

## EXCHANGE AGREEMENT

THIS AGREEMENT is entered into by and between, \_\_\_\_\_ hereinafter referred to as "Exchanger", and SURETY 1031 EXCHANGE, INC., hereinafter referred to as "Intermediary".

WHEREAS, Exchanger owns that real property, hereinafter referred as "Relinquished Property," described in Exhibit "A" attached hereto and hereby incorporated by reference herein, and

WHEREAS, Exchanger entered into an \_\_\_\_\_ dated \_\_\_\_\_ (the "Purchase Agreement") for the sale of the Relinquished Property to \_\_\_\_\_; and

WHEREAS, Exchanger has entered into an Escrow Agreement, number \_\_\_\_\_, with Surety Title Agency, Inc. hereinafter referred to as "Escrow"; and

WHEREAS, Exchanger desires only to exchange the Relinquished Property for like-kind property, hereinafter referred to as "Replacement Property," in such a way as to qualify for tax-deferred treatment under Section 1031 of the Internal Revenue Code of 1986, as amended ("IRC") and similar state statutes; and

WHEREAS, Exchanger, with the continued intent to complete a tax-deferred exchange pursuant to Section 1031 of the IRC, is willing to allow the amendment of Escrow to substitute Intermediary as the seller of the Relinquished Property therein in order to allow for the closing of Escrow pending the location of suitable Replacement Property as specified herein; and

WHEREAS, Intermediary is willing to accept and to hold the proceeds of the Relinquished Property, as set forth in and received from the Escrow, and to utilize the same in securing, acquiring, and transferring to Exchanger suitable Replacement Property to complete the tax-deferred exchange according to the terms and conditions as set forth herein;

THEREFORE, the parties hereto agree as follows:

(1) Subject to and conditioned upon the close of Escrow and otherwise subjecting to and upon the terms and conditions set forth in this Agreement, including the optional authority for direct deeding contained in Paragraph 13 hereof, Exchanger hereby agrees to convey the Relinquished Property to Intermediary, and Intermediary hereby agrees to convey to Exchanger, in exchange for the Relinquished Property, Replacement Property having an aggregate Exchange Value equal to the Exchange Value of the Relinquished Property as determined under Paragraph 4 below.

(2) Exchanger shall convey all of Exchanger's right, title and interest in and to the Relinquished Property, under the provisions of Paragraph 13 hereof authorizing direct deeding, by delivery to Escrow on or before the closing of Escrow, of deed in the form described in the Purchase Agreement conveying the Relinquished Property to Purchaser. Exchanger shall in this event also execute and deliver to Escrow, on or before the closing of



Surety 1031 Exchange, Inc.  
1010 Leader Building 526 Superior Avenue East  
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Escrow, an Assignment of Real Estate Purchase & Sale Agreement for the Relinquished Property, assigning Exchanger's rights and obligations thereunder to Intermediary.

(3) In order to account for and monitor the Exchange Value in respect to the Relinquished Property, Intermediary agrees to establish an exchange account concerning this transaction in Intermediary's books and records in favor of Exchanger (hereinafter referred to as the "Exchange Account"). the opening entry for the Exchange Account shall be the Exchange Value with respect to the Relinquished Property as determined under paragraph 4 below. Thereafter, the balance in the Exchange Account shall be reduced from time to time by (i) Intermediary's fees and costs, (ii) the Exchange Value with respect to each Replacement Property (i.e., all amounts expended by Intermediary in connection with the acquisition of each Replacement Property, as determined under paragraph 5 below), and (iii) any other payments made or costs or expenses incurred by Intermediary for which Exchanger is obligated or responsible under this Agreement. The balance of the Exchange Value remaining in the Exchange Account also shall be increased in accordance with paragraph 15 below.

(4) In respect to the Relinquished Property, "Exchange Value" shall mean the total consideration received by Intermediary from the closing of the Escrow. All real estate commission, prorations of income and expenses (including rents, interest on encumbrances, real estate taxes, etc.), closing costs, title insurance premiums, escrow fees, and other amounts otherwise chargeable to Exchanger in the Escrow as seller of the Relinquished Property shall be charged to Intermediary and shall reduce the Exchange Value of the Relinquished Property.

(5) In respect to the Replacement Property, "Exchange Value" shall mean the total costs and expenses incurred by Intermediary, in accordance with the provisions of this Agreement in connection with the acquisition and conveyance thereof to Exchanger, including, without limitation, the aggregate amount of all deposits and expenditures by Intermediary in respect the purchase price, real estate commissions, prorations of income and expenses (including rents, interest on encumbrances, real estate taxes, etc.), closing costs, title insurance premiums, escrow fees and closing costs, and any other amounts otherwise chargeable to Intermediary in connection with the acquisition and conveyance of the Replacement Property to Exchanger, but excluding any existing mortgage, trust deed or other secured loans which may be assumed or take subject to by Exchanger.

(6) At the close of Escrow, the proceeds, including cash, shall be transferred, assigned, and/or conveyed to Intermediary and be held by Intermediary pursuant to the terms of this Agreement.

(7) Intermediary is instructed to deposit all such funds received into banks, savings and loan accounts, money market deposit accounts, repurchase agreements, in time deposits, or in such other investments as Exchanger may direct. If Exchanger fails to so direct, Intermediary may deposit said funds in accounts and with institutions as Intermediary may in its sole discretion deem appropriate. Exchanger hereby holds Intermediary harmless for any loss Exchanger may suffer as a result of the failure of any institution into which said funds are deposited.



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(8) In no event shall Intermediary be required to make a cash payment for Replacement Property, including all costs and expenses of said purchase, in excess of the amount of the Exchange Value then remaining in the Exchange Account.

(9) In the event additional cash is necessary to acquire the Replacement Property, said amount (I) shall be advanced by Exchanger to Intermediary; (ii) shall be used by Intermediary to acquire the Replacement Property; (iii) shall be considered an interest-free loan from Exchanger to Intermediary (fully satisfied upon the conveyance of Replacement Property to Exchanger); and (iv) in the event the Replacement Property is not conveyed to Exchanger, shall be repaid by Intermediary to Exchanger, upon written demand of Exchanger.

(10) For purposes of this agreement:

- (a) The period between the "conveyance date" and midnight of the 45th day thereafter is defined as the identification period; and
- (b) The period between the "conveyance date" and midnight of the earlier of the 180th day thereafter or the due day (including extensions) of the taxpayer's tax return for the taxable year in which the transfer of the Relinquished Property occurs is defined as the exchange period.

(11) Within 45 days after the transfer of the Relinquished Property from Exchanger to Intermediary, hereinafter referred to as the "Conveyance Date", Exchanger shall by written notice to Intermediary identify Replacement Property. Such notice from Exchanger shall unambiguously identify the Replacement Property by street address or legal description. Thereafter Intermediary shall undertake to acquire the Replacement Property upon such terms or pursuant to such agreement as Exchanger has negotiated with the seller of such Replacement Property. Provided, however, the Intermediary shall incur no liability to Exchanger hereunder if efforts to purchase Replacement Property on the terms and condition specified by Exchanger shall be unsuccessful. All agreements to purchase shall be executed by or assigned to Intermediary and title to the Replacement Property shall be recorded in Intermediary's name. Intermediary shall immediately thereafter convey the Replacement Property to Exchanger subject to, and subject only to, such title defect or exceptions as Exchanger has approved, in writing, prior to the acquisition; provided, however, the Intermediary's conveyance to Exchanger shall constitute full compliance with any express or implied warranties to which Intermediary would otherwise be subject. In the alternative, title to the Replacement Property may be conveyed by direct deed from the seller to Exchanger, in accordance with Paragraph 13 hereof.

(12) The Intermediary shall not be required to make any warranties or representation regarding the Relinquished Property which are not guaranteed by Exchanger. Further, the Intermediary shall not be required to make any warranties or representation regarding the Replacement Property which would survive as to the Intermediary following conveyance of the Replacement Property.

(13) To the extent permitted by Section 1031 of the IRC and the Regulations promulgated thereunder, legal title to the Relinquished Property and/or the Replacement Property may be transferred directly from the Exchanger to Purchaser, or from the Replacement Property Seller to Exchanger. The means of accomplishing such direct deed may require the



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execution of an Assignment of Real Estate Purchase & Sale Agreement between the Exchanger and the Intermediary for the Relinquished Property, and a separate such agreement between Exchanger and the Intermediary for the Replacement Property.

