\_\_\_\_ ( \_\_\_\_ )  
) Debtors. ) Jointly Administered  
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**MOTION FOR ORDER AUTHORIZING TEMPORARY  
MAINTENANCE OF DEBTORS' BANK ACCOUNTS  
AND CASH MANAGEMENT SYSTEM**

The above-captioned debtors and debtors-in-possession (the "Debtors") hereby move this Court for entry of an order authorizing the Debtors to temporarily maintain their existing bank accounts and cash management system (the "Motion"). In support of the Motion, the Debtors respectfully set forth and allege as follows:

**FACTS**

**A. Introduction**

1. On the date hereof (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, as amended (the "Bankruptcy Code"), together with various motions and applications seeking certain typical "first day" orders.

<sup>1</sup> The Debtors 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; Exchange Management, LLC; Investment Exchange Group, LLC; National Exchange Accommodators, LLC; National Exchange Services QI, Ltd.; National Intermediary, Ltd.; NRC 1031, LLC; Real Estate Exchange Services, Inc.; Rutherford Investment LLC; Security 1031 Services, LLC; and Shamrock Holdings Group, LLC.  
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2. The Debtors have continued in possession of their properties and have continued to operate and manage their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request has been made for the appointment of a trustee or examiner, and no official committee(s) has been appointed in the case.

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the Debtors' chapter 11 cases and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This is a "core" proceeding under 28 U.S.C. §157(b)(2). The statutory predicates for the relief sought herein are sections 105(a), 363, 1107 and 1108 of the Bankruptcy Code.

**B. Background**

5. The sole member of The 1031 Tax Group, LLC (the "Member") made six (6) acquisitions between August 2005 and December 2006 under a business strategy of "rolling up" regional "qualified intermediary" (also referred to as a "QI," "exchange accommodator titleholder," "EAT," "accommodator," or "facilitator") into a national firm. All of these acquisitions entities are wholly-owned direct or indirect subsidiaries of the 1031 Tax Group, LLC. The first acquisition was in Boston, then New York and Tampa, followed by San Antonio, Denver and finally San Jose. Typically, the former owner stayed on after the acquisition to run the facilitator.

6. The Debtors act as a QI for deferred like kind property exchanges consummated by exchangers pursuant to section 1031 of the Internal Revenue Code, 26 U.S.C. § 1031. A Section 1031 tax deferred exchange, named for the Internal Revenue Code Section to which it refers (also known as a Starker exchange, tax free exchange, or like kind exchange), allows a deferral of the capital gains tax that would otherwise be due.

7. In a typical 1031 exchange, an exchanger ("Exchanger") sells its business or

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investment real estate. The Exchanger then has forty-five (45) days from the date of sale of the property to identify a like kind replacement property (which usually takes the form of a signed contract) and 180 days from the date of the sale to close on the purchase of the replacement property. In order to preserve the tax deferral, the Exchanger cannot take title to the proceeds of the first sale, but must instead deposit the proceeds with a QI until such time that the Exchanger is ready to close on the replacement property. Revenue is generated by the Debtors in these transactions in two ways: (i) fees are earned based on the size and complexity of each transaction and (ii) the QI earns a spread on interest received versus interest paid to the Exchanger.

8. Several of the Debtors also acted as a qualified intermediary for “reverse exchanges.” In a reverse exchange, the Exchanger identifies and contracts for the replacement property prior to selling the old property. The Exchanger lends funds or guarantees a bank loan to the QI. The QI uses the funds to purchase and takes title to the replacement property. The replacement property is leased back to the Exchanger at a rent equal to the QI’s carrying cost, including debt service. The Exchanger agrees to acquire the property within 180 days. The Exchanger signs a contract to sell the old property and assigns the rights under the contract to the QI. When the sale closes on the old property, the replacement property is conveyed to the Exchanger in exchange for the proceeds of sale of the old property. The funds are used to repay the loan to the Exchanger and the lease is cancelled. A reverse exchange can also be done where the replacement property is build-to-suit construction or a renovation. Title to the replacement property in a reverse exchange is held in a Single Purpose Entity (“SPE”), usually an LLC (the “Reverse LLC”). Thus, the Debtors have a significant number of Reverse LLCs existing for this purpose.<sup>2</sup>

