

EXCHANGE AND QUALIFIED ESCROW ACCOUNT AGREEMENT



Citibank File Number: 20121126

This Exchange Agreement ("**Exchange Agreement**") is dated as of June 25, 2012 by and between Citibank, N.A. ("**Citibank**"), and 160 Madison Avenue Owners' Corp., ("**Taxpayer**").

RECITALS

- A. Taxpayer, directly or through a Taxpayer Disregarded Entity, owns that certain parcel or parcels of land, and all improvements thereon and appurtenances thereto, located at 160 Madison Avenue, New York, NY, and which is more particularly described on Exhibit "A" hereto (the "Relinquished Property").
- B. Taxpayer desires to exchange the Relinquished Property for one or more Eligible Replacement Properties in an exchange (the "Exchange") qualifying under Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury Regulations promulgated thereunder.
- C. Citibank is willing and agrees to act as a "qualified intermediary" (such term being used herein as defined in Treasury Regulation Section 1.1031 (k)-1 (g)(4)) in order to facilitate the Exchange as provided in this Exchange Agreement.
- D. Citibank is willing and agrees to act as an escrow agent for the limited purpose of establishing a "qualified escrow account" (such term being used herein as defined in Treasury Regulation Section 1.1031 (k)-1 (g)(3)), in order to secure its obligations hereunder as qualified intermediary.
- E. Taxpayer has entered into the Relinquished Property Sale Agreement, a copy of which is attached hereto as Exhibit "B".

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Citibank and Taxpayer agree as follows:

AGREEMENT

1. Defined Terms. In addition to the capitalized terms defined in the preamble to this Agreement, the following capitalized terms used and not otherwise defined herein shall have the meanings set forth below unless the context shall otherwise require:

"**Buyer**" means 160 Madison Ave, LLC, or its assignee or nominee, in its capacity as such under the Relinquished Property Sale Agreement.

"**Business Day**" means any day except a Saturday, Sunday or legal holiday observed by the Bank in the United States.

"**Citi 1031 Client Application**" means a completed Citi 1031 Exchange Services Client Application form, executed by the Taxpayer, and setting forth all of the information required by Citibank in connection with this Exchange Agreement.

"**Closing Agent**" is defined in Section 3(b) of this Exchange Agreement.

"**Contingency**" is defined in Section 6(c) of this Exchange Agreement.

"Deposits" means earnest money or similar payments or option payments required under either the Relinquished Property Sale Agreement or a Replacement Property Purchase Agreement, as the context requires.

"Eligible Replacement Property" means a parcel of real property, together with improvements (if any) thereon, (i) which is like-kind (within the meaning of Code §1031) to the Relinquished Property; (ii) which Taxpayer plans to use in its business or hold for investment; (iii) which Taxpayer properly identifies in its Identification Notice or a Modification Notice or which is deemed to have been identified pursuant to Treasury Regulation §1.1031(k)-1(c)(4)(ii)(A); and (iv) which Taxpayer shall be entitled to receive pursuant to the terms of this Agreement (including the provisions of Section 6(c) hereof with respect to identifications subject to a Contingency).

"Exchange Account" is defined in Section 5(a) of this Exchange Agreement.

"Exchange Account Earnings" means the interest or other income, if any, earned on the investment of the Exchange Funds in the Exchange Account.

"Exchange Funds" means an amount equal to the purchase price for the Relinquished Property under the Relinquished Property Sale Agreement (including all Deposits on account thereof) less the sum of (i) the amount required to discharge any Taxpayer Debt and (ii) any Transactional Items of a seller related to the disposition of the Relinquished Property and deducted from such purchase price.

"Exchange Period" means the period beginning on the Initial Closing Date and ending at midnight on the earlier of (a) the one hundred and eightieth (180th) calendar day thereafter (irrespective of whether such day is a Business Day) or (b) the due date (including extensions) for Taxpayer's U.S. federal income tax return for the year in which the Initial Closing Date takes place, but subject to extension under Section 14(a) hereof with respect to a Federally Declared Disaster affecting the Exchange.

"Federally Declared Disaster" is used herein as defined under Code §7508A for purposes of IRS Revenue Procedure 2007-56 (or any successor Revenue Procedure).

"Identification Notice" means a written notice, substantially in the form of Exhibit C attached hereto, signed by the Taxpayer and sent to Citibank, which notice identifies one or more Eligible Replacement Properties for the Exchange pursuant to the requirements of Code §1031(a)(3) and Treasury Regulation §1.1031(k)-1(c) and (e).

"Identification Period" means the period beginning on the Initial Closing Date and ending at midnight on the forty-fifth (45th) calendar day thereafter, but subject to extension under Section 14(a) hereof with respect to a Federally Declared Disaster affecting the Exchange.

"Initial Closing Date" means the date of the Relinquished Property Closing or such other date on which the disposition of the Relinquished Property to the Buyer is completed for federal income tax purposes under Code §1001 and §1031.

