



**QUALIFIED ESCROW AGREEMENT**

**THIS QUALIFIED ESCROW AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and among the following: Exchange Operations, LLC, a Delaware Limited Liability Company (hereinafter referred to as "Qualified Intermediary" or "QI"); \_\_\_\_\_ (hereinafter referred to as "Exchanger"); and B of I FEDERAL BANK (hereinafter referred to as "Escrow Holder"). QI, Exchanger and Escrow Holder are collectively referred to herein as the "Parties".

**RECITALS**

**WHEREAS**, QI and Exchanger have entered into that certain Exchange Agreement dated \_\_\_\_\_ ("Exchange Agreement"), wherein, among other things, QI agreed to facilitate an Internal Revenue Code ("IRC") Section 1031 tax-deferred exchange on behalf of the Exchanger for the Relinquished Property (as such term is defined in Section 2(b), below);

**WHEREAS**, the Exchange Agreement requires the QI to hold the Exchange Proceeds (as such term is defined in Section 2(c), below), in connection with Exchanger's IRC Section 1031 exchange, in a federally or state chartered financial institution and subject to strict restrictions as set forth therein;

**WHEREAS**, the Parties intend that the Exchange Proceeds be held in accordance with the provisions and conditions of this Agreement pursuant to Treasury Regulation §1.1031(k)1(g)(3)(ii); and

WHEREAS, the purpose of this Agreement is also provide instructions to Escrow Holder for maintenance of the Escrow Account (as such term is defined in Section 2(a), below).

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned Parties agree as follows:

**SECTION 1. Appointment of Escrow Holder**

The Parties hereby mutually appoint Escrow Holder to act as the depository under this Agreement on the terms and conditions set forth herein. The Escrow Holder accepts appointment hereunder, agrees to perform its duties and obligations set forth herein, and warrants that it is a federally or state chartered financial institution.

**SECTION 2. Definitions**

(a) "Escrow Account" means an account consisting of a segregated account established in the name of the QI, in connection with the Exchanger's IRC Section 1031 exchange, under the provisions of the Exchange Agreement and subject to the substantial restrictions as set forth therein.

## Qualified Escrow Agreement

(b) "Relinquished Property" refers to the "subject matter" property referred to in the Exchange Agreement entered into previously or contemporaneously between the QI and Exchanger.

(c) "Exchange Proceeds" refers to the exchange funds generated from the sale of the Relinquished Property that are to be deposited with the Escrow Holder and subject to the provisions of this Agreement.

### **SECTION 3. The Escrow Account and Release of Exchange Proceeds**

(a) Upon the closing of the Relinquished Property and subject to the provisions and conditions of the Exchange Agreement, QI or Closing Agent shall immediately tender all Exchange Proceeds to the Escrow Holder for deposit in the Escrow Account together with a copy of this fully executed Agreement.

(b) All Exchange Proceeds received by the Escrow Holder pursuant to the terms of the Exchange Agreement and this Agreement shall be held, invested and disbursed in accordance with the terms and conditions of this Agreement.

(c) Escrow Holder agrees it will accept and deposit the Exchange Proceeds into an account on behalf of QI and tax payer.

(d) Escrow Holder agrees it will only release the Exchange Proceeds upon receipt of a written or digital disbursement request in the form attached hereto as Exhibit "A" signed by both QI and Exchanger (or Exchangers if there are more than one as a party to the Exchange Agreement) directing the Escrow Holder to transfer the Exchange Proceeds to purchase a replacement property, or any other approved transaction as identified in the Exchange Agreement or replacement property identification form, or to the Exchanger subject to the restrictions as set forth in the Exchange Agreement. Exchanger's right to receive, pledge, borrow or otherwise obtain the benefits of the Exchange Proceeds held in the Escrow Account shall be subject to the restrictions as set forth in Treasury Regulation §1.1031(k)-1(g)(6) (and any additional regulations that may be promulgated by the Internal Revenue Service with respect to this subject matter). Each written disbursement request shall state the amount requested, to whom payment should be made, and the date the payment is needed. Exchanger acknowledges that QI will withhold its signature instructing Escrow Holder to release the Exchange Proceeds except in those limited circumstances as described in the Exchange Agreement as allowed for under Treasury Regulation §1.1031(k)-1(g)6.

(e) Escrow Holder will have no duty to verify the authenticity of the signatures in the disbursement request beyond its standard procedural guidelines, nor will it be required to determine whether a release of the Exchange Proceeds to the Exchanger is warranted under the Exchange Agreement.