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<sup>2</sup> As of the Petition Date, there were over one hundred (100) open reverse exchange contracts, at an undetermined total value. As of the Petition Date, none of the Reverse LLC entities have filed petitions for {00254097.DOC;}

9. As of the Petition Date, there were in excess of three hundred (300) open exchange contracts representing an estimated liability of \$151 million. By the nature of the exchanges, the estimated liability matures within 180 days. The size of each exchange ranges from the tens of thousands to more than \$10.5 million and averaged approximately \$550,000.

### **RELIEF REQUESTED**

10. The Office of the United States Trustee has established certain operating guidelines for debtors-in-possession, including the guideline that a chapter 11 debtor must open new bank accounts and close pre-petition accounts. This requirement is designed to (a) provide a clear line of demarcation between pre-petition and post-petition transactions and operations and (b) block the inadvertent payment of pre-petition claims through the payment of checks drawn prior to the filing of a petition. The United States Trustee also has established guidelines requiring that debtors-in-possession modify their checks and business forms so that such forms contain a “debtor-in-possession” designation.

11. The Debtors intend to comply fully with the United States Trustee’s guidelines by opening new debtor-in-possession bank accounts (the “Debtor-in-Possession Bank Accounts”) with JPMorgan Bankruptcy Deposit & Investment Services as soon as is practical.

12. By this Motion, the Debtors are seeking authority to maintain their existing bank accounts and cash management system temporarily, in conjunction with the new Debtor-in-Possession Bank Accounts. Before the Petition Date, the Debtors maintained over one hundred bank accounts (each an “Existing Account,” and collectively, the “Existing Accounts”), in several financial institutions across the United States, including various payroll, tax, local depository, concentration and disbursement bank accounts (the “Existing Cash Management System”). The Existing Accounts are listed on Exhibit “A” hereto.

13. Given the large number of Existing Accounts, it is the Debtors’ intention to

maintain the Existing Accounts in their current form temporarily so that the transition into Chapter 11 can be as smooth and orderly as possible under the circumstances, thereby creating a minimum amount of disruption and cost to the estate. It is further the Debtors' intention to write checks and make disbursements only from the Debtor-in-Possession Bank Accounts so as to provide a clear line of demarcation between pre-petition and post-petition transactions and operations and avoid the inadvertent payment of pre-petition claims.

14. In addition, the Debtors cannot currently access the funds in several of the Existing Accounts as the funds have been blocked by the respective financial institutions. Several of the Existing Accounts are the subject of litigation and other legal action both before this Court (to be commenced on the Petition Date) and the District Court, City and County of Denver, State of Colorado. Upon a resolution of this litigation, the Debtors would plan to transfer the funds on deposit in the Existing Accounts to the Debtor-in-Possession Bank Accounts.

15. Accordingly, the Debtors respectfully request that the Existing Accounts be maintained only until such time as the Debtors can complete an orderly closure and/or transfer of such Existing Accounts, provided that no pre-petition checks, drafts, wire transfers, or other forms of tender which have not yet cleared the relevant drawee bank as of the Petition Date will be honored unless authorized by separate order of this Court.

#### **NOTICE**

16. Notice of this Motion has been provided to the Office of the United States Trustee and those creditors listed on the Debtors' Consolidated List of Creditors Holding the 20 Largest Unsecured Claims. The Debtors submit that no further notice is required.

#### **NO PRIOR REQUEST**

17. No previous motion for the relief requested herein has been made by the Debtors to this or any other court.

18. In light of the non-extraordinary nature of the relief requested herein, the Debtors respectfully request that the Court waive the separate memorandum of law requirement contained in the Local Rules.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto as Exhibit "B", *inter alia*, authorizing the temporary maintenance of the Existing Accounts, and granting such other and further relief as the Court may deem just and proper.

