

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

IN RE: Lead Case No.: 12-30081-BKC-EPK  
CLSF III IV, Inc., et al., Chapter 7  
Debtor. (Jointly Administered)

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**TRUSTEE’S MOTION FOR ENTRY OF ORDER AUTHORIZING SALE OF  
INSURANCE POLICY TO LIFE PARTNERS, INC., FREE AND CLEAR  
OF LIENS, CLAIMS AND ENCUMBRANCES**

Trustee Deborah C. Menotte (“Trustee”), by and through undersigned counsel, pursuant to 11 U.S.C. § 363(b) and (f), Fed. R. Bankr. P. 2002 and 6004, and Local Rule 6004-1, moves the Court for the entry of an order authorizing the sale of the Trustee’s interest in an insurance policy to Life Partners, Inc. (or such higher and better offer as may be received by the Trustee), free and clear of all liens, claims and encumbrances, with any such liens, claims and encumbrances to attach to the sale proceeds, and in support thereof state:

**Background**

1. This case was commenced on August 22, 2012, by the filing of an involuntary petition against the CLSF III IV, Inc.
2. Thereafter, thirty-two affiliates (the “Affiliates”) of the Debtor (together with the Debtor, collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 7 of the Bankruptcy Code between October 24, 2012 and November 7, 2012.
3. On December 11, 2012, the Chapter 7 cases of the Debtors were jointly administered pursuant to this Court’s *Order of Joint Administration of Related Cases With CLSF III IV, Inc. as Lead Case* [ECF# 120].

4. On October 2, 2013, this Court entered an order [Main Case ECF# 561] approving the substantive consolidation of the bankruptcy estate of CLSF III IV, Inc. with that of the bankruptcy estates of the thirty-two jointly administered debtors and numerous non-debtor entities.

5. The statutory predicates for the relief sought herein are 11 U.S.C. §§ 363(b) and (f), Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure, and Local Rule 6004-1.

6. On November 30, 2012, the Trustee commenced an adversary proceeding by the filing of a *Complaint to Avoid and Recover Fraudulent Transfers, Turnover, and for a Temporary Restraining Order, Preliminary Injunction and Permanent Injunction* (the “Complaint”), against Life Capital, The Montage Financial Group, Inc. (“Montage”) and Jonathan Polter (“Polter”), thereby initiating Adversary No.: 12-02124-BKC-EPK (the “Sinder Adversary”), which alleges that the Debtor sold a life insurance policy to Life Capital, issued by John Hancock Insurance Company in the face amount of \$12,000,000.00 on the life of Rita Sinder (the “Sinder Policy”).

7. On July 26, 2013, the Trustee filed *Trustee’s Motion to Approve Mediated Settlement Agreement Between (I) Trustee; and (II) Life Capital Group II, LLC, With Respect to Adversary No.: 12-02124-EPK* [ECF# 418] (the “Sinder Settlement Motion”), seeking the approval of a settlement agreement (the “Sinder Settlement Agreement”) between the Trustee and Life Capital with respect to the sale and marketing of the Sinder Policy.

8. The Court entered an *Order Granting Trustee’s Motion to Approve Mediated Settlement Agreement Between (I) Trustee; and (II) Life Capital Group II, LLC, With Respect to Adversary No.: 12-02124-EPK* [ECF# 556] (the “Sinder Settlement Order”). As set forth in the Sinder Settlement Order, the Trustee was authorized to market and sell the Sinder Policy to

the highest and best bidder for cash, subject to the sale requirements of the Sinder Settlement Agreement. Pursuant to the Sinder Settlement Order, the deadline for the Trustee to obtain Court approval of a sale of the Sinder Policy to any person other than Life Capital is 147 days from execution of the Sinder Settlement Agreement.

**Relief Requested**

9. Since the entry of the Settlement Order, the Trustee has been actively marketing the Sinder Policy, and has received an offer from Life Partners, Inc. (the “Purchaser”) to purchase the Sinder Policy for the sum of \$2,200,000.00 (the “Purchase Price”), pursuant to a proposed *Purchase and Sale Agreement By and Between Life Partners, Inc., as Seller, and Deborah C. Menotte, as Chapter 7 Trustee, as Seller for The Sinder TR Corporation* (the “Purchase Agreement”). A copy of the proposed Purchase Agreement is attached hereto as

**Exhibit “A.”**

10. The Trustee seeks to sell the Sinder Policy to Life Partners, Inc., or such higher and better offer as may be received by the Trustee, free and clear of all liens, claims and encumbrances, with such liens, claims and encumbrances, if valid, to attach to the sale proceeds.

11. The Trustee states that any potential purchasers wishing to make a higher and better offer for the purchase of the Sinder Policy must provide to the Trustee’s counsel, Leslie Gern Cloyd, Esq., Berger Singerman LLP, no later than 5:00 p.m. on December 10, 2013 (i) a purchase agreement in the same form as the Purchase Agreement attached hereto as Exhibit “A;” and (ii) a deposit equaling 10% of the proposed purchase price that such potential purchaser seeks to pay for the Sinder Policy (which deposit shall be made by wire transfer into the trust account of Berger Singerman LLP).

12. As set forth in the Purchase Agreement, the closing of the purchase and sale of

the Sinder Policy shall occur at 5:00 p.m., EDT, on the latest of (a) one business day after the Court enters an Order approving the Purchase Agreement; and (b) one business day after the date on which the conditions in Section 2.07 of the Purchase Agreement are satisfied, or any later time or date designated by the Court or by written agreement signed by both the Purchaser and Seller.

13. The Trustee intends for the sale of the Trustee's interests in the Sinder Policy to take place as promptly as possible, consistent with the due process requirements of sections 363 of the Bankruptcy Code and the Sinder Settlement Order.

14. The Trustee respectfully requests that the hearing to approve the sale be scheduled and conducted on an expedited basis, but not earlier than 21 days after the filing of this Motion.

#### **Form and Manner of Notice of Sale**

15. Pursuant to Bankruptcy Rule 6004(a), notice of the proposed sale of property outside the ordinary course of business is to be provided in accordance with Bankruptcy Rule 2002(a)(2), (c)(1), and (k). These provisions of Bankruptcy Rule 2002 provide, in part, that all creditors are to receive at least 21 days' notice of a sale of estate assets outside the ordinary course of business, unless the court, for cause, shortens the time or directs another method of giving notice. Fed. R. Bankr. P. 2002(a)(2). Relevant here, Bankruptcy Rule 2002(c)(1) provides that the notice of the proposed sale of assets is to include a general description of the assets, the terms and conditions of any private sale, and the time fixed for filing objections. Fed. R. Bankr. P. 2002(c)(1).

16. The Trustee is providing notice of this Motion and the proposed sale of the Trustee's interests in the Sinder Policy to all creditors listed on the matrices filed with the Court,

and will post a copy of this Motion and any hearing notice thereon on the website ([www.CLSFTrustee.com](http://www.CLSFTrustee.com)) established pursuant to this Court's *Order Granting Trustee's Motion to Establish Certain Notice, Case Management and Administrative Procedures* [ECF# 419].

**Authority for Relief**

17. The Court has the statutory authority to authorize the sale free and clear of all liens, claims and interests pursuant to 11 U.S.C. § 363(f) if:

- (i) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (ii) each entity holding a lien, claim, encumbrance or interest consents;
- (iii) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (iv) such interest is in bona fide dispute; or
- (v) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *In re Gulf States Steel, Inc. of Ala.*, 285 B.R. 497, 506 (Bankr. N.D. Ala. 2002) (section 363(f) is written in the disjunctive; the court may approve a sale “free and clear” provided at least one of the subsections is met). The Trustee submits that she will be able to demonstrate that at least one of these requirements will have been met at the sale hearing with respect to the Sinder Policy.

18. Property of the estate may be sold outside the ordinary course of business. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate....” 11 U.S.C. § 363(b)(1). Courts have held that transactions should be approved under section Code

363(b)(1) when: (a) they are supported by the sound business judgment of a bankruptcy trustee; (b) interested parties are provided with adequate and reasonable notice; (c) the sale price is fair and reasonable; and (d) the purchaser is acting in good faith. See *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (D. Del. 1987). Here, each of these factors is met.

19. The Trustee, in the sound exercise of her business judgment, has concluded that the Purchase Price for the Sinder Policy presents the best option for maximizing the value of the Sinder Policy for the benefit of the Debtors' estates. However, the Trustee seeks such higher and better offers for the Sinder Policy that meet the requirements as set forth in paragraph 11 of this Motion.

**WHEREFORE**, the Trustee respectfully requests entry of an Order (i) granting this Motion; (ii) approving the sale of the Sinder Policy to Life Partners, Inc., pursuant to the terms of the Purchase Agreement, free and clear of all liens, claims, and encumbrances, with all such liens, claims and encumbrances to attach to the sale proceeds, or such higher and better offer as is received by the Trustee by 5:00 p.m. on December 10, 2013; (iii) granting such other and further relief as may be just and proper.

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was served on this 21<sup>st</sup> day of November, 2013, via (i) electronic transmission through the Court's CM/ECF system upon all parties on the attached CM/ECF Service List; (ii) via electronic transmission upon all parties on the attached list of parties who have consented to electronic service; (iii) via first class, U.S. Mail and electronic transmission upon all parties listed below; and (iv) via first class, U.S.

Mail upon all creditors and interested parties on the attached Service List, to the extent that such parties were not already served electronically through the Court's CM/ECF system.

Respectfully submitted,

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**EXHIBIT "A"**

**PURCHASE AND SALE AGREEMENT**

**by and between**

**Life Partners, Inc.  
as Purchaser**

**and**

**Deborah C. Menotte, as chapter 7 trustee,  
as Seller for The Sinder TR Corporation**

**and**

**Berger Singerman LLP,  
solely in its capacity as Escrow Agent**

**November 21, 2013**

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## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of November 21, 2013 (the "Effective Date") by and between Life Partners, Inc., a Texas corporation ("Purchaser"), Deborah C. Menotte, as chapter 7 trustee ("Seller") for The Sinder TR Corporation ("Debtor"), and, solely in its capacity as escrow agent, Berger Singerman LLP, a Florida limited liability partnership ("Escrow Agent").

### RECITALS

A. Seller, as chapter 7 trustee and pursuant to section 541 of the U.S. Bankruptcy Code, is authorized to sell the life insurance policy on the life of the Insured described on Schedule 1 attached to this Agreement (the "Policy").

B. Seller wishes to sell, and Purchaser is willing to purchase, all of Seller's Interest (as defined below) in the Policy, subject to the satisfaction of the terms and conditions hereinafter set forth.

C. Seller and Purchaser wish to appoint Escrow Agent to act as escrow agent pursuant to this Agreement, and Escrow Agent wishes to act as escrow agent hereunder.

D. Subject to the issuance of appropriate orders of the United States Bankruptcy Court for the Southern District of Florida, West Palm Beach Division (the "Court") in Case Number(s) 12-30081-BKC-EPK (the "Case"), the Policy is or will be at Closing (as hereinafter defined) free of all liens and encumbrances.

E. Subject only to hearing(s) and the issuance of the Approval order (as defined below), Seller and Purchaser have taken all of the necessary steps required of them, including, without limitation, the giving of applicable notices to potential claimants, such that upon the execution of this Agreement and the issuance of the Approval Order, this Agreement shall be binding and enforceable against Seller and Purchaser in accordance with its terms.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

### ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Acknowledgment" means a document from the Insurer confirming in writing the recordation of a new owner of the Policy and the recordation of a new beneficiary of the Policy pursuant to Change Forms delivered to the Insurer.

**“Acknowledgment Date”** means the date on which the Insurer delivers a written confirmation of the Policy’s change of ownership and beneficiary to Purchaser or its designee.

**“Acquisition”** means the proposed acquisition by Purchaser of the Policy and other assets in accordance with the terms of this Agreement.

**“Affiliate”** of a specified Person means a Person that (at the time when the determination is to be made) directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the specified Person. As used in the foregoing sentence, the term “control” (including, with correlative meaning, the terms “controlling,” “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to vote 10% or more of the voting securities of any Person.

**“Approval Date”** means the date on which the Court enters the Approval Order.

**“Approval Order”** means that certain order of the Court entered after the Sale Hearing granting the Sale Motion and approving this Agreement and the payment of the Purchase Price for the Policy in consideration for transfer and sale of the Policy, which order of the Bankruptcy Court shall be in form and substance acceptable to Purchaser, and which shall contain in addition to other customary provisions for an asset sale order under Section 363(b) of the Bankruptcy Code, without limitation the following:

(a) a finding that Seller, in her capacity as chapter 7 trustee for the Debtor, has good and marketable title to, and is the sole legal and beneficial owner of, the Policy, and the Policy constitutes property of the bankruptcy estate of the Debtor, and approving and authorizing, pursuant to Section 363(b) of the Bankruptcy Code, the sale of the Policy to Purchaser, free and clear of all liens, claims, rights, encumbrances and other interests pursuant to Section 363(f) of the Bankruptcy Code (with any such liens, claims, rights, encumbrances and other interests attaching to the proceeds of sale);

(b) a finding that Purchaser is not an “insider” (as that term is defined in Section 101(31) of the Bankruptcy Code) of the Debtor, that Purchaser is purchasing the assets sold hereunder, in good faith and without collusion, and that the Purchase Price constitutes fair consideration and reasonably equivalent value for the assets sold hereunder;

(c) providing, pursuant to Section 363(m) of the Bankruptcy Code, that the reversal or modification on appeal of the Approval Order shall not affect the validity of the sale to Purchaser pursuant to this Agreement, and that the sale hereunder may not be avoided pursuant to Section 363(n) of the Bankruptcy Code;

(d) a finding and conclusion that adequate notice of the Sale Motion and the Acquisition has been given, that the marketing and sale process for the Policy constituted a fair and appropriate process under the circumstances, are in the best interest of the Debtor and its estate, and provided a full, fair and reasonable opportunity for persons to make offers to purchase the Policy or any portion thereof;

(e) finding that Purchaser submitted the highest and best offer, that the sale to Purchaser is an appropriate exercise of Seller's business judgment and is in the best interest of the Debtor's estate, and overruling any objections to the sale;

(f) finding that Seller has, to the extent necessary, satisfied the requirements of Bankruptcy Code Section 363(b)(1), and accordingly, appointment of a consumer privacy ombudsman pursuant to Bankruptcy Code sections 363(b)(1) or 332 is not required with respect to the relief requested in the Sale Motion;

(g) providing that any amounts owed by Seller or the Debtor to Purchaser hereunder shall constitute administrative expenses of the Debtor bankruptcy estate, entitled to priority under section 503(b) and 507(a)(2) of the Bankruptcy Code, to the extent not paid by Seller;

(h) the Policy does not constitute an executory contract and, accordingly, no approval is required under Section 365 of the Bankruptcy Code; and

(i) providing that the Approval Order shall be effective immediately upon entry and not subject to the stay under Fed. R. Bnkr. P. 6004(h).

**"Business Day"** means any day other than a Saturday or Sunday or any other day on which commercial banking institutions in Palm Beach County, Florida are authorized or obligated by Law, executive order or government decree to be closed.

**"Acknowledgment Date"** means the date on which the Insurer delivers a written confirmation of the Policy's change of ownership and beneficiary to Purchaser or its designee.

**"Change Forms"** means forms required by the Insurer to change the owner and/or beneficiary of the Policy.

**"Contract"** means any contract, agreement, lease, sublease, license, note, bond, mortgage or indenture, permit, franchise, insurance policy or other instrument, whether written or oral.

**"Deposit"** means Two Hundred Twenty Thousand and 00/100 Dollars (\$220,000.00).

**"Escrow Account"** means the following non-interest bearing account established with Escrow Agent:

Bank Name:	Gibraltar Private Bank & Trust
Bank City & State:	Coral Gables, Florida
ABA Routing No.:	..... 0455
Account Name:	BERGER SINGERMAN, LLP TRUST ACCOUNT
Beneficiary Account #:	!7964

**"Escrow Agent"** means Berger Singerman LLP, acting as escrow agent with respect to the disbursement of the Purchase Price set forth in this Agreement.

“**Estate**” means the applicable bankruptcy estate in the Case.

“**Final Order**” means an order entered by the Court that is not subject to a stay pursuant to Rule 6004(h) or Rule 8005 of the Federal Rules of Bankruptcy Procedure or otherwise.

“**Governmental Authority**” means any nation or government, any state, province, city, municipal entity or other political subdivision thereof, and any governmental, executive, legislative, judicial, administrative or regulatory agency, department, authority, instrumentality, commission, board, bureau or similar body, whether federal, state, provincial, territorial, local or foreign.

“**Governmental Order**” means, unless otherwise indicated, any order, writ, judgment, injunction, decree, stipulation, determination or administrative ruling or award entered by or with any Governmental Authority.

“**Information**” means any data, whether in the form of written documents, electronic information, verbal communications or otherwise, whether obtained prior to or after the Effective Date, and whether or not such information is designated or marked in writing as being confidential or proprietary.

“**Insured**” means the individual named as the insured under the terms of the Policy listed on **Schedule 1** to this Agreement.

“**Insurer**” means the life insurance company that issued the Policy as listed on **Schedule 1** to this Agreement.

“**Life Settlement Documents**” means, to the extent such documents are currently within the possession or control of Seller, each document executed and/or delivered by the Insured, the Original Owner or any other party in connection with the purchase of the related Policy from the Original Owner or the transfer of the Policy from the Original Owner to the Debtor (and any intermediary owner), including, without limitation, the Policy and application for the Policy, the life settlement contract between the Original Owner and the initial purchaser relating to the sale of the Policy by the Original Owner to such purchaser (if applicable) and the surrender, relinquishment or similar documentation (if applicable), the life settlement application, all Policy Illustrations, the HIPAA Authorization for Disclosure of Protected Health Information (and any similar document), all life expectancy reports regarding the Insured, the consent of insured, the agreement of continued contact and list of designated contacts, the authorization to provide death certificates, the life settlement disclosure, the spousal waiver, the beneficiary waiver, the release of policy Information, and a copy of a document identifying the Insured issued by a Governmental Authority which verifies the age (including date of birth) and gender of the Insured as set forth in the application for the Policy, or their respective equivalents, and all other documents, instruments, certificates and Information relating to the Policy.

“**Law**” means, unless otherwise indicated, any national, federal, state, provincial or local statute, law, ordinance, regulation, rule, code, order, requirement or rule of law (including, without limitation, common law).

**“Liability”** or **“Liabilities”** means any and all debts, liabilities and obligations, whether asserted or unasserted, accrued or fixed, absolute or contingent, matured or unmatured or determined or determinable, including, without limitation, those arising under any Law, Governmental Order, Contract, action, arrangement, commitment or undertaking.

**“Original Owner”** means the Person to which the Policy was initially issued and who was listed as owner on the initial declarations page of such Policy.

**“Person”** means any individual, partnership (whether general or limited), corporation, joint stock company, limited liability company, trust (including a business or statutory trust), estate, association, custodian, nominee, joint venture or other entity, or a Governmental Authority.

**“Policy Illustration”** means a policy illustration from the related Insurer.

**“Premium”** means any premium payable under the Policy.

**“Sale Hearing”** means the hearing before the Court to approve the sale of the Policy.

**“Sale Motion”** means the motion to approve the sale of the Policy, to be filed by Seller on or about November 21, 2013.

**“Seller’s Interest”** means all of Seller’s claims, options, privileges, rights, title and interest in, to and under the Policy, if any.

**“Seller’s Knowledge”** means the actual knowledge of Deborah Menotte, acting solely in her capacity as trustee.

**“Transfer/Resale Transaction”** means the transfer by Purchaser of all or a portion of its interest in the Policy pursuant to a true sale or other purchase or financing transaction, which may include a securitization, or in a synthetic or risk transfer transaction, or otherwise.

Section 1.02. Additional Definitions

<u>Definition</u>	<u>Location</u>
<b>“Agreement”</b> .....	Preamble
<b>“Case”</b> .....	Preamble
<b>“Closing”</b> .....	2.03
<b>“Confidential Information”</b> .....	9.02(a)
<b>“Court”</b> .....	Preamble
<b>“Debtor”</b> .....	Preamble
<b>“Deposit”</b> .....	2.04
<b>“Escrow Funds”</b> .....	2.10(b)
<b>“Escrow Release Date”</b> .....	2.08
<b>“Effective Date”</b> .....	Preamble
<b>“Final Payment”</b> .....	2.05
<b>“Matured Policy”</b> .....	5.03



<b><u>“Outside Date”</u></b> .....	3.02(e)
<b><u>“Policy”</u></b> .....	Recitals
<b><u>“Proprietary Information”</u></b> .....	8.02(b)
<b><u>“Purchase Price”</u></b> .....	2.02
<b><u>“Purchaser”</u></b> .....	Preamble
<b><u>“Seller”</u></b> .....	Preamble
<b><u>“Transaction Documents”</u></b> .....	8.02(a)

Section 1.03. Interpretation and Rules of Construction. Except to the extent that the context otherwise requires:

(a) when a reference is made herein to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated;

(b) the table of contents and headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;

(c) whenever the word “include”, “includes” or “including” is used in this Agreement, it is deemed to be followed by the words “without limitation”;

(d) the words “hereof”, “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;

(e) all terms defined in this Agreement have their defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;

(f) definitions of terms are applicable to the singular as well as the plural forms of such terms, and other grammatical forms of such terms have corresponding meanings;

(g) if any action is otherwise to be taken pursuant to this Agreement on a day which is not a Business Day, such action shall be taken on the next Business Day following such day;

(h) references to a Person are also to its permitted successors and assigns;

(i) references to any Contract shall be deemed to be to such Contract as amended, amended and restated, supplemented or otherwise modified from time to time;

(j) references to any statute, regulation, or similar rule, or to a provision of any statute, regulation, or similar rule, includes any successor statute or provision, as the case may be; and

(k) the use of the word “or” is not intended to be exclusive unless expressly indicated otherwise.

## ARTICLE II PURCHASE AND SALE

Section 2.01. Purchase and Sale of Seller's Interest. Subject to the issuance of the Approval Order and upon the terms and subject to the conditions of this Agreement, Seller hereby agrees to assign and transfer to Purchaser all of Seller's right, title, and interest in and to the Policy and all related Life Settlement Documents free and clear of all liens, claims, rights, encumbrances and other interests as set forth in the Approval Order, which assignment and transfer includes, without limitation, the right(s) to: (i) change the Beneficiary on the Policy; (ii) assign or surrender the Policy; (iii) borrow on the Policy; (iv) apply for and maintain waiver of premium under or conversion of the Policy; (v) receive any and all benefits paid under the Policy; and (vi) be notified about any and all matters relative to the Policy.

Section 2.02. Purchase Price. The Purchase Price (as defined below) to be paid by or on behalf of Purchaser to Seller for the purchase of Seller's Interest with respect to the Policy shall be Two Million Two Hundred Thousand and 00/100 (\$2,200,000.00) (the "**Purchase Price**"), subject to adjustment in accordance with this Agreement. The Purchase Price does not include any amounts owed for the Policy for any current premiums due and arrearages, in each case, disclosed to Purchaser in writing, and future premiums.

Section 2.03. Closing. Subject to the terms and conditions of this Agreement, the closing of the purchase and sale of the Policy as contemplated by this Agreement (the "**Closing**") shall occur at 5:00 p.m. EDT on the latest of (x) one (1) Business Day after the Court enters the Approval Order, and (y) one (1) Business Day after the date on which the conditions in Section 2.07 are satisfied, or any later time or date designated by the Court or by written agreement signed by both Purchaser and Seller (the "**Closing Date**").

Section 2.04. Deposit. On the Effective Date, Purchaser shall deliver the Deposit, by wire transfer of immediately available funds in accordance with the instructions set forth on Schedule 2, to Escrow Agent, which Deposit shall be held in the Escrow Account. If this Agreement is terminated in accordance with the terms hereof, then Escrow Agent shall return the Deposit to Purchaser by wire transfer of immediately available funds in accordance with the written instructions provided by Purchaser.

Section 2.05. Closing. On the Closing Date, Purchaser shall deliver to Escrow Agent, by wire transfer of immediately available funds in accordance with the instructions set forth on Schedule 2, for deposit into the Escrow Account, an amount equal to the Purchase Price, less the amount of the Deposit (the "**Final Payment**"), and Seller and Purchaser shall consummate the sale by Seller to Purchaser of the Policy, as contemplated by this Agreement. If Purchaser fails to make the Final Payment, Purchaser shall be in default and in material breach of this Agreement and shall automatically forfeit the Deposit to the Estate.

Section 2.06. Parties' Rights and Obligations.

(a) Premiums. Except as disclosed to Purchaser in writing, Seller has paid, or caused to be paid, all Premiums on the Policy and has not let the Policy lapse or enter a grace period through the Effective Date, and Seller shall pay, or caused to be paid, Premiums on the



Policy from the Effective until the Escrow Release Date and, other than as agreed with Purchaser in writing, shall not let the Policy lapse (or enter into any grace period) during the period prior to the Escrow Release Date without the prior written consent of Purchaser.

(b) Payment of Death Benefits.

(i) If the death of the Insured under the Policy occurs prior to the Escrow Release Date and Seller informs Purchaser of such death no later than thirty (30) days after the Escrow Release Date, the Death Benefit under the Policy shall be payable to Seller. Any such Policy shall not be sold (or deemed not to be sold) to Purchaser hereunder. If Purchaser or any Affiliate of Purchaser receives any Death Benefits that are payable to, or for the benefit of, Seller hereunder, Purchaser shall hold such amounts in trust for Seller and shall deliver such amounts to Seller within two (2) Business Days of receipt thereof.

(ii) In all other cases, the Death Benefit under the Policy shall be payable to, and for the benefit of, Purchaser. If Seller or any Affiliate of Seller receives any Death Benefits that are payable to, or for the benefit of, Purchaser hereunder, Seller shall hold such amounts in trust for Purchaser and shall deliver such amounts to Purchaser within two (2) Business Day of receipt thereof.

(iii) If in accordance with clause (i) above, any Death Benefit in respect of the Policy is for the benefit of Seller and Seller notifies Purchaser thereof prior to the Escrow Release Date for such Policy, then Seller and Purchaser shall direct the Escrow Agent to return the Purchase Price for such Policy to Purchaser.

(iv) If in accordance with clause (i) above, any Death Benefit in respect of the Policy is for the benefit of Seller and Seller notifies Purchaser thereof after the Escrow Release Date for such Policy, then Seller shall reimburse Purchaser for any Premiums paid by Purchaser in respect of such Policy.

(v) Purchaser shall have the right to withhold from the Death Benefit for such Policy (to the extent Purchaser actually receives such Death Benefit) any amounts owed by Seller to Purchaser in accordance with this Section 2.06(b).

(c) Communications Received. With respect to the Policy, from the Effective Date through the Acknowledgement Date, Seller will notify Purchaser of and deliver copies to Purchaser of any grace or lapse notices, notices of rescission of coverage or payment or notices of intent to increase cost of insurance in relation to the Policy received by Seller or any of their agents from the Insurer, and information relating to lawsuits filed with respect to the Policy, and such other information received by Seller or any of their agents from any Person, which Seller reasonably believes is material to Purchaser or the Policy.

(d) Delivery of Information. No later than three (3) Business Days following the Effective Date, Seller shall deliver to Purchaser an electronic copy of each Life Settlement Document in its possession, custody or control. With respect to the delivery by Seller of electronic copies of the foregoing, such electronic copies must be delivered on DVD, portable hard drive or Dropbox link, and each document must be a PDF file that may be saved, copied and printed by the user. If Seller and Purchaser do not close the Acquisition, then, within five

(5) Business Days of the Closing Date, Purchaser shall deliver back to Seller all such documentation and information, and all copies thereof that it has made (excluding copies thereof that it destroys or is required by law or its own internal records retention policies to retain), which copies shall be "confidential information" for purposes of, and shall otherwise be subject to, any confidentiality agreement that exists between Purchaser and Seller or any Affiliate of Seller. From and after the Closing Date, Seller shall deliver to Purchaser, within five (5) Business Days of the receipt of the same, any information, documentation and communications received by either Seller or any Affiliate in respect of the Policy.

Section 2.07. Change Forms. The Change Forms changing the owner and beneficiary of the Policy to Purchaser or its designee must be executed by both Purchaser and Seller. Within two (2) Business Days after Seller delivers the Change Forms changing the owner and beneficiary of the Policy to Purchaser or its designee, Purchaser shall execute the Change Forms and deliver them to Seller. Seller shall also execute the Change Form, and Seller shall deliver the fully executed Change Forms directly to the Insurer.

Section 2.08. Release of Purchase Price from the Escrow Account. Within one (1) Business Day after Purchaser's receipt of written confirmation from the Insurer of the Policy's change of ownership to Purchaser or its designee (the "**Escrow Release Date**"), Purchaser shall provide written notification to Escrow Agent, which shall be confirmed by Seller, that the Escrow Agent shall deliver to Seller from the Escrow Account the Purchase Price.

Section 2.09. Notice to Insured. To the extent required by Law, following the transfer of ownership of the Policy and within the time and in the manner prescribed by such Law, Purchaser shall give notice to the Insured under the Policy of the change of ownership of such Policy.

Section 2.10. Appointment and Duties of Escrow Agent.

(a) Subject to the terms and conditions of this Agreement, Purchaser and Seller hereby appoint Berger Singerman LLP as escrow agent to hold, administer and deliver the Purchase Price (including the Deposit), solely in accordance with the terms and conditions set forth in this Agreement, and Berger Singerman LLP hereby accepts such appointment and agrees to hold, administer and deliver the Purchase Price (including the Deposit), solely in accordance with the terms and conditions set forth in this Agreement or as required by Court order.

(b) Escrow Agent shall hold the Purchase Price (including the Deposit) in the Escrow Account, together with all investments thereof and all interest accumulated thereon and proceeds therefrom (collectively, the "**Escrow Funds**"), in escrow upon the terms and conditions set forth in this Agreement and shall not disburse funds from the Escrow Account except as provided in this Agreement or by order of the Court. Escrow Agent hereby agrees that (i) the Escrow Account shall be an account separate from any other account of Escrow Agent, (ii) no funds, other than the Escrow Funds shall be held therein and (iii) no other funds shall be commingled with the Escrow Funds.

(c) Escrow Agent hereby agrees that funds in the Escrow Account are, and shall be considered: (i) property of Purchaser, (ii) held by Escrow Agent for the benefit of Purchaser and (iii) not available to Seller, except in accordance with the provisions hereof.

Section 2.11. Escrow Agent Liability. In performing any of its duties hereunder, Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses, except for those arising out of its willful default or gross negligence, and Escrow Agent shall accordingly not incur any such liability with respect (a) to any action taken or omitted in good faith upon advice of its counsel, or (b) to any action taken or omitted in reliance upon any written notice or instruction provided for in this Agreement. Seller and Purchaser hereby agree to indemnify and hold harmless Escrow Agent from and against any and all losses, claims, damages, liabilities and expenses, including reasonable attorneys' fees, which may be incurred by Escrow Agent in connection with its acceptance or performance of its duties hereunder, including any litigation arising from this Agreement or involving the subject matter hereof, except in the case of Escrow Agent's willful default or gross negligence. In the event of a dispute between Seller and Purchaser sufficient in the discretion of Escrow Agent to justify its doing so, Escrow Agent shall be entitled to tender into the registry or custody of a Court all money or property in its hands under this Agreement, together with such legal pleadings as it deems appropriate, and thereupon be discharged from all further duties and liabilities under this Agreement. The Escrow Agent shall not be liable for any failure of the depository. Purchaser understands and acknowledges that the Escrow Agent is a law firm representing Seller, and Purchaser agrees that such law firm may continue to represent Seller in any litigation pursuant to this Agreement, and in the event of litigation, Escrow Agent shall deposit the Deposit with the Court.

### ARTICLE III CONDITIONS PRECEDENT

Section 3.01. Conditions Precedent to Seller's Obligations. The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the fulfillment of each of the following conditions, which may be waived by Seller in writing:

(a) all representations and warranties by Purchaser set forth in this Agreement shall be true and correct as of the Closing Date;

(b) Purchaser shall have performed and complied in all material respects with all obligations and agreements required in this Agreement and/or the Sale Order to be performed or complied with by it prior to the Closing Date;

(c) there shall not be in effect on the Closing Date any order or decision by a Governmental Authority of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; and

(d) the Approval Order shall have been entered by the Bankruptcy Court and shall be a Final Order, as of the Closing Date.

Section 3.02. Conditions Precedent to Purchaser's Obligations. The obligation of Purchaser to consummate the transactions contemplated by this Agreement is subject to the fulfillment of each of the following conditions, which may be waived by Purchaser in writing:

(a) all representations and warranties of Seller set forth in this Agreement shall be true and correct as of the Closing Date;

(b) Seller shall have performed and complied in all material respects with all obligations and agreements required in this Agreement and/or the Sale Order to be performed or complied with by them prior to the Closing Date;

(c) there shall not be in effect on the Closing Date any order or decision by a Governmental Authority of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; and

(d) the Approval Order shall have been entered by the Bankruptcy Court and shall be a Final Order as of the Closing Date.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Purchaser, as of the Effective Date and as of the Closing Date, as follows:

Section 4.01. Organization and Authority. Seller is the duly appointed trustee of the Estate in the Case.

Section 4.02. Authorization. Pursuant to orders entered by the Court in the Case, Seller has the power and authority to sell the Policy, subject to the entry of the Approval Order. Subject to the entry of the Approval Order, Seller has taken all necessary actions in her capacity as the duly appointed trustee of the Estate to execute and deliver this Agreement and perform and consummate all of the transactions contemplated hereby.

Section 4.03. No Conflict. Seller has not granted any rights, options, rights of first refusal or offer, or other agreement of any kind, giving any party a right to purchase or otherwise acquire the Policy or any part thereof or any interest therein, except the rights of Purchaser under this Agreement and as otherwise set forth in this Agreement.

Section 4.04. No Litigation or Proceedings. Other than the Case and claims asserted by actual parties to the Case in actions or motions filed with the Court, to Seller's Knowledge, no judicial, administrative, arbitral or other proceeding, in Law, equity or otherwise, is pending or threatened against Seller with respect to the Policy or any matter whatsoever which could materially adversely affect the consummation of the transactions contemplated hereby. To Seller's Knowledge, there is no investigation by any Governmental Authority or the Insurer pending or threatened which relates to or involves the Policy or the transactions contemplated by this Agreement.



Section 4.05. No Broker, Finder or Investment Banker. Neither Seller nor any employees or agents or Affiliates thereof, have entered into any arrangements pursuant to which any broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission from Purchaser in connection with the transactions contemplated by this Agreement.

Section 4.06. Policy Documents. Seller has delivered to Purchaser on or before the Effective Date copies of each Life Settlement Document in respect of the Policy in its possession, custody or control as of such date, and shall deliver to Purchaser each Life Settlement Document that comes into Seller's possession, custody or control date the Effective Date.

Section 4.07. No Additional Representations or Warranties by Seller. Notwithstanding anything contained in this Agreement to the contrary, Seller understands and agrees that Purchaser has not made, and is not making, any representation or warranty whatsoever, express or implied, with respect to any matter, other than those representations and warranties of Purchaser expressly set forth in Article IV of this Agreement.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser hereby represents and warrants to Seller, as of the Effective Date and as of the Closing Date, as follows:

Section 5.01. Organization and Authority of Purchaser. Purchaser has been duly organized and is validly existing as a corporation under the Laws of the State of Texas, with full power and authority to own its properties and to conduct its business as currently conducted.

Section 5.02. Authorization. Purchaser has the power and authority to execute, deliver and perform its obligations under this Agreement. The execution, delivery and performance by Purchaser of this Agreement, and the consummation of the transactions contemplated hereby, have been duly authorized by all required action on the part of Purchaser.

Section 5.03. No Conflict. The execution, delivery and performance by Purchaser of this Agreement do not and will not (a) violate, conflict with or result in the material breach of any provision of its constitutive documents, (b) conflict with or violate any material Law or Governmental Order applicable to it or to any of its respective assets, properties or businesses, or (c) conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation with respect to any Contract to which Purchaser is a party or by which its assets are bound, which conflict, breach or default in clause (c) would have a materially adverse effect on the validity or enforceability of this Agreement, or the ability of Purchaser to perform its obligations under this Agreement.

Section 5.04. Execution, Delivery and Enforceability. This Agreement has been or will be duly executed and delivered by Purchaser, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their terms, subject, as to enforceability, to

applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights generally and to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law).

Section 5.05. No Broker, Finder or Investment Banker. Neither Purchaser nor any employees or agents thereof, have entered into any arrangements pursuant to which any broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission from Seller in connection with the transactions contemplated by this Agreement.

Section 5.06. Consents. No registration, declaration, or filing with, or any approval or consent of, any Governmental Authority is required to be made or given by Purchaser, or to be received from any Governmental Authority, in each case that has not been made or received in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

Section 5.07. Compliance with Law. Purchaser is not in violation of any Law or Governmental Order applicable to it or any of its properties or assets which could materially adversely affect the consummation of the transactions contemplated hereby.

Section 5.08. No Litigation or Proceedings. No judicial, administrative, arbitral or other proceeding, in Law, equity or otherwise, is pending or threatened against Purchaser with respect to any matter whatsoever which could materially adversely affect the consummation of the transactions contemplated hereby. There is no investigation by any Governmental Authority pending or threatened which relates to or involves the Policy or the transactions contemplated by this Agreement.

Section 5.09. No Bankruptcy, Etc. of Purchaser. Purchaser has not filed, nor is Purchaser aware that anyone has filed or threatened to file against Purchaser, any proceeding seeking to adjudicate Purchaser insolvent, nor has Purchaser made any assignment of any property for the benefit of any creditors, nor is Purchaser aware that there presently exists or is threatened any tax or creditor's lien or any other execution, levy, attachment or other process of Law upon the property of Purchaser, nor is Purchaser aware that there is outstanding any legal process against Purchaser or Purchaser's property which enjoins Purchaser from consummating the transactions contemplated by this Agreement.

Section 5.10. Patriot Act. No Person Affiliated with Purchaser or that makes funds available to Purchaser or any Affiliate of Purchaser in order to allow Purchaser to fulfill its obligations under this Agreement or for the purpose of funding the investment in Purchaser is: (A) a Person listed in the Annex to Executive Order No. 13224 (2001) issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), (B) named on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Office of Foreign Assets Control, (C) a non-U.S. shell bank or is providing banking services indirectly to a non-U.S. shell bank, (D) a senior non-U.S. political figure or an immediate family member or close associate of such figure, or (E) otherwise prohibited from investing in Purchaser pursuant to applicable U.S. anti-money laundering, anti-terrorist and asset control Laws, regulations, rules or orders.

Section 5.11. No Additional Representations or Warranties by Seller. Notwithstanding anything contained in this Agreement to the contrary, Purchaser understands and agrees that Seller has not made, and is not making, any representation or warranty whatsoever, express or implied, with respect to any matter, other than those representations and warranties of Seller expressly set forth in Article III of this Agreement.

## ARTICLE VI ADDITIONAL AGREEMENTS

Section 6.01. Further Action. The parties hereto shall use all commercially reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable Law, and execute and deliver such agreements, instruments and other documents as may be required to carry out the provisions of this Agreement and consummate and make effective the transactions contemplated by this Agreement.

Section 6.02. Covenants of Seller. Seller hereby covenants and agrees as follows:

(a) Subject to Court direction and approval, Seller will take all actions that may be reasonably necessary or desirable from time to time to vest in Purchaser all of Seller's rights, title and interest in, to and under Seller's Interest with respect to the Policy conveyed hereunder and to give full effect to the provisions hereof and consummate the transactions contemplated hereto.

(b) Seller will follow applicable bankruptcy procedure to give appropriate notice to all potential claimants in the Estate of the hearing scheduled in the Case to approve this Agreement and consummation of the transactions contemplated thereby.

(c) Seller hereby covenants to Purchaser that (i) Seller will not take any action inconsistent with Purchaser's ownership of the Policy or the related Seller's Interest conveyed hereunder (ii) any financial statements of such Seller or any Affiliates thereof that are published, made publicly available or delivered to creditors or investors (or potential creditors or investors) will not indicate or imply that such Seller or any Affiliate thereof has any ownership interest in the Policy that is transferred to Purchaser hereby, and (iii) if a third party that has a legal or equitable right to obtain such information (including any creditor, potential creditor, investor or potential investor in a Seller, or any regulator or court of competent jurisdiction) should inquire, Seller will promptly indicate that the Policy has been sold and transferred to Purchaser and will not claim ownership interests therein and that such Seller has not retained any ownership interest therein.

(d) Seller has not sold, pledged, assigned nor transferred to any other Person, nor granted, created, incurred, assumed or suffered any lien, charge encumbrance on nor knowingly taken any action that reasonably could be expected to have an adverse effect on the Policy. Except for the conveyances hereunder or otherwise required by the Court, Seller will not sell, pledge, assign or transfer to any other Person, or grant, create, incur, assume or suffer to exist any encumbrances on any interest in the Policy conveyed hereunder nor knowingly take any action that reasonably could be expected to have an adverse effect on the Policy.

(e) Seller shall use its reasonable efforts to obtain findings in the Sale Order that Purchaser is not, and shall not be deemed to be, a successor or continuation of Seller or any debtor, nor deemed to be merged or de facto merged with either Seller or any debtor, and that Purchaser shall not assume any obligations or liabilities of Seller or debtor, except as expressly provided in this Agreement, provided, however, that Seller's failure to obtain such findings in the Sale Order shall not constitute a breach of this Agreement.

(f) From the Effective Date, Seller shall not initiate any loans against or under the Policy or access or use any account or cash value of the Policy for any purpose, except that deductions from the account value made by the Insurance in respect of cost of insurance or expense charges shall not be deemed to be a breach of this Section 6.02(e).

Section 6.03. Covenants of Purchaser. Purchaser hereby covenants and agrees that from the Effective Date to the Closing Date, Purchaser will promptly deliver to Seller any information necessary to update the representations, warranties and covenants contained in this Agreement.

## ARTICLE VII TERMINATION

Section 7.01. Purchaser Right to Terminate Upon Seller's Default. Seller shall be in default hereunder upon the occurrence of any one or more of the following events:

(a) prior to the Closing Date, any of Seller's warranties or representations set forth herein are untrue or inaccurate in any respect material to the Acquisition and Seller fails to cure the condition rendering such representation or warranty untrue or inaccurate within ten (10) calendar days after the earlier of (a) obtaining knowledge thereof, and (b) receipt of written notice from Purchaser of such material untruth or inaccuracy; or

(b) prior to the Closing Date, Seller shall fail to meet, comply with or perform in any respect material to the Acquisition any covenant, agreement, or obligation on their part required, within the time limits and in the manner required in this Agreement, for any reason other than a termination under Sections 7.02 or 7.03.

In the event of a default by Seller under Section 7.01, Purchaser may, at its option and in its sole and absolute discretion, terminate this Agreement by written notice delivered to Seller. Upon delivery of such notice, Purchaser and Seller shall deliver joint notice of such termination to Escrow Agent and instruct Escrow Agent to deliver the Deposit and all interest earned thereon to Purchaser. Thereafter neither Seller nor Purchaser shall have any obligations to the other under this Agreement, except as specifically set forth herein.

Section 7.02. Seller's Right to Terminate Upon Purchaser's Default. Purchaser shall be in default hereunder upon the occurrence of any one or more of the following events:

(a) prior to the Escrow Release Date, any of Purchaser's warranties or representations set forth herein are untrue or inaccurate in any respect material to the Acquisition and Purchaser fails to cure the condition rendering such representation or warranty untrue or inaccurate within ten (10) calendar days after the earlier of (a) obtaining knowledge thereof, and (b) receipt of written notice from Purchaser of such material untruth or inaccuracy; or



(b) Purchaser shall fail to meet, comply with or perform in any respect material to the Acquisition any covenant, agreement, or obligation on its part required, within the time limits and in the manner required in this Agreement, for any reason other than a termination under Sections 7.01 or 7.03.

In the event of a default by Purchaser under this Section 7.02, Seller may, at its option and in their sole and absolute discretion, terminate this Agreement by written notice delivered to Purchaser. Upon delivery of such notice, Purchaser and Seller shall deliver joint notice of such termination to Escrow Agent and instruct Escrow Agent to deliver (i) the Deposit to Seller and (ii) all interest accrued on the Deposit to Purchaser. Thereafter neither Seller nor Purchaser shall have any obligations to the other under this Agreement, except as specifically set forth herein.

Section 7.03. Additional Termination Events. In addition to the provisions in Sections 7.01 and 7.03, this Agreement may be terminated prior to the Closing Date by mutual written agreement of both Seller and Purchaser, in which event Purchaser and Seller shall deliver a joint notice of such termination to Escrow Agent with instructions for Escrow Agent to deliver Deposit and all interest earned thereon to Purchaser. Thereafter, neither Seller nor Purchaser shall have any obligations to the other under this Agreement, except as specifically set forth herein.

#### ARTICLE VIII AS IS WHERE IS

***“AS IS, WHERE IS.”* IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT PURCHASER ACCEPTS THE CONDITION OF THE POLICY “AS IS, WHERE IS-- WITH ALL FAULTS” WITHOUT ANY IMPLIED REPRESENTATION, WARRANTY OR GUARANTEE AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE AS TO THE CONDITION, SIZE OR VALUE OF THE POLICY, EXCEPT ONLY AS MAY BE OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT AND SELLER HEREBY EXPRESSLY DISCLAIMS ANY AND ALL SUCH IMPLIED REPRESENTATIONS, WARRANTIES OR GUARANTEES, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY, OR CONDITION OF THE POLICY, (B) THE POLICY DOCUMENTS, (C) THE SUITABILITY OF THE POLICY, (D) THE COMPLIANCE OF THE POLICY, INCLUDING ANY UNDERWRITING, WITH ANY LAWS, ORDINANCES, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL ENTITY, OR (D) ANY OTHER MATTER WITH RESPECT TO THE POLICY, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR ON SCHEDULE 1.**

#### ARTICLE IX GENERAL PROVISIONS

Section 9.01. Expenses. Except as otherwise specified in this Agreement, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

Section 9.02. Confidential Information. “**Confidential Information**” consists of any and all information disclosed or provided to Purchaser pursuant to the Mutual Confidentiality and Nondisclosure Agreement entered into among Seller, Purchaser and Longevity Market Advisors, LLC. Seller, and its officers, directors, employees, agents or representatives, shall not disclose to any other Person Confidential Information except as directed by the Court.

Section 9.03. Tax. As a result of the transfer of Seller’s Interest in the Policy to Purchaser, there may be certain tax and accounting consequences to both Purchaser and Seller. Neither Seller nor Purchaser makes any representations or warranties of any kind, nor are any intended or should any be inferred, regarding the tax consequences to either Seller or Purchaser of the transactions contemplated by this Agreement. Seller and Purchaser each also acknowledge that each will consult with its own attorneys, accountants and financial advisors about the legal and tax consequences of the transfer of Seller’s Interest in the Policy.

Section 9.04. Survival of Representations and Warranties. The representations and warranties made by Seller in Article III shall terminate at Closing. The representations and warranties made by Purchaser in Article IV shall survive the purchase of Seller’s Interest by Purchaser pursuant to this Agreement for a period of five (5) years after the Escrow Release Date.

Section 9.05. Notices. All notices, requests, consents, instructions, and communications required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be (as elected by the party giving such notice) hand-delivered by messenger or nationally recognized overnight courier service, by certified mail, return receipt requested, postage prepaid, by recognized contract carrier providing signed receipt for delivery, and sent by email transmission. Each such notice, request, or other communication shall be considered given and shall be deemed delivered on the earlier of (a) on the date of delivery if by personal delivery or courier service; (b) on the date of transmission with confirmed answer back if by e-mail if transmitted before 5:00 p.m., Eastern Standard Time, on a Business Day, and on the next Business Day if transmitted after 5:00 p.m., Eastern Standard Time, or on a non-business day with a copy of such notice also sent by one of the other described methods in this Section; or (c) on the date on which return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed. Rejection, refusal to accept, or inability to deliver of which no notice was given shall be deemed to be a receipt of such notice, request or other communication. The respective attorneys for Seller and Purchaser are hereby authorized to give any notice pursuant to this Agreement on behalf of their respective client. Copies of applicable notices shall be given to Escrow Agent, as applicable. Notices will be delivered at the following addresses/email addresses, subject to the right of any party to change the address/email address at which it is to receive notice by written notice to the other party complying with this Section.

If to Seller, to:

Leslie Gern Cloyd, Esq.  
2650 N. Military Trail, Suite 240  
Boca Raton, Florida 33431

E-mail: LCloyd@bergersingerman.com

If to Purchaser, to:

Life Partners, Inc.  
204 Woodhew Drive  
Waco, Texas 76712  
Attention: R. Scott Penden  
E-mail: [spenden@lifepartnersinc.com](mailto:spenden@lifepartnersinc.com)

Section 9.06. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations shall not in any way be affected or impaired thereby in such jurisdiction, and such provision or obligation shall not in any way be affected or impaired thereby in any other jurisdiction.

Section 9.07. Recitals. The Recitals set forth at the beginning of this Agreement are hereby incorporated into and made a part of the substantive provisions of this Agreement.

Section 9.08. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and thereof and supersedes and cancels all prior agreements, negotiations, correspondence, undertakings, understandings and communications of the parties, oral or written, with respect to such subject matter.

Section 9.09. Assignment. No party to this Agreement may assign this Agreement, any of its rights and obligations hereunder or any interest herein without the prior written consent of each other party, which consent may be withheld in each such party's sole and absolute discretion.

Section 9.10. Third Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their successors and permitted assigns, and nothing herein is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 9.11. Amendments, Etc. No modification, amendment or waiver of, or with respect to, any provision of this Agreement, and all other agreements, instruments and documents delivered pursuant to this Agreement, shall be effective unless it shall be in writing and signed by the parties hereto.

Section 9.12. Waiver. The failure or delay of any party hereto to enforce at any time any of the provisions of this Agreement shall in no way be construed as a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of such party thereafter to enforce each and every such provision.

Section 9.13. Governing Law. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Florida.

Section 9.14. Consent to Jurisdiction; Waiver of Jury Trial.

(a) Consent to Jurisdiction. Purchaser, on its own behalf and on behalf of its respective successors and permitted assigns, (i) hereby irrevocably and unconditionally submits to the non-exclusive jurisdiction of the state courts of the State of Florida in the County of Palm Beach, and to the jurisdiction of the Court and the United States District Court for the Southern District of Florida, for the purpose of any proceeding relating to or arising out of this Agreement or any agreement referred to herein brought by Seller or its respective successors or permitted assigns, and (ii) to the extent permitted by applicable Law, hereby waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts, that its property is exempt or immune from execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper, or that this Agreement or any agreement referred to herein may not be enforced in or by such court. Purchaser hereby agrees that service of process in any action, suit or proceeding with respect to any matter as to which it submits to jurisdiction herein may be served by mailing a copy thereof by registered or certified mail, postage prepaid, return receipt requested, addressed to a party at its address provided for notices hereunder, such service to become effective seven (7) Business Days after such mailing.

(b) Waiver of Jury Trial. PURCHASER AND SELLER EACH HEREBY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE ARISING OUT OF, CONNECTED WITH, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT. INSTEAD, ANY DISPUTE RESOLVED IN COURT WILL BE RESOLVED IN A BENCH TRIAL WITHOUT A JURY.

Section 9.15. Headings. The headings herein are for purposes of reference only and shall not otherwise affect the meaning or interpretation of any provision hereof.

Section 9.16. Execution in Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, including counterparts sent via electronic mail or facsimile, each of which when so executed shall be deemed to be an original and both of which when taken together shall constitute one and the same agreement.

Section 9.17. Construction of Agreement. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

Section 9.18. Limited Recourse of Seller. It is expressly understood and agreed by the parties hereto that this Agreement is executed by Seller, not individually or personally, but solely as chapter 7 trustee of the Estate of the Debtor. In no event shall Deborah C. Menotte, in her individual capacity, have any liability for the representations, warranties, covenants, agreements or other obligations of Seller hereunder, as to all of which recourse shall be had solely to the

assets of the Estate, and (iii) under no circumstances shall Deborah C. Menotte be personally liable for the payment of any indebtedness or expenses of Seller or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by Seller under this Agreement.

## ARTICLE X COURT APPROVAL

Section 10.01. Order of Sale Under Bankruptcy Code Section 363. The obligations under this Agreement of Purchaser and Seller are contingent upon the issuance of the Approval Order in the Case finding that Purchaser is a good faith buyer and providing for the Policy to be conveyed by Seller to Purchaser pursuant to 11 USC § 363 free and clear of all monetary liens, claims and encumbrances of every kind and nature, and free of clear of all interests in or to the Policy at law or in equity.

Section 10.02. Cooperation to Obtain Approval Order. Seller and Purchaser agree to cooperate and provide to each other and the Court all reasonably requested materials and assistance so as to enable the Court to enter the Approval Order as rapidly as possible. Seller shall in good faith seek prompt entry of the Approval Order.

Section 10.03. Higher and Better Offers. Purchaser understands, acknowledges, and agrees that this Agreement and the sale of the Policy is subject to higher and better offers, as determined by the Court, and if Seller accepts a higher and better offer, then this Agreement shall be of no further force or effect and the Deposit shall be delivered to Purchaser within five (5) Business Days after the Court approves the sale of the Policy to such third party offeror.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers or agents thereunto duly authorized.

By: \_\_\_\_\_  
Name: Deborah C. Menotte, as chapter 7  
Trustee

LIFE PARTNERS, INC.

By: \_\_\_\_\_  
Name: R. Scott Peden  
Title: President



**Schedule 1**

**POLICY INFORMATION AND PURCHASE PRICE**

<b>Policy Number</b>	<b>Issue Date</b>	<b>Insurer</b>	<b>Death Benefit (in \$)</b>	<b>Policy Purchase Price (in \$)</b>
93707727	1-Sep-07	John Hancock Life Insurance Company	\$12,000,000	\$2,200,000

**Schedule 1**

**WIRE INSTRUCTIONS**

**GIBRALTAR PRIVATE BANK & TRUST**

**Wire Instructions (Incoming)**

**DOMESTIC WIRES**

Bank Name: Gibraltar Private Bank & Trust  
Bank City & State: Coral Gables, Florida  
Bank Routing/ABA #: 0455  
Account Name: BERGER SINGERMAN, LLP TRUST  
ACCOUNT Beneficiary Account #: : 17964

**INTERNATIONAL WIRES**

Receiving Bank: Any USA correspondent bank  
SWIFT No: SWIFT/Routing # of the USA correspondent bank  
Beneficiary's Bank: Gibraltar Private Bank & Trust  
Coral  
Gables,  
Florida

Routing/ABA #: 0455

Beneficiary Customer Name  
Beneficiary Account #: Customer Account Number

International wires should be processed through the sending International Bank's USA correspondent bank utilizing Gibraltar's domestic wire instructions. The sending International Bank can utilize any USA correspondent bank they have a relationship with. The USA correspondent bank will then forward the wire to Gibraltar via the Federal Reserve wire system utilizing Gibraltar's routing #.