"Modification Notice" is defined in Section 6(a) of the Exchange Agreement.

"Notice of Revocation" is defined in Section 6(a) of this Exchange Agreement.

"Relinquished Property Assignment" means that certain assignment of even date herewith whereby Taxpayer is assigning to Citibank, as qualified intermediary, Taxpayer's Rights under the Relinquished Property Sale Agreement.

"Relinquished Property Closing" means the closing under the Relinquished Property Sale Agreement.

"Relinquished Property Sale Agreement" means that certain Contract of Sale dated May 23, 2011, as amended to date, between the Taxpayer and the Buyer with respect to the purchase and sale of the Relinquished Property, a copy of which is attached hereto as Exhibit B.

"Replacement Property Closing" means a closing pursuant to a Replacement Property Purchase Agreement.

"Replacement Property Purchase Agreement" means an agreement between the Taxpayer and a Seller with respect to the transfer of an Eligible Replacement Property.

"Rights" means (i) with respect to the Relinquished Property, the Exchangor's rights (within the meaning of Treasury Regulation §1.1031(k)-1(g)(4)(v)) in the Relinquished Property Sale Agreement (but not its obligations thereunder) to transfer the Relinquished Property and to receive the Exchange Funds and (ii) with respect to any Eligible Replacement Property, the Exchangor's rights (within the meaning of Treasury Regulation §1.1031(k)-1(g)(4)(v)) in the applicable Replacement Property Purchase Agreement (but not its obligations thereunder) to acquire such Eligible Replacement Property.

"Seller" means a seller of an Eligible Replacement Property under a Replacement Property Purchase Agreement.

"Seller Debt Assumption" is defined in Section 7(d) of this Exchange Agreement.

"Shortfall" means the amount, if any, by which the Uncommitted Exchange Account Balance is less than the sum of (i) the purchase price to be paid in cash by Citibank to acquire an Eligible Replacement Property and (ii) any related Transactional Items to be paid by Citibank in connection with such acquisition.

"Taxpayer" as used herein shall mean 160 Madison Avenue Owners' Corp., and/or any Taxpayer Disregarded Entities as the context so requires.

"Taxpayer Debt" means indebtedness of Taxpayer secured by, or required to be discharged upon the transfer of, the Relinquished Property.

"Taxpayer Disregarded Entities" means one or more entities that are wholly-owned by 160 Madison Avenue Owners' Corp., (directly or indirectly through one or more other Taxpayer Disregarded Entities) and disregarded as an entity separate and apart from Taxpayer for federal income tax purposes pursuant to Treasury Regulation §301.7701-3 or a relevant provision of the Code.

"Termination Event" means any of the events described in Section 4(c) of this Exchange Agreement.

"Transactional Items" means customary transactional items, within the meaning of Treasury Regulation §1.1031(k)-1(g)(7)(ii), of a seller with respect to the Relinquished Property or of a buyer with respect to an Eligible Replacement Property.

"Treasury Regulations" means all final, proposed and temporary Treasury Department regulations under Title 26 of the Code of Federal Regulations as in effect on the date hereof. Section references shall be deemed to refer to the corresponding section of any amendment, modification or restatement to such regulations.

"Uncommitted Exchange Account Balance" means the sum of (i) any remaining Exchange Funds held in the Exchange Account and (ii) any remaining Exchange Account Earnings held in the Exchange Account, reduced by the sum of (x) any amounts properly committed to be used pursuant to the terms of this Exchange Agreement and (y) any amounts required to be withheld for the payment of federal income taxes or other taxes by applicable federal or state law.

2. Exchange of Property Generally.

- a) Citibank and Taxpayer hereby agree, subject to the terms of this Exchange Agreement, that for the purpose of effecting the Exchange, the Taxpayer will transfer Rights with respect to the Relinquished Property to Citibank in exchange for the receipt of Rights with respect to one or more Eligible Replacement Properties from Citibank, as follows:
 - i) Citibank agrees to acquire from Taxpayer, and Taxpayer agrees to convey to Citibank, Rights under the Relinquished Property Sale Agreement;
 - ii) Citibank agrees to cause the Relinquished Property to be transferred to Buyer;
 - iii) upon identification of one or more Eligible Replacement Properties by Taxpayer, Citibank agrees to acquire Rights under one or more Replacement Property Purchase Agreements for the purpose of effectuating the Exchange; and
 - iv) At each Replacement Property Closing, Citibank agrees to direct the relevant Seller to transfer the relevant Eligible Replacement Property to the Taxpayer.
- b) The transfers described in this Exchange Agreement are part of an integrated, interdependent, mutual and reciprocal plan intended to effectuate an Exchange by Taxpayer of like-kind real properties pursuant to and in accordance with the provisions of Section 1031 of the Code, and to the extent possible, applicable state and local tax statutes.

3. Disposition of Relinquished Property.

- a) On or before the Initial Closing Date and pursuant to the Relinquished Property Assignment, Taxpayer shall assign to Citibank, as qualified intermediary, its Rights under the Relinquished Property Sale Agreement and Taxpayer shall give written notice of such assignment to all parties to the Relinquished Property Sale Agreement.
- b) If Taxpayer has received any Deposits for the Relinquished Property, Taxpayer shall transfer those amounts to title company, escrow company or other closing agent ("Closing Agent") for the transfer of the Relinquished Property. Taxpayer shall transfer Rights with respect to the Relinquished Property to Citibank, as qualified intermediary, subject to the Taxpayer Debt, if any, and subject to the rights of the other parties to the Relinquished Property Sale Agreement. Citibank, as qualified intermediary, shall not assume any personal liability with respect to any Taxpayer Debt. Rather, Taxpayer and Citibank, as qualified intermediary, shall direct the Closing Agent to arrange for the discharge of Taxpayer Debt, if any, with funds provided by Buyer.
- c) In order to save duplicative recording fees, escrow costs and other similar charges, Taxpayer shall convey, on behalf of Citibank, the Relinquished Property directly to the Buyer. In addition, Taxpayer agrees to execute all bills of sale and assignment of leases, security deposits, trade names and other assets, which are necessary to close the transaction, directly in favor of the Buyer. If the Relinquished Property Closing does not occur on the Initial Closing Date, as such date may be extended by Taxpayer and the Buyer, Citibank shall re-assign all of its Rights under the Relinquished Property Sale Agreement back to Taxpayer pursuant to a re-assignment agreement in form and substance acceptable to Citibank.
- d) Notwithstanding anything in this Exchange Agreement to the contrary, and as permitted by Treasury Regulation §1.1031(k)-1(g)(4)(vii), Taxpayer may receive as taxable "boot" from Buyer, either directly or through the Closing Agent at the Relinquished Property

Closing, a payment in cash or other property, in an amount to be determined by Taxpayer, if so provided in the Relinquished Property Assignment

4. Limitation on Taxpayer's Right To Receive Exchange Funds.

- a) Taxpayer will deliver transaction instructions to the Closing Agent at the Relinquished Property Closing, which instructions shall provide that the Exchange Funds are due and payable to Citibank, as a qualified intermediary; and Citibank shall hold and apply the Exchange Funds, in accordance with the terms and conditions of this Exchange Agreement, in the Exchange Account.
- b) Pursuant to Treasury Regulation 1.1031(k)-1(g)(6), prior to the occurrence of a Termination Event, Citibank shall hold the Exchange Funds and any Exchange Fund Earnings in escrow for the benefit of the Taxpayer; but Taxpayer shall have no right, power, or option to demand, call for, receive, pledge, borrow or otherwise obtain the benefits of any of Exchange Funds, including any Exchange Funds Earnings, except that any Uncommitted Exchange Account Balance held by Citibank shall be paid to Taxpayer within three (3) Business Days after Citibank is notified that a Termination Event has occurred.
- c) Citibank shall disburse to Taxpayer any Uncommitted Exchange Account Balance after the occurrence of any of the following events (each, a "Termination Event"), as permitted by Treasury Regulation §1.1031(k)-1(g)(6):
 - i) If, before the end of the Identification Period, Taxpayer fails to provide Citibank with an Identification Notice (or has properly revoked all Identification Notices and Modification Notices, if any, previously provided pursuant to a Notice of Revocation), then Taxpayer shall have the right to receive the Uncommitted Exchange Account Balance after the end of the Identification Period;
 - ii) If the Identification Period has expired, and if prior to such expiration Taxpayer properly provided Citibank with, and did not revoke, an Identification Notice, then Taxpayer shall have the right to receive the Uncommitted Exchange Account Balance after Taxpayer has acquired all Eligible Replacement Properties; or
 - iii) If, at the end of the Exchange Period, the Exchange Funds (and any Exchange Account Earnings) have not been fully expended to acquire Eligible Replacement Properties and pay for Transactional Items in connection therewith, then Exchangor shall have the right to receive the Uncommitted Exchange Account Balance after the end of the Exchange Period.
- d) After the occurrence of any one of the above described Termination Events, Taxpayer will provide written instructions to Citibank to disburse the Uncommitted Exchange Account Balance to Taxpayer pursuant to the terms of this Exchange Agreement.
- e) Taxpayer acknowledges that if, during the Exchange Period, Taxpayer decides not to acquire any or all Eligible Replacement Properties, and unused Exchange Funds remain in the Exchange Account, Taxpayer cannot receive the unused Exchange Funds (or any Exchange Account Earnings) until the end of the Exchange Period due to the limitations on the receipt of Exchange Funds set forth in this Section 4.

5. Exchange Account.

- a) Upon receipt of the Exchange Funds, Citibank shall hold the Exchange Funds and any Exchange Account Earnings in escrow at Citibank for the benefit of the Taxpayer under Taxpayer's social security number or tax identification number, as applicable, in either

- i) a segregated non-interest bearing CitiBusiness Checking account (a “**DDA Account**”); or
- ii) a segregated business insured money market account (an “**IMMA Account**”; each of the DDA Account and the IMMA Account are individually and collectively referred to as an “**Exchange Account**”),

as selected by Taxpayer on its Citi 1031 Client Application.

- b) Exchange Funds and any Exchange Account Earnings shall not be subject to execution or attachment on any claim against Citibank by a third party, nor shall they be subject to Citibank’s creditors.
- c) Exchange Funds and any Exchange Account Earnings deposited in the Exchange Account are insured by the Federal Deposit Insurance Corporation (“FDIC”) up to applicable limits. Taxpayer acknowledges that further information regarding FDIC Insurance is available at the FDIC website at www.fdic.gov or by calling the FDIC at 1-877-ASKFDIC. Taxpayer further acknowledges that it has received the FDIC Update from Citibank.
- d) If Taxpayer directs the Exchange Funds to be deposited into an IMMA Account, interest will be earned in accordance with the following:
 - i) Citibank will use the daily balance method to calculate the interest on the IMMA Account. This method applies a daily periodic rate to the principal in the IMMA Account each day.
 - ii) When interest begins to accrue, it is computed on a 365 day basis for the actual number of days the Exchange Funds are on deposit. Interest may be computed using a 366 day basis for a leap year.
 - iii) Interest is compounded daily and will be credited to Taxpayer’s IMMA Account on the date a Termination Event occurs.
 - iv) Exchange Funds wired to Citibank, or delivered by check, and not received by Citibank by 5:00 p.m. Eastern Time on a Business Day, will not begin to accrue interest pursuant to this Exchange Agreement until the next Business Day. Exchange Funds wired to Citibank, or delivered to Citibank by check, and received by Citibank by 5:00 p.m. on a Business Day, will begin to accrue interest pursuant to this Exchange Agreement on the day of receipt of the wire or check by Citibank.
 - v) Interest rates and annual percentage yields are determined by Citibank and can change at any time (Taxpayer acknowledges that it has received from Citibank the Interest Rate Sheet for CitiBusiness products which describes the interest rate and annual percentage yield information in effect as of the date of this Exchange Agreement).
- e) Citibank shall file information returns, reporting as taxable income to Taxpayer the interest and other earnings, if any, paid to Taxpayer during any calendar year on such returns, reports, and other filings as are required by applicable law. Taxpayer represents and warrants to Citibank that the Social Security or Taxpayer Identification Number identified on the Citi 1031 Client Application is correct. Taxpayer will recognize such interest and other earnings, if any, as taxable income to Taxpayer regardless of whether such interest or other earnings are used to acquire one or more Eligible Replacement Properties. Citibank shall have no obligation to pay any income, gains or other taxes that may be imposed with respect to any of the transactions contemplated by this Exchange Agreement. Taxpayer further certifies under penalties of perjury that Taxpayer is not a

"foreign person" as defined under Section 1445 of the Code, and that the Taxpayer is not subject to backup withholding.

6. Identification of Replacement Property.

- a) Prior to the expiration of the Identification Period, Taxpayer shall have delivered to Citibank a written Identification Notice signed by Taxpayer identifying one or more Eligible Replacement Properties. Taxpayer may notify Citibank of any changes, deletions, or additions to its Identification Notice (a "Modification Notice") and may revoke in full an Identification Notice (a "Notice of Revocation"), in each case only by a written notice signed by the Taxpayer and delivered to Citibank prior to the expiration of the Identification Period. To be effective, an Identification Notice, a Modification Notice or a Notice of Revocation must be received by Citibank prior to the end of the Identification Period and all notices to Citibank must be delivered in accordance with Section 10 hereof.
- b) Upon receipt of an Identification Notice or a Modification Notice within the Identification Period, Citibank will sign such notice, indicating its proper receipt within the Identification Period. Taxpayer agrees that the Eligible Replacement Properties shall be identified on the Identification Notice or any Modification Notice in accordance with the following principles, as required by Code Section 1031 and the Treasury Regulations thereunder:
 - i) Taxpayer shall unambiguously describe each Eligible Replacement Property using either its complete legal description, complete street address, Assessor's Parcel Number, or distinguishable name.
 - ii) Taxpayer shall identify only that number of Eligible Replacement Properties which meets one of the following "rules": (1) three (3) properties without regard to the fair market value of the properties (the "three property rule"); (2) any number of properties so long as their aggregate fair market value as of the end of the Identification Period does not exceed two hundred percent (200%) of the aggregate fair market value of the Relinquished Property as of the Initial Closing Date (the "200% rule"); or (3) any number of properties without regard to their fair market value so long as Taxpayer receives Eligible Replacement Properties constituting at least ninety-five percent (95%) of the aggregate fair market value of all Eligible Replacement Properties before the end of the Exchange Period (the "95% Acquisition rule").
 - iii) Any property acquired by the Taxpayer, pursuant to the terms of this Exchange Agreement, before the end of the Identification Period, and thus deemed to be identified for purposes hereof, shall be taken into account for purposes of the three property rule, the 200% rule and the 95% acquisition rule.
- c) If, in connection with the identification of one or more Eligible Replacement Properties, the Taxpayer identifies a "material and substantial contingency beyond the control of Taxpayer" (within the meaning of Treasury Regulation §1.1031(k)-1(g)(6)(iii)(B) – hereinafter a "Contingency"), the occurrence of which Contingency (for example, a failure to obtain a zoning approval) will cause Taxpayer to abandon the acquisition of such Eligible Replacement Property, and if such Contingency in fact occurs after the end of the Identification Period, then the property so identified subject to the Contingency shall not thereafter be considered to be an Eligible Replacement Property for purposes of this Agreement.
- d) TAXPAYER HEREBY ACKNOWLEDGES THAT TAXPAYER HAS DISCUSSED THE TREASURY REGULATION PROVISIONS RELATED TO IDENTIFICATION OF ONE OR MORE ELIGIBLE REPLACEMENT PROPERTIES WITH TAXPAYER'S TAX ADVISOR AND CITIBANK IS ACTING SOLELY AS QUALIFIED INTERMEDIARY AND HAS NOT OFFERED OR PROVIDED ANY TAX ADVICE TO TAXPAYER. Taxpayer agrees and

acknowledges that Citibank, as qualified Intermediary, shall not be responsible for the adequacy or sufficiency of the Identification Notice (or any Modification Notice) for any reason, including without limitation, the adequacy or accuracy of any property descriptions or the determination of values used in computing the maximum value of properties identified under the 200% rule or the 95% acquisition rule.

7. Acquisition of one or more Eligible Replacement Properties.

- a) Taxpayer shall have the sole duty and obligation to identify one or more Eligible Replacement Properties and enter into each Replacement Property Purchase Agreement. At or before each Replacement Property Closing, Taxpayer shall assign its Rights under the relevant Replacement Property Purchase Agreement to Citibank, as qualified intermediary, pursuant to a Replacement Property Assignment in form and substance acceptable to Citibank in its sole discretion. However, Citibank shall have no obligation to accept such an assignment unless:
 - i) the Seller of the Eligible Replacement Property agrees in writing to deed the Eligible Replacement Property directly to Taxpayer, as directed by Citibank, and
 - ii) the Seller of the Eligible Replacement Property consents in writing to the assignment of Taxpayer's Rights in the Replacement Property Purchase Agreement to Citibank, as qualified intermediary.
- b) Taxpayer shall give written notice of each Replacement Property Assignment to all parties to the relevant Replacement Property Purchase Agreement on or before the date the relevant Replacement Property Closing and shall obtain written acknowledgment from all such parties that the notice of assignment was received prior to such closing.
- c) In connection with each Replacement Property Assignment, Citibank will direct the Seller to transfer the relevant Eligible Replacement Property (by deed, bill of sale, assignment and/or other instrument of transfer which complies with the terms of the relevant Replacement Property Purchase Agreement) directly to the Taxpayer.
- d) In connection with the acquisition of each Eligible Replacement Property, Citibank shall cause to be paid from the Exchange Account the purchase price for such Eligible Replacement Property and (if so directed by Exchangor) any Transactional Items of a buyer related to the acquisition of the Eligible Replacement Property. If the Uncommitted Exchange Account Balance is insufficient to make such required payment, then Taxpayer shall be solely responsible for any Shortfall and shall either make a cash payment and/or assume (or acquire such Eligible Replacement Property subject to) indebtedness of the Seller secured by such Eligible Replacement Property (a "Seller Debt Assumption") in an aggregate amount equal to the Shortfall. Taxpayer shall provide Citibank, when reasonably requested, with reasonable written assurances that any Shortfall will be paid (either in cash and/or by a Seller Debt Assumption) prior to Citibank accepting the relevant Replacement Property Assignment. Citibank shall not be required to acquire legal title to any property, assume any obligation or loan, execute any evidence of indebtedness, or incur any obligation creating personal liability in connection with the acquisition of any Eligible Replacement Property.
- e) If so requested by Taxpayer, Intermediary may pay any Deposits required to be paid under a Replacement Property Purchase Agreement but only if Taxpayer and Citibank have entered into a Replacement Property Assignment with respect to such Replacement Property Purchase Agreement prior to the time any such Deposit is to be paid.
- f) As required by Code §1031(a)(3) and Treasury Regulation §1.1031(k)-1(b), Taxpayer (through Citibank as qualified intermediary) must complete its acquisition of an Eligible Replacement Property before the expiration of the Exchange Period for such Eligible Replacement Property to qualify for inclusion in the Exchange.

- g) Taxpayer shall provide Citibank at least three (3) Business Days prior notice of any scheduled Replacement Properties Closing or the required payment of any Deposit to a Seller. In order to provide timely wiring of Exchange Funds, unconditional and proper wiring instructions must be provided by Taxpayer to Citibank in writing no later than three (3) Business Days before the day the wire is to be initiated, unless Taxpayer has made alternative arrangements with Citibank.
 - h) If a Replacement Property Closing does not occur on the scheduled date, as such date may be extended by the Taxpayer and the relevant Seller, then Citibank shall re-assign all of its Rights under the relevant Replacement Property Purchase Agreement back to Taxpayer pursuant to a re-assignment agreement in form and substance acceptable to Citibank in its sole discretion.
- 8. Indirect Transfers. If Taxpayer so directs, the transfer of the Relinquished Property or any acquisition of an Eligible Replacement Property hereunder may be effected by the transfer or acquisition of beneficial or other ownership interests of an entity in a transaction which is treated, for federal income tax purposes, as a direct transfer or acquisition of such entity's underlying assets (including, by way of example and not by limitation, a transfer or acquisition of all the membership interests in a limited liability company which has not elected to be taxed as an association).
- 9. Duties of Citibank. It is understood and agreed by the parties to this Exchange Agreement that:
 - a) Citibank has entered into this Exchange Agreement with the intention of being an escrow agent holding a "qualified escrow account," within the meaning of Treasury Regulation Section 1.1031(k)-1(g)(4)(ii), and a "qualified intermediary," within the meaning of Treasury Regulation Section 1.1031(k)-1(g)(4)(iii), on the date hereof and shall use its reasonable best efforts to retain that status until all of the Exchange Funds and any Exchange Fund Earnings have been disbursed in accordance with this Exchange Agreement. Citibank and Taxpayer acknowledge and agree that this Exchange Agreement is intended to satisfy the "safe harbor" provisions of Treasury Regulation Section 1.1031(k)-1(g).
 - b) CITIBANK IS ENTERING INTO THIS EXCHANGE AGREEMENT SOLELY FOR THE PURPOSE OF FACILITATING TAXPAYER'S EXCHANGE OF THE RELINQUISHED PROPERTY FOR ONE OR MORE ELIGIBLE REPLACEMENT PROPERTIES. NONE OF CITIBANK'S ACTIONS UNDER THIS EXCHANGE AGREEMENT SHALL CONSTITUTE LEGAL, TAX OR OTHER ADVICE OR REPRESENTATIONS TO TAXPAYER OR ANY OTHER PERSON OR ENTITY. CITIBANK MAKES NO REPRESENTATIONS REGARDING THE TAX CONSEQUENCES OF THE TRANSACTIONS CONTEMPLATED BY THIS EXCHANGE AGREEMENT, INCLUDING QUALIFICATION OF THE TRANSACTIONS SET FORTH HEREIN AS A LIKE-KIND EXCHANGE UNDER SECTION 1031 OF THE CODE OR ANY OTHER MATTER. TAXPAYER HEREBY REPRESENTS TO CITIBANK, AND ACKNOWLEDGES THAT CITIBANK IS RELYING ON SUCH REPRESENTATION IN EXECUTING THIS EXCHANGE AGREEMENT, THAT TAXPAYER HAS EXECUTED THIS EXCHANGE AGREEMENT BASED ON THE ADVICE OF TAXPAYER'S LEGAL AND TAX ADVISERS WITH RESPECT TO ALL ASPECTS OF THIS EXCHANGE AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING BY WAY OF ILLUSTRATION, AND NOT LIMITATION, FEDERAL, STATE, AND LOCAL TAX CONSEQUENCES. TAXPAYER EXPRESSLY RELEASES CITIBANK FROM AND COVENANTS NOT TO SUE CITIBANK FOR ANY LIABILITY WITH RESPECT THERETO, EXCEPT FOR CITIBANK'S WILLFUL MISCONDUCT, GROSS NEGLIGENCE OR FRAUD.
 - c) Citibank shall only be obligated to act as an escrow agent and qualified intermediary in accordance with the terms and conditions of this Exchange Agreement and shall not be bound by any other contract or agreement, whether or not Citibank has knowledge of any

such contract or agreement or of its terms or conditions. Citibank has undertaken to perform only such duties as are expressly set forth herein, and no additional duties or obligations shall be implied hereunder or by operation of law or otherwise.

- d) Citibank shall not be liable to Taxpayer or any person or entity for any damages, losses, costs, expenses, or taxes that it or they may incur as a result of any act or omission of Citibank under this Exchange Agreement unless such damages, losses, expenses, or taxes are caused by Citibank's willful misconduct, gross negligence or fraud. Citibank shall not incur any obligation or liability with respect to (i) any action taken or omitted in good faith upon the advice of its counsel or counsel for any other party hereto, given with respect to any questions relating to the duties and responsibilities of Citibank under this Exchange Agreement, or (ii) any action taken or omitted in reliance upon any instrument, including due execution thereof or the identity or authority of any person executing such instrument, its validity and effectiveness, but also as to the truth and accuracy of any information contained therein that Citibank shall, in good faith, believe to be genuine, to have been signed by a proper person or persons and to conform to the provisions of this Exchange Agreement.
 - e) Except for damages, losses, or expenses caused by Citibank's willful misconduct, gross negligence or fraud, Taxpayer shall indemnify, hold harmless, and defend Citibank from and against any and all actions, suits, claims, charges, costs, losses, damages, liabilities, expenses, including costs of investigation, court costs, and attorneys' fees and disbursements that may be brought or imposed upon Citibank in connection with its actions hereunder, including any litigation arising in connection with this Exchange Agreement or involving the subject matter hereof as and when incurred. This obligation shall survive termination of this Exchange Agreement.
 - f) Should any dispute arise with respect to the delivery or ownership or right of possession of any of the Exchange Funds, Citibank is authorized and directed to retain in its possession without liability to any person or entity, all or any part of the Exchange Funds until such dispute is settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction in the United States of America as to which time for appeal has expired and no appeal has been perfected, but Citibank shall be under no duty whatsoever to institute or defend any such proceedings.
 - g) Citibank shall not, by act, delay, omission or otherwise, be deemed to have waived any right or remedy it may have either under this Exchange Agreement or generally, unless such waiver be in writing and signed by Citibank, and such waiver shall constitute a waiver only to the extent expressly set forth therein. A waiver by Citibank under the terms of this Exchange Agreement shall not be construed as a bar to, or a waiver of, the same or any other such right or remedy that it would otherwise have on any other occasion.
10. Facilitation Fee. The non-refundable set up fee for this transaction has been waived. Taxpayer shall reimburse Citibank for any and all costs paid or incurred by Citibank in connection with acting as an exchange facilitator pursuant to this Exchange Agreement. Taxpayer will pay to Citibank an additional closing fee of \$250 for each additional Replacement Property Closing, beyond the first, to be due on the date of such Replacement Property Closing.
11. Conditions Precedent. Citibank's obligations under this Exchange Agreement shall be subject, to the extent not waived by Citibank, to (i) the Taxpayer and all other parties to the transactions contemplated herein performing all obligations and complying with all conditions required by or otherwise set forth in this Exchange Agreement; (ii) the receipt by Citibank of fully executed copies of all agreements and other documents requested by Citibank, in form and substance satisfactory to Citibank, including without limitation, this Exchange Agreement, the Citi Client Application, organizational documents and certificates, resolutions and any other documents and agreements requested in connection with this Exchange Agreement, (iii) all proceedings to be

taken by the parties with respect to the transactions contemplated herein being taken pursuant to valid authority, being duly authorized and approved and being evidenced in a manner reasonably satisfactory in form and substance to Citibank; (iv) no statute, rule, regulation, court order, administrative order, or regulation being proposed, enacted, or in effect, which would or might restrain or prohibit the transactions contemplated hereby or that would seek to prohibit, delay or challenge any such transactions.

12. Notices. Each notice, instruction or other certificate required or permitted by the terms hereof shall be in writing and shall be communicated by hand delivery, facsimile, Federal Express or another similar overnight document delivery service, or United States mail, postage prepaid (certified, return receipt requested), to the parties at the following addresses:

If to Taxpayer: 254 Fifth Avenue, 3rd Floor
New York, NY 10001
Phone: (845) 796-9140
Fax: (212) 889-5573
Email: csimon@fairlane.biz

With a copy to: Vernon & Ginsburg, LLP
261 Madison Avenue, 26th Floor
New York, NY 10116
ATTN: Darryl M. Vernon, Esquire
Fax: (212) 697-4432
Email: dvernon@vernonginsburg.com

If to CITIBANK: Citibank
1650 Market St, Suite 3550
Philadelphia, PA 19103
ATTENTION: David Gorenberg
Phone: (267) 385-3624
Fax: (866) 767-8201
Email: david.gorenberg@citi.com

Any such notice, request or consent shall be deemed to have been given or made when delivered in person to the party to whom the communication is addressed, or when sent by facsimile to such party at the address indicated, or on the next Business Day after being sent by Federal Express or similar overnight document delivery service or on the third day after the postmark date of mailing when sent by certified mail. Any party may change the address at which it is to receive notices by so advising the other parties in writing. To be effective, any such notice, request or consent sent by facsimile must be sent to the facsimile number shown above.

13. Taxpayer's Additional Representations, Warranties and Covenants. Taxpayer hereby represents to Citibank as follows:

- a) Taxpayer has held the Relinquished Property for productive use in a trade or business or for investment and has not held such property primarily for sale. Taxpayer intends to hold each Eligible Replacement Property to be acquired hereunder for productive use in a trade or business or for investment and will not hold such property primarily for sale.
- b) Taxpayer will not purchase any Eligible Replacement Property from a related person, as such term is defined in Section 1031(f)(3) of the Code, unless Taxpayer provides satisfactory evidence to Citibank that such acquisition is permitted by Section 1031(f)(2)(C).
- c) Taxpayer does not own 10% or more of Citibank or any of its affiliates, and has not otherwise taken, and will not take, any action that would render Citibank a "disqualified person" under Treasury Regulation §1.1031(k)-1(k).

- d) Taxpayer acknowledges that for complete tax deferment under Section 1031 of the Code, Taxpayer must trade up or trade even in value, debt and equity. Any cash Taxpayer receives from the exchange transaction may be taxable.

14. Federal Declared Disasters and Force Majeure.

- a) Notwithstanding anything to the contrary in this Agreement, and unless Citibank and Taxpayer agree otherwise in writing, the Identification Period and/or the Exchange Period hereunder shall be automatically extended if the Internal Revenue Service issues a notice pursuant to IRS Revenue Procedure 2007-56 (or any successor Revenue Procedure) which is applicable to the Exchange and provides for an extension of one or both Code §1031 deadlines (that is, the 45 day period for identifying Eligible Replacement Properties and/or the 180 day period for completing the Exchange) as a result of a relevant Federally Declared Disaster. Citibank shall not be responsible for notifying Taxpayer of any relevant Federally Declared Disaster.
- b) Citibank shall not be liable to Taxpayer for any failure or delay in performance if such failure or delay is occasioned by (i) compliance with government regulation, request or order, or (ii) circumstances beyond the reasonable control of Citibank including, but not limited to, Act of God, war, insurrection, fire, flood, earthquake, accident, strike or other labor disturbance, interruption of or delay in transportation or power failure. Accordingly, Taxpayer is strongly urged to take steps to schedule all Replacement Property Closings sufficiently before the expiration of the Exchange Period so that any unforeseen delay will not result in a violation of the time constraints imposed by Section 1031 of the Code.

15. Miscellaneous.

- a) This Exchange Agreement may be modified, altered, or amended only by the written agreement of Taxpayer and Citibank.
- b) This Exchange Agreement and the Exchange Account shall be governed by and construed in accordance with Federal law and regulations and the extent that such laws and regulations do not apply, then to the laws of the State of New York without regard to the conflict of laws provisions thereof, and shall be binding upon and shall inure to the benefit of the parties and their respective successors in interest and permitted assigns. Each of the parties hereby consents and submits to personal jurisdiction in the State of New York for all matters that may arise with respect to this Exchange Agreement, and waives any and all rights to object to jurisdiction within the State of New York. The parties consent to venue in the District Court of the City of New York, New York and, to the extent there is subject matter jurisdiction, in the New York Division of the United States District Court for the District of New York. No party hereto shall make or raise any claim of *forum non conveniens* with respect to any court located in the State of New York as to any litigation regarding this Exchange Agreement.
- c) The paragraph headings and subheadings contained in this Exchange Agreement are for convenience and reference only, and shall not in any way affect the meaning or interpretation of this Exchange Agreement.
- d) This Exchange Agreement may be executed in any number of counterparts and each shall be considered an original and together they shall constitute one agreement. Facsimile signatures on this Exchange Agreement or any other document called for or contemplated in this Exchange Agreement shall be deemed original signatures.
- e) Taxpayer may not assign this Exchange Agreement.
- f) Should a court of competent jurisdiction find any portion of this Exchange Agreement to be invalid or unenforceable, the remaining terms and provisions hereof shall not be affected and shall remain in full force and effect.

- g) Each party hereto and their legal counsel have reviewed this Exchange Agreement and have had an opportunity to revise (or request revision of) this Exchange Agreement and, therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Exchange Agreement.
- h) Should the language of any provision herein be deemed to negate a like-kind exchange within the meaning of Section 1031 of the Code as to Taxpayer, it shall be interpreted and applied in order to comply with Section 1031 of the Code.
16. Waiver of Jury Trial. **THE PARTIES WAIVE TRIAL BY JURY OF ANY AND ALL DISPUTES ARISING HEREUNDER OR RELATED HERETO AND AGREE THAT ALL SUCH DISPUTES SHALL BE TRIED AND DECIDED SOLELY BY A JUDGE SITTING WITHOUT A JURY.**
17. **WASHINGTON STATE LAW, RCW 19.310.040, REQUIRES AN EXCHANGE FACILITATOR TO EITHER MAINTAIN A FIDELITY BOND IN AN AMOUNT OF NOT LESS THAN ONE MILLION DOLLARS THAT PROTECTS CLIENTS AGAINST LOSSES CAUSED BY CRIMINAL ACTS OF THE EXCHANGE FACILITATOR, OR HOLD ALL CLIENT FUNDS IN A QUALIFIED ESCROW ACCOUNT OR QUALIFIED TRUST.**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized offices as of the date first written above:

CITIBANK, N.A.



Name: David M. Gorenberg

Title: Director

TAXPAYER:
160 MADISON AVENUE OWNERS' CORP.



Name: Claude Simon

Title: President