Dated: May 13, 2007

Respectfully submitted,

DREIER LLP

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Proposed Counsel for the Debtors and  
Debtors-in-Possession

**EXHIBIT "A"**



Bank Name	Address 1	Address 2	City	State	Zip	Telephone	Account Name	Description	Account Number	Status at 12/31/06
Bank of America, N.A.	P.O. Box 25118		Tampa	FL	33622	(888) 287-4637	Atlantic Exchange Company, LLC	Operating Account	0041 3362 5756	Open
Commerce Bank, N.A.	1701 Route 70 East		Cherry Hill	NJ	08034	(888) 751-9000	Security 1031 Services, Inc.		0367076734	Open
Commerce Bank, N.A.	1701 Route 70 East		Cherry Hill	NJ	08034	(888) 751-9000	Security 1031 Services, Inc.	FBO Hugh Lynch	7760144123	Open
Commerce Bank, N.A.	1701 Route 70 East		Cherry Hill	NJ	08034	(888) 751-9000	Security 1031 Services, Inc.	FBO Seika & Helen Ogura	7760145407	Open
Commerce Bank, N.A.	1701 Route 70 East		Cherry Hill	NJ	08034	(888) 751-9000	Security 1031 Services, Inc.	FBO Claremont AEC	7760145408	Open
Commerce Bank, N.A.	1701 Route 70 East		Cherry Hill	NJ	08034	(888) 751-9000	Security 1031 Services, Inc.	FBO Claremont Wellington	7760145409	Open
Commerce Bank, N.A.	1701 Route 70 East		Cherry Hill	NJ	08034	(888) 751-9000	Security 1031 Services, Inc.	Escrow Account	0466363488	Open
Commerce Bank, N.A.	1701 Route 70 East		Cherry Hill	NJ	08034	(888) 751-9000	Security 1031 Services, Inc.	Interest Account	7760145455	Open
Commerce Bank, N.A.	1701 Route 70 East		Cherry Hill	NJ	08034	(888) 751-9000	Security 1031 Services, Inc.	Operating Account	0368670121	Open
Countrywide							1031 Tax Group, LLC	Main	423210	Open
Countrywide							1031 Tax Group, LLC	ITF Eric O'Connor	423830	Open
Countrywide							1031 Tax Group, LLC	ITF Morley, Richard V	423814	Open
Countrywide							1031 Tax Group, LLC	ITF Anita Hunter	423806	Open
Countrywide							1031 Tax Group, LLC	ITF Buono, Robert John	423822	Open
Countrywide							1031 Tax Group, LLC	ITF Lee Gustafson	423855	Open
Countrywide							1031 Tax Group, LLC	ITF Robert E Hadaway	423848	Open
Fifth Third	P.O. Box 630900		Cincinnati	OH	45263	813-306-2553	Real Estate Exchange Service Inc.	Client Account - Britt Trust	7420586492	Open
Freedom Bank	P.O. Box 1441		St. Petersburg	FL	37731	727.820.8600	Real Estate Exchange Service Inc.		15001031	Open
Freedom Bank	P.O. Box 1441		St. Petersburg	FL	37731	727.820.8600	Real Estate Exchange Service Inc.		15001040	Open
Frost National Bank	PO Box 1600		San Antonio	TX	78296	800-513-7678	National Exchange Services	Special Account	750028711	Open
Frost National Bank	PO Box 1600		San Antonio	TX	78296	800-513-7678	National Exchange Services		750016926	Open
Frost National Bank	P.O. Box 1600		San Antonio	TX	78296	(800) 513-7678	National Exchange Services QI, Ltd	FBO Betty Hillman (CD)	053-00400779	Open
HSBC	Getty Square Office	16 South Broadway	Yonkers	NY	10701	(800) 975-4722	Security 1031 Services Inc. 22-00651	FBO Blue Holdings Realty LLC	651-63901-8	Open
Prudential Financial	PO Box 8236		Philadelphia	PA	19176	800-521-7466	National Exchange Services	Master Account	02808215829	Open
Prudential Financial	PO Box 8236		Philadelphia	PA	19176	800-521-7466	National Exchange Services	FBO: Accrued Interest Escrow Acct	02808916647	Open
Prudential Financial						(800) 521-7446	National Exchange Services QI, Ltd	Proceeds Account	02808215831	Open
United Western Bank	700 17th Street		Denver	CO	80202	(800) 594-2079	Investment Exchange Group, LLC	Client Interest Summary	70 7100004 1	Open
United Western Bank	700 17th Street		Denver	CO	80202	(800) 594-2079	Investment Exchange Group, LLC	IXG Exchange Account	70 7100002 5	Open
United Western Bank	700 17th Street		Denver	CO	80202	(800) 594-2079	Investment Exchange Group, LLC	IXG Investment Pool Summary	70 7100001 7	Open
United Western Bank	700 17th Street		Denver	CO	80202	(800) 594-2079	Investment Exchange Group, LLC	IXG DDA Summary	70 7100000 9	Open
Wachovia Bank, N.A.	PO Box 563966		Charlotte	NC	28262	800.566.3862	National Exchange Services	Master Account	2000028786003	Open
Wachovia Bank, N.A.	NC8502	P.O. Box 563966	Charlotte	NC	28262	(800) 566-3862	National Exchange Services QI, Ltd		2000031753395	Open
Wachovia Bank, N.A.	NC8502	P.O. Box 563966	Charlotte	NC	28262	(800) 566-3862	The 1031 Tax Group, LLC	Payroll Account	2000028383480	Open
Wachovia Bank, N.A.	NC8502	P.O. Box 563966	Charlotte	NC	28262	(800) 566-3862	The 1031 Tax Group, LLC	Operating Account	2000028383448	Open
Wachovia Bank, N.A.	NC8502	P.O. Box 563966	Charlotte	NC	28262	(800) 566-3862	The 1031 Tax Group, LLC		2000031753272	Open
Wachovia Bank, N.A.	NC8503	P.O. Box 563967	Charlotte	NC	28262	(800) 566-3862	The 1031 Tax Group, LLC	Prime Cash Fund	2000031753272	Open
Wachovia, N.A.	NC8502	P.O. Box 563966	Charlotte	NC	28262	800.566.3862	Real Estate Exchange Service Inc.		2000031753269	Open
Wachovia, N.A.	NC8502	P.O. Box 563966	Charlotte	NC	28262	800.566.3862	Real Estate Exchange Services, Inc.	Operating Account	2000031753256	Open
Wachovia, N.A.	NC8502	P.O. Box 563966	Charlotte	NC	28262	800.566.3862	Real Estate Exchange Services, Inc.		2000031753285	Open
Wachovia, N.A.	NC8502	P.O. Box 563966	Charlotte	NC	28262	800.566.3862	Real Estate Exchange Services, Inc.		2000028383710	Open
Citibank, N.A.	P.O. Box 5870	Grand Central Station	New York	NY	10163	(914) 899-7771	Atlantic Exchange Company, LLC	FBO Marlene & Jesse Berman Exchange Escrow Account	58599925	Unknown
Citibank, N.A.	P.O. Box 5870	Grand Central Station	New York	NY	10163	(914) 899-7771	Atlantic Exchange Company, LLC	FBO Phillos Realty Investors, LP Exchange Escrow Account	59237256	Unknown
Citibank, N.A.	P.O. Box 5870	Grand Central Station	New York	NY	10163	(914) 899-7771	Atlantic Exchange Company, LLC	FBO John Rudder Exchange Escrow Account	59237264	Unknown
Citibank, N.A.	P.O. Box 5870	Grand Central Station	New York	NY	10163	(914) 899-7771	Atlantic Exchange Company, LLC	FBO Pamela Nicroth Exchange Escrow Account	59237328	Unknown
Citibank, N.A.	P.O. Box 5870	Grand Central Station	New York	NY	10163	(914) 899-7771	Atlantic Exchange Company, LLC	FBO Frank J. Middleton Exchange Escrow Account	59237336	Unknown
Citibank, N.A.	P.O. Box 5870	Grand Central Station	New York	NY	10163	(914) 899-7771	Atlantic Exchange Company, LLC	FBO Kwok Wah Cheung Exchange Escrow Account	59237344	Unknown
Citibank, N.A.	P.O. Box 5870	Grand Central Station	New York	NY	10163	(914) 899-7771	Atlantic Exchange Company, LLC	Harkness Office Associates, LLC Exchange Escrow Account	59237467	Unknown
Citibank, N.A.	P.O. Box 5870	Grand Central Station	New York	NY	10163	(914) 899-7771	Atlantic Exchange Company, LLC	FBO Mark Pinette Exchange Escrow Account	59237483	Unknown
Citibank, N.A.	P.O. Box 5870	Grand Central Station	New York	NY	10163	(914) 899-7771	Atlantic Exchange Company, LLC	FBO So. Shore Industrial Exchange Escrow Account	67820011	Unknown
Citibank, N.A.	P.O. Box 5870	Grand Central Station	New York	NY	10163	(877) 528-0990	Security 1031 Services Inc.	FBO Flavia B. Landsberg	51498582	Unknown
Citibank, N.A.	P.O. Box 5870	Grand Central Station	New York	NY	10163	(877) 528-0990	Security 1031 Services Inc.	FBO 1833 Nostrand Avenue Corp.	22446716	Unknown