(f) The persons signing on behalf of QI and Exchanger(s), to the extent these parties are entities, hereby represent that they have signature authority to execute this Agreement and all related agreements (including the above-mentioned written disbursement request).

### **SECTION 4. Security Interest**

QI and Exchanger hereby appoint Escrow Holder to act as holder of a Qualified Escrow Account as defined under Treasury Regulation §1.1031(k)-1(g)(3)(ii) with respect to the Exchange Proceeds and the exchange of properties. The Parties hereto agree that the Exchanger has a security interest in the

## Qualified Escrow Agreement

Exchange Proceeds subject to the restrictions set forth in the Exchange Agreement and Treasury Regulation §1.1031(k)-1(g)(6).

### **SECTION 5. Incorporation of Recitals and the Exchange Agreement**

The Recitals and the Exchange Agreement are hereby incorporated herein by this reference and made a part hereof.

### **SECTION 6. Account Agreement & Disclosure**

The Escrow Account is also subject to the terms and conditions set forth in the Account Agreement & Disclosures for B of I FEDERAL BANK.

### **SECTION 7. No liability of Escrow Holder**

Escrow Holder shall not have any liability of any kind or nature by reason of any failure to consummate any property transactions except if such failure is caused by Escrow Holder's breach of any of its duties and obligations; Escrow Holder's duties and obligations are strictly limited to those expressly set forth in this Agreement and any other written agreement signed by Escrow Holder. Escrow Holder hereby agrees to perform all express rights, duties and obligations required of it hereunder in good faith in accordance with the terms of the provisions of this Agreement.

### **SECTION 8. No Bonding Requirement**

Escrow Holder shall not be required to give any bond or other security for the faithful performance of its duties hereunder.

### **SECTION 9. Disputes**

In the event of a dispute between QI and Exchanger regarding this Agreement or the disbursement or application of funds from the Escrow Account, Escrow Holder may, at its option, either take no action whatsoever, or interplead the parties in a proceeding to resolve such dispute by filing an interpleader suit with a court to determine the rightful owner of the funds, in either case, without liability to Escrow Holder.

### **SECTION 10. Indemnity and Hold Harmless**

Exchanger agrees to indemnify and hold Escrow Holder and any of its affiliates, officers, directors, employees, shareholders, agents, successors and assigns (collectively referred to as "Escrow Holder Indemnified Parties") harmless from and against any loss, damage, costs, charges, judgments, attorneys' fees or other sums that Escrow Holder and/or Escrow Holder Indemnified Parties may suffer, incur or pay, arising out of or in connection with the execution and/or performance of this Agreement, except to the extent that such loss, damage, costs, charges, judgments, attorneys' fees or other sums is due to Escrow Holder's breach of the terms of this Agreement. Exchanger shall, at its expense, defend any action or proceeding instituted against Escrow Holder and/or Escrow Holder Indemnified Parties that relates, directly or indirectly, to the subject matter of this Agreement except to the extent it relates to the breach of this Agreement by Escrow Holder; provided, however, if Escrow Holder elects to defend itself in any such action, it shall be privileged to do so, and the reasonable expense of such defense shall be borne by Exchanger.

Qualified Escrow Agreement

SECTION 11. Notices

All Notices and other communication required or permitted to be given or delivered hereunder shall be in writing, and shall be delivered (a) personally, (b) by first-class mail, or (c) by facsimile transmission, addressed to the party intended at the address set forth below, or such other address as may be designated by such party by notice given to the other parties in the same manner. All notices and other communications delivered by mail shall be deemed to have been delivered to and received by the addressee on the third day following the day on which such notice or communication was deposited in the United States mail. All notices and other communications delivered to a party personally or by facsimile transmission shall be deemed to have been delivered to and received by such party on the date of such personal delivery or facsimile transmission, if delivered before close of business, and on the next business day if delivered after close of business.

Address for QI: 900 East Hamilton Avenue #100  
Campbell, California 95008

Address for Exchanger : \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address for Escrow Holder: B of I Federal Bank  
4350 La Jolla Village Drive, Suite 140  
San Diego, CA 92122

**SECTION 12. Status of Escrow Holder**

Escrow Holder hereby represents that, to the best of its knowledge, it is not a "disqualified person" as such term is defined in Treasury Regulation §1.1031(k)-1(k).

**SECTION 13. Termination**

QI and Exchanger hereby expressly waive any rights they have or may have to terminate or dismiss Escrow Holder as escrow holder of the Escrow Account.

**SECTION 14. Miscellaneous**

- (a) Time: Time is of the essence for this Agreement.
- (b) Assignment: This Agreement shall inure to the benefit of, and shall be binding on, the Parties to this Agreement, their estates, heirs, representatives, successors in interest, and assigned provided, however, that no party shall have any right to assign this Agreement or any portion thereof without the prior written consent of the other party, which such party may withhold at its sole discretion.

## Qualified Escrow Agreement

(c) Amendment: This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed and executed by all the Parties hereto.

(d) Merger: This Agreement (and all other agreements, exhibits, and schedules referred to herein) constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings or agreements of the Parties. This Agreement may not be contradicted by evidence of any prior or contemporaneous statements or agreements. No party has been induced to enter into this Agreement by, nor is any party relying on any representation, understanding, agreement, commitment or warranty outside those expressly set forth in this Agreement.

(e) Conflict of Terms: Should any of the terms or provisions of this Agreement conflict with those contained in the Exchange Agreement, then the provisions of this Agreement shall prevail.

(f) Invalid Provisions: Should any provision of this Agreement be or become invalid or unenforceable, the remaining provisions of this Agreement shall be and remain fully effective.

(g) Attorney's Fees: If any party hereto brings suit to enforce or declare the meaning of any provision of this Agreement, the prevailing party, in addition to any other relief, shall be entitled to recover reasonable attorneys' fees and costs, including any on appeal.

(h) Intent: It is the intent of the Parties that this Agreement shall permit Exchanger to complete a like-kind exchange pursuant to IRC Section 1031, and it is intended to comply with the requirements of the regulations thereunder, including, but not limited to, Treasury Regulation §1.1031(k)-1 and the requirements for a qualified escrow account thereunder. To the extent that any provision herein conflicts with the requirements of the safe harbor provisions contained therein, the requirements and the conditions of the statute and the regulations shall control and shall be treated as if consummated herein.

(i) Governing Law: The Escrow Account hereby created may be administered within or without the State of Delaware, but in all respects shall be governed by and construed in accordance with the laws of the State of Delaware, including all matters of construction and performance, regardless of the laws that might otherwise govern under principles of conflicts of law applicable thereto.

(j) No Reliance: Exchanger acknowledges and agrees that it has relied solely upon the advice and judgment of its own independent tax advisors, attorneys, and/or certified public accountants as to the legal and/or tax implications of this Agreement and the Exchange Agreement. Escrow Holder shall in no event be held liable for Exchanger's failure to receive the tax benefits provided under IRC Section 1031 (or the equivalent state statute, if any). Exchanger has been specifically advised and informed that the complete scope and content of this Agreement should be reviewed and approved by Exchanger's independent tax and legal advisors prior to executing this Agreement.

(k) Counterparts: This Agreement may be executed in multiple counterparts, including by facsimile or other electronic transmission, and shall be of the same force and effect as if one document had been signed by all Parties.

Qualified Escrow Agreement

IN WITNESS WHEREOF, the Parties have executed this Qualified Escrow Agreement as of the Effective Date.

**EXCHANGER:**

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

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

Tax ID No. \_\_\_\_\_

**QUALIFIED INTERMEDIARY:**

Exchange Operations, LLC

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

Name: Stan Freeman

Title: President

**ESCROW HOLDER:**

B of I Federal Bank

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

Name:

Title: Vice President

**EXHIBIT "A"**  
**DISBURSEMENT REQUEST**

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THE B OF I FEDERAL BANK (hereinafter referred to as "Escrow Holder") is hereby directed to pay from the Exchange Proceeds established and maintained under that certain Qualified Escrow Agreement dated \_\_\_\_\_, 20\_\_\_\_(hereinafter referred to as the "Agreement"), between, EXCHANGE OPERATIONS, LLC (hereinafter referred to as the "Qualified Intermediary" or "QI"), \_\_\_\_\_ (hereinafter referred to as the "Exchanger") and Escrow Holder, the Disbursement Amount set forth below, plus any and all accrued interest, if applicable.

Disbursement Amount: \_\_\_\_\_

Disbursement Date: \_\_\_\_\_

Funds will be Disbursed to: \_\_\_\_\_

Upon execution of this Disbursement Request, the undersigned Exchanger hereby certifies that he/she has reviewed supporting documentation and this payment is in accordance with the requirements set forth in the Agreement by and between the Parties.

**QUALIFIED INTERMEDIARY:**

**EXCHANGER:**

\_\_\_\_\_

\_\_\_\_\_

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

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

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

Names: \_\_\_\_\_

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

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