(14) Exchanger acknowledges and agrees that:

- (a) The Intermediary shall not be required to assume any secured loan on any Replacement Property or to execute any promissory notes or other evidence of Indebtedness in connection with such acquisitions which would impose any personal liability on officers and/or directors of the Intermediary for the payment thereof.
- (b) In no event shall the Intermediary be required to pay a cash amount for the Replacement Property, including all costs and expenses incurred in connection with such purchase, in excess of the Exchange Value then held in the Exchange Account.
- (c) The Intermediary shall act only in accordance with the written instructions of Exchanger and on the terms of this Agreement in making said acquisition, and may refuse to proceed with said acquisition in the event said Instruction exceeds the scope of this Agreement.
- (d) It is the sole responsibility of the Exchanger to determine that the agreements, assignment, notices and other documents used and the procedures followed meet the requirements for a Section 1031 Exchange. Owner acknowledges that the Intermediary has not made and is not making any representation concerning the adequacy or sufficiency of these documents and procedures for that purpose, even though Intermediary may have provided forms, documents or contract language for consideration in drafting such documents. Owner represents that it is relying solely on its own knowledge and information, and on the advice of its own tax counsel in determining the adequacy and sufficiency of such documents and procedures for that purpose, and in determining that Intermediary is qualified to act as an intermediary and/or escrow agent in the contemplated Section 1031 Exchange.
- (e) Owner shall indemnify, defend and hold harmless the Intermediary, and all affiliates of the Intermediary with respect to any claims which may be asserted against the Intermediary or any of its affiliates, and with respect to any loss, cost, expense or damage which might be suffered by Intermediary, including defense costs and attorneys' fees, in any way arising out of this Agreement, any other agreement or document which is part of the Exchange, or Exchange Transaction, any property of any nature whatsoever which is part of or in any way affected by the Exchange Transaction or any breach by Owner of any of its obligations under this Agreement or any other agreement or document which is part of the Exchange Transaction.

(15) Except for payments made from the Exchange Account to reimburse Exchanger for expenses paid by Exchanger for the sale of the Relinquished Property or the acquisition of Replacement Property, such as appraisal or title reports, earnest money, etc., which reimbursement shall be permitted upon written request from Exchanger and which payments are authorized under Treasury Regulation section 1.1031(k)-1(g)(7)(ii), the Exchanger shall not be entitled to receive any portion of the exchange account or any growth factor thereof nor



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to receive, pledge, borrow or otherwise obtain the benefits of money or other property prior to the termination this Agreement.

(16) All interest earned on the Exchange Account shall be for the benefit of Exchanger, and shall be reported as interest income on Exchanger's tax return, regardless of whether said interest is applied to the purchase of Replacement Property or is received by Exchanger in cash as part of the distribution of the Exchange Account to Exchanger upon termination of this Agreement. The Exchanger's tax ID number is \_\_\_\_\_.

(17) This Agreement shall terminate and the Exchange Account shall be paid to Exchanger by the Intermediary under the following conditions:

- (a) If the Exchanger fails to identify Replacement Property within 45 days after the Conveyance Date, the exchange has failed and the Agreement shall terminate and the Intermediary shall pay the Exchange Account to Exchanger after the 45th day.
- (b) If Exchanger has timely identified Replacement Property, after Exchanger has received all of the identified Replacement Property to which Exchanger is entitled, this Agreement shall terminate and the Intermediary shall pay the Exchange Account to Exchanger.
- (c) If Exchanger identifies Replacement Property, following the occurrence after the end of the identification period of a material and substantial contingency that (i) relates to the deferred exchange, (ii) is provided for in writing, and (iii) is beyond the control of Exchanger and of any disqualified person as defined in Treasury Regulation section 1.103(k)-1(k), other than the person obligated to transfer the Replacement Property to the Exchanger, the Agreement shall terminate and the Intermediary shall pay the exchange Account to Exchanger.
- (d) Otherwise, at the end of the Exchange Period.

(18) All notices provided or required to be given under this Agreement shall be deemed to have been duly given, served, and delivered if mailed by Untied States registered or certified mail addressed to the party entitle to receive the same at the address specified in this Agreement; provided, however, that any party may change its mailing address by giving to the other parties written notice of its new mailing address, and any notice so give shall be deemed to have been given, served, and delivered on the date following the date on which said notice was mailed in the manner herein provided.

Notices shall be given pursuant to the above paragraph to

Exchanger at: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Intermediary at: Surety 1031 Exchange, Inc.  
1010 Leader Building  
Cleveland, Ohio 44114



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Attention: \_\_\_\_\_.

with copy to :

\_\_\_\_\_  
Surety 1031 Exchange, Inc.  
1010 Leader Building  
Cleveland, Ohio 44114

(19) This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by the parties hereto. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. If any provisions of the Agreement shall be held invalid, such invalidity shall not affect any other provision hereof.

(20) This Agreement shall be construed in accordance with the laws of the State of Ohio. This Agreement may be executed in duplicate counterparts, each which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same agreement.

(21) This Agreement inures to the benefit of and binds all parties hereto, their heirs, successors and assigns.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

EXCHANGER

INTERMEDIARY

\_\_\_\_\_

SURETY 1031 EXCHANGE, INC.

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

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

its: \_\_\_\_\_

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



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