**EXHIBIT "B"**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

THE 1031 TAX GROUP, LLC, et al.,<sup>1</sup>  
Debtors.

Chapter 11

Case No. \_\_\_\_\_ ( \_\_\_\_ )  
Jointly Administered

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**ORDER AUTHORIZING TEMPORARY MAINTENANCE OF DEBTORS'  
BANK ACCOUNTS AND CASH MANAGEMENT SYSTEM**

Upon consideration of the motion (the "Motion")<sup>2</sup> of the above-captioned debtors (the "Debtors") for an order authorizing the Debtors to temporarily maintain their Existing Accounts and cash management system; and notice having been given to (a) the Office of the United States Trustee; and (b) those creditors listed on the Debtors' Consolidated List of Creditors Holding the 20 Largest Unsecured Claims; and it appearing that no other notice need be given; and after due deliberation, and sufficient cause appearing therefor, it is hereby

ORDERED, that the Motion is granted to the extent provided herein; and it is further

ORDERED, that the Debtors are hereby authorized to temporarily maintain their Existing Accounts, as identified on Exhibit "A" hereto, only until such time as the Debtors can complete an orderly closure and/or transfer of the funds on deposit in such Existing Accounts to the Debtor-in-Possession Bank Accounts, provided that no pre-petition checks, drafts, wire transfers, or other forms of tender which have not yet cleared the relevant drawee bank as of the

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<sup>1</sup> The Debtors 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; Exchange Management, LLC; Investment Exchange Group, LLC; National Exchange Accommodators, LLC; National Exchange Services QI, Ltd.; National Intermediary, Ltd.; NRC 1031, LLC; Real Estate Exchange Services, Inc.; Rutherford Investment LLC; Security 1031 Services, LLC; and Shamrock Holdings Group, LLC.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

Petition Date will be honored unless authorized by separate order of this Court; and it is further

ORDERED, that banks at which the Existing Accounts are maintained are hereby authorized to continue to service and administer the Existing Accounts as accounts of the Debtors as debtors-in-possession and to honor those checks as to which the Debtors have provided notice to the banks that authority to honor such check has been granted pursuant to an order of this Court; and it is further

Dated: May \_\_, 2007

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UNITED STATES BANKRUPTCY JUDGE