

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

<p>In re</p> <p>LIFE SETTLEMENTS ABSOLUTE RETURN I, LLC, <i>et al.</i>,<sup>1</sup></p> <p>Debtors.</p>	<p>Chapter 11</p> <p>Case No. 17-13030 (MFW) (Jointly Administered)</p> <p><u>Hearing Date:</u> 2/19/2019 @ 2:00 P.M. (ET) <u>Obj. Deadline:</u> 2/12/2019 @ 4:00 P.M. (ET)</p>
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**MOTION PURSUANT TO 11 U.S.C. §§ 105, 363, 365, 503 AND 507  
AND BANKRUPTCY RULES 2002, 6004 AND 6006 FOR (I) ENTRY OF AN  
ORDER (A) ESTABLISHING BID AND AUCTION PROCEDURES  
RELATED TO THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS’  
ASSETS; (B) APPROVING RELATED BID PROTECTIONS; (C) SCHEDULING  
AN AUCTION AND SALE HEARING; (D) ESTABLISHING CERTAIN NOTICE  
PROCEDURES FOR DETERMINING CURE AMOUNTS FOR EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES TO BE ASSUMED AND ASSIGNED; AND  
(E) GRANTING RELATED RELIEF; AND (II) ENTRY OF AN ORDER  
(A) APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS  
FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS;  
AND (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Life Settlements Absolute Return I, LLC (“LSAR”) and Senior LS Holdings, LLC (“Senior LS,” and collectively with LSAR, the “Debtors”), file this *Motion Pursuant to 11 U.S.C. §§ 105, 363, 365, 503 And 507 and Bankruptcy Rules 2002, 6004 and 6006 for (I) Entry of an Order (A) Establishing Bid and Auction Procedures Related to the Sale of Substantially All of the Debtors’ Assets; (B) Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Certain Notice Procedures for Determining Cure*

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: Life Settlements Absolute Return I, LLC (7992) and Senior LS Holdings, LLC (5731). The mailing address for the Debtors, solely for purposes of notices and communications, is: 6650 Rivers Avenue, Suite 105 #81921, North Charleston, SC 29406-4829, with copies to Nelson Mullins Riley & Scarborough LLP, c/o Shane G. Ramsey, 150 Fourth Avenue North, Suite 1100, Nashville, TN 37219 and Bayard, P.A., c/o Evan T. Miller, 600 N. King Street, Suite 400, Wilmington, DE 19801.

*Amounts for Executory Contracts and Unexpired Leases to be Assumed and Assigned; and (E) Granting Related Relief; and (II) Entry of an Order (A) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (the "**Motion**").* In support of this Motion, the Debtors rely upon and fully incorporate the *Declaration of Robert J. Davey, III in Support of Chapter 11 Petitions and First Day Motions* [D.I. 7] (the "**First Day Declaration**")<sup>2</sup>. In further support of the Motion, the Debtors respectfully represent as follows:

**RELIEF REQUESTED**

1. By this Motion, the Debtors respectfully request the entry of orders substantially in the form of **Exhibit A**, (the "**Bid Procedures Order**"), and **Exhibit B** (the "**Sale Order**"): (a) establishing bidding procedures for the sale of Debtors' assets, approving the proposed bid protections, scheduling the auction and establishing notice procedures for the assumption and assignment of executory contracts and unexpired leases; (b) approving the sale of substantially all of the Debtors' assets free and clear of all liens, claims, encumbrances and interests; and (c) authorizing the assumption and assignment of certain executory contracts and unexpired leases, all in accordance with that certain Purchase and Sale Agreement attached as **Exhibit C** (the "**Purchase and Sale Agreement**").

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<sup>2</sup> Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them in the First Day Declaration. Further, any terms (whether capitalized or lower case) used herein that are defined in the Uniform Commercial Code (the "**UCC**") shall be construed and defined as set forth in the UCC unless otherwise defined herein; provided that to the extent that the UCC is used to define any term used herein and if such term is defined differently in different articles of the UCC, the definition of such term contained in Article 9 of the UCC shall govern.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

3. Venue of this case is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

4. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

5. The statutory predicates for the relief requested in this Motion are 11 U.S.C. §§ 105, 363, 365, 503 and 507 as complemented by Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 6004-1(c) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

### **BACKGROUND**

6. On December 29, 2017 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned bankruptcy cases (collectively, the “**Chapter 11 Cases**”). On the same day, the Debtors filed a motion directing joint administration of the Chapter 11 Cases. On January 5, 2018, the Court entered an order directing the joint administration of the Chapter 11 Cases [D.I. 25].

7. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses and manage their properties as debtors in-possession. To

date, no official committees have been appointed in these Chapter 11 Cases and no request has been made for the appointment of a trustee or an examiner.

8. The history of the Debtors and the events giving rise to these Chapter 11 Cases are fully set forth in the First Day Declaration. As more fully set forth therein, LSAR was formed as a special purpose vehicle to invest in life insurance policies (the “**Policies**”) in the life settlement market. The Policies were issued by leading insurance companies to individuals who are generally wealthy and desire to sell their Policies and the related benefits, rather than surrender them to the issuing insurance company for less value (the “**Insureds**”). Upon purchasing a policy, the investor maintains such policy by paying the premiums and any related costs (collectively, the “**Premiums**”) until the insured individual passes away. At such time, the investor, as the owner and beneficiary of the policy, is entitled to the death benefit proceeds.

9. Additional information regarding the Debtors’ businesses, capital structures, and the circumstances leading to the filing of these Chapter 11 Cases is set forth in the First Day Declaration.

**A. Summary of the Debtors’ Prepetition Indebtedness**<sup>3</sup>

10. As discussed more fully in the First Day Declaration, pursuant to the Indenture, in 2008 LSAR issued Preference Notes in the principal amount of \$40 million, Mezzanine Notes in the principal amount of \$24 million, and Residual Notes in the amount of \$110,222,499 (collectively, the “**2008 Notes**”).

11. The Indenture further authorized LSAR to incur credit pursuant to a credit facility in a principal amount not to exceed \$15 million.

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<sup>3</sup> The below summary of the Debtors’ Prepetition Collateral structure is intended for informational purposes only and shall not constitute a finding as to the validity of any indebtedness of the Debtors nor prohibit any party, including, without limitation, the Debtors, from challenging any aspect of such financing.

12. Pursuant to the Indenture, LSAR pledged, among other things, the Policies and the proceeds thereof to Wells Fargo to secure payment of the 2008 Notes and any properly issued credit facility.

13. On July 11, 2012, LSAR and GERS formally documented an Amended and Restated Loan Agreement (the “**Purported Credit Facility**”).

14. GERS asserts a first priority secured claim in the amount of \$14,527,076.69 for advances made under the Purported Credit Facility [Claim Register No. 3-1] (the “**GERS Claim**”). The GERS Claim is purportedly secured by substantially all of the assets of the Debtors (the “**Alleged Collateral**”) by virtue of the Purported Credit Facility and the Indenture.

15. Pursuant to the Indenture, Wells Fargo, as Indenture Trustee under the Indenture, is the collateral agent with respect to the holders of the 2008 Notes and, as such, has an interest in the Policies and proceeds thereof pledged to secure the obligations due and owing under the 2008 Notes.

16. GERS contends that the Purported Credit Facility is likewise secured by the Policies and proceeds thereof. The Debtors dispute this contention.

17. This dispute between the Debtors and GERS is currently being litigated in Adversary Proceeding Number 18-50677 (MFW) (the “**Litigation**”).

**B. Background Regarding Sale**

18. Shortly after the Petition Date, the Debtors contacted multiple parties, and were contacted by multiple parties, who were or might be interested in providing a debtor-in-possession loan to the Debtors or purchasing the Debtors assets.

19. This marketing process led to the execution of 20 non-disclosure agreements (“**NDAs**”) with well-known funds, including some of the leading names in the life settlements industry (the “**NDA Parties**”).

20. Over the course of approximately the next ten months, the NDA Parties conducted due diligence regarding the Debtors' businesses.

21. On January 18, 2018, one of the NDA Parties made an offer to purchase the Policies for \$2 million. The Debtors did not believe this offer represented a fair price for the Policies and, consistent with their fiduciary duties, rejected the offer.

22. No other NDA Parties made an offer to purchase the Policies.

23. Several NDA Parties expressed an interest in providing debtor-in-possession financing ("**DIP Financing**") to the Debtors.

24. After negotiating with multiple parties, the Debtors executed a term sheet dated March 30, 2018 with one of the NDA Parties regarding DIP Financing.

25. From March 2018 through November 2018, the Debtors negotiated a formal agreement with this NDA Party for the provision of DIP Financing. However, Ensign Peak Advisors, Inc. ("**Ensign Peak**"), the holders of the Debtors' Preference Notes, has advised the Debtors that it will contest the Debtors obtaining DIP Financing, or any other form of financing, on a basis that will prime its lien.

26. Ensign Peak has not offered to provide DIP Financing or other financing to the Debtors.

27. In November 2018, the Debtors were approached by an entity regarding a potential offer to purchase the Policies for \$5.1 million. However, the Debtors did not enter into a formal purchase agreement with that entity.

28. On November 23, 2018, the Debtors notified all of the NDA Parties that they had received a proposal to purchase the Policies and invited the NDA Parties to submit competing

offers. Five of the NDA Parties expressed interest in submitting a competing offer, but to date, no other NDA Party has submitted a competing offer.

29. In December 2018, the Debtors were approached by BPCP Life Settlement LLC (“**BPCP**” or the “**Stalking Horse**”) regarding a potential offer to purchase the Policies.

30. As a result of the feedback the Debtors received from Ensign Peak regarding the proposed DIP Financing, the Debtors determined that, consistent with their fiduciary duties, they should engage BPCP in negotiations regarding a potential sale of the Policies.

31. On January 29, 2019, BPCP made a formal Stalking Horse proposal to purchase the Policies.

32. Ultimately, the Debtors and their professionals, in consultation with certain of its pre-petition creditors, collectively determined that the proposal submitted by BPCP, and the continued marketing process to be completed as part of the Chapter 11 Cases, would maximize the financial return to the Debtors’ creditor constituencies with minimal closing risk. BPCP has entered into a stalking horse purchase and sale agreement with the Debtors. By this Motion, the Debtors seek an order from the Bankruptcy Court approving BPCP as the stalking horse bidder and a corresponding marketing process that would culminate in an auction designed to maximize the sales price for the Debtors’ assets.

**C. Proposed Timeline for Sale of Property**

33. The Debtors propose the following timeline (the “**Timeline**”) for the sale process:

<u>Event</u>	<u>Deadline</u>
Bid Procedures Hearing.....	February 19, 2019
Proposed Bid Deadline .....	[45 days after entry of Bid Procedures Order]
Auction.....	[3 business days after Bid Deadline]

<u>Event</u>	<u>Deadline</u>
Sale Hearing.....	[3 business days after Auction]
Closing .....	[3 business days after entry of Sale Order]

34. Given their post-petition marketing efforts, the Debtors believe that the proposed timeline is more than sufficient to complete a fair and open sale process and maximize the value received for the assets to be acquired pursuant to the Sale and Purchase Agreement (the “**Property**”). The Timeline will provide the Debtors sufficient time to solicit (and/or re-solicit) prospective purchasers in advance of the Proposed Bid Deadline set forth in the Timeline, while respecting the necessity to consummate a sale as quickly as possible to maximize the net value obtained for the Debtors’ Property for the benefit of their estates and all constituencies.

**D. No Collusion**

35. Debtors engaged in extensive negotiations with the Stalking Horse, which produced the Purchase and Sale Agreement. The negotiations regarding price, as well as the other terms of the agreement, were conducted at arms-length. *Boyer v. Gildea*, 374 B.R. 645, 658 (N.D. Ind. 2007). Moreover, the Debtors certify that neither they nor the Stalking Horse engaged in any type of collusive activity to control the sales price with Stalking Horse or any other party. The Bid Procedures also require each Qualified Bidder participating in the Auction to confirm that it has not engaged in any collusion with respect to the bidding. Thus, section 363(n) of the Bankruptcy Code governing collusive sales is inapplicable to the proposed Purchase and Sale Agreement and the transactions contemplated therein. 11 U.S.C. § 363 (n).



**E. Terms of the Purchase and Sale Agreement**

36. A summary of the pertinent terms of the Purchase and Sale Agreement, including the terms to be highlighted pursuant to Local Rule 6004-1, is as follows:<sup>4</sup>

- Property: Section 2.01 of the Purchase and Sale Agreement lists the Property to be acquired by the Stalking Horse. As set forth therein, the Stalking Horse will acquire substantially all of the Debtors' assets, including all of the Life Settlement Policies;
- Buyer's Assumed Obligations: As set forth in Section 2.01(c) of the Purchase and Sale Agreement, the liabilities to be assumed by the Stalking Horse include the Executory Contract;
- Purchase Price: Section 1.01 and 2.03 of the Purchase and Sale Agreement provides that the Purchase Price for the Purchased Property will be \$5,650,000;
- Payment of Premiums: Section 1.01 of the Purchase and Sale Agreement provides that the Premiums of each of the Life Settlement Policies shall be paid by the Debtors through a date not earlier than nine (9) months after the Closing Date;
- Termination and Other Deadlines: Section 9.01 of the Purchase and Sale Agreement sets forth circumstances under which the Purchase and Sale Agreement may be terminated;
- Break-Up Fee, Stalking Horse Expense Reimbursement Amount and Minimum Overbid Amount: Section 6.01(b) of the Purchase and Sale Agreement and paragraph 7 of the Bid Procedures Order contemplate a Break-Up Fee of three percent (3.5%) of the of the ultimate winning bid for the Property, plus documented, out-of-pocket expenses of the Stalking Horse, including documented legal fees and costs of Stalking Horse in the aggregate amount not to exceed \$350,000. The first competing bid shall be in the sum of \$547,750 over and above the Purchase Price, with subsequent incremental bids in the minimum amount of \$200,000;
- Closing Conditions. The respective obligations of the Stalking Horse and the Debtors to consummate the closing of the transactions contemplated by the Purchase and Sale Agreement are subject to the satisfaction or waiver of the closing conditions set forth in Article VII of the Purchase and Sale Agreement;
- Performance Deposit. Pursuant to Section 2.02 of the Purchase and Sale Agreement, the Stalking Horse is required to deposit \$250,000 with Debtors upon entry of the Bid Procedures Order;

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<sup>4</sup> The following summary is qualified in its entirety by reference to the provisions of the Purchase and Sale Agreement. In the event of any inconsistencies between the provisions of the Purchase and Sale Agreement and the terms herein, the terms of the Purchase and Sale Agreement shall control.

- Sale Free and Clear: The Sale Order provides that on the Closing Date and concurrently with the Closing, all then existing or thereafter arising obligations, liabilities and encumbrances of, against or created by Debtors or their bankruptcy estates, will be fully released from and with respect to the Property, which shall be transferred to the Stalking Horse free and clear of all obligations, liabilities and encumbrances except for the Stalking Horse's assumption of the Executory Contracts. The Sale Motion will be deemed to provide sufficient notice as to the sale and assignment of the Property free and clear of all Liens in accordance with Local Rule 6004-1. Following the Closing, no holder of any Lien on the Property may interfere with the Stalking Horse's use and enjoyment of the Property based on or related to such Lien, or any actions that the Debtors may take in their chapter 11 cases and no interested party may take any action to prevent, interfere with or otherwise enjoin consummation of the Sale or by this Order;
- No Successor Liability: The Sale Order provides that the Stalking Horse and its Affiliates and their respective predecessors, successors, assigns, members, partners, principals, directors, officers, and shareholders (or equivalent) have no obligations with respect to any liabilities of the Debtors other than the Stalking Horse's obligations assumed under or pursuant to the Purchase and Sale Agreement; and
- Relief From Bankruptcy Rule 6004(h): The Sale Order provides that the Sale Order will be effective and enforceable immediately upon entry and its provisions will be self-executing.
- Assumption of Executory Contract. The Stalking Horse intends to assume the servicing agreement with Clear View Advisors Corporation ("**CVACorp**") for the servicing of the Life Settlement Policies. As stated in the *Declaration of Robert J. Davey, III in Support of Motion of Debtors for Order Authorizing Employment, Retention, and Compensation of Clear View Advisors Corporation as the Contractor to the Equity Representative in the Ordinary Course of Business Pursuant to 11 U.S.C. §327(b), Nunc Pro Tunc to the Petition Date* [D.I. 12], Robert J. Davey, III is the owner of CVACorp, is the Secretary/Treasurer of The Attilanus Fund I, L.P. ("**Attilanus**"), which is the sole member of LSAR, and is the Secretary/Treasurer of Anysia Financial Management, LLC, which conducts and manages the business of Attilanus.

37. Finally, the Purchase and Sale Agreement contemplates a going concern sale, with a certain designated executory contract to be assumed and assigned to the Stalking Horse on the Closing Date.

**BASIS FOR RELIEF REQUESTED**

**A. Necessity for Sale**

38. After critical analysis, the Debtors concluded that their forecasted revenues would be insufficient to adequately fund the Debtors' business operations, the costs to service the Premiums, and debt service obligations. Thus, the Debtors, in consultation with their professional advisors, determined that given their leveraged financial position, their diminishing revenue stream, and their conclusions about the valuation of the Debtors' businesses and assets, the most effective way to preserve the Debtors' going concern value for the benefit of all constituencies would be a sale of their assets following a thorough marketing process.

39. The Debtors submit that a Sale of the Property along the Timeline will adequately address their liquidity issues by transferring ownership of the business to a financially stable buyer, with the ability to satisfy the capital requirements of the business so that the business can continue on a going concern basis, while maximizing the value of the Debtors' estates for the benefit of all constituencies. Accordingly, the Debtors have decided to pursue the Sale of the Property, and they assert that they must be permitted to conduct the process in the manner proposed in the Bid Procedures. In the absence of a sale transaction conducted in accordance with such timeline, the Debtors may not have sufficient liquidity to maintain operations going forward, will likely face deterioration in the value of the business and may be unable to continue operations, potentially leading to liquidation under Chapter 7 of the Bankruptcy Code.

**B. Bid Procedures<sup>5</sup>**

40. To maximize the value of the Property for the benefit of the Debtors' and their estates and all parties in interest, the Debtors seek to implement a competitive bidding process

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<sup>5</sup> Terms used but not otherwise defined in this section of this Motion shall have the meanings ascribed to them in the Bid Procedures attached as **Schedule 1** to the Bid Procedures Order.

designed to generate maximum net value. As described more fully in the Bid Procedures attached as **Schedule 1** to the Bid Procedures Order attached to this Motion as **Exhibit A**, the Debtors propose selling the Property to a Qualified Bidder making the highest or best offer for the Property.

41. As described more fully in the Bid Procedures, the Debtors propose a process governed by the following procedures:<sup>6</sup>

**Bid Deadline.** Any party interested in submitting a bid must transmit such bid to the parties identified on **Schedule 1** attached to the Bid Procedures not later than 5:00 p.m. (prevailing Eastern Time) on the date that is 45 days after entry by the Court of a Bid Procedures Order (the “**Bid Deadline**”);

**Required Bid Materials.** All bids, other than that of the Stalking Horse, must include the following, among other things (the “**Required Bid Materials**”):

- a) **Identification of Potential Bidder.** Identification of the party submitting the bid (the “**Potential Bidder**”) (and any equity holders, in the case of a Potential Bidder which is an entity specially formed for the purpose of effectuating the contemplated transaction) and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- b) **Purchase and Sale Agreement.** An executed copy of a purchase and sale agreement providing for the purchase of the assets of the Debtors. Such purchase and sale agreement shall be substantially in the form of the Purchase and Sale Agreement and delivered together with a draft marked against the Purchase and Sale Agreement to reflect all variations from the Purchase and Sale Agreement;
- c) **Financing.** Evidence of the Potential Bidder’s ability to consummate the transaction and payment of the purchase price in cash at the Closing, including, but not limited to:
  - i. a signed commitment for any debt or equity financing;

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<sup>6</sup> The following description of the Bid Procedures is only a summary of the terms set forth in the Bid Procedures attached as **Schedule 1** to the Bid Procedures Order. The following summary is qualified in its entirety by reference to the provisions of the Bid Procedures. In the event of any inconsistencies between the provisions of the Bid Procedures and the terms herein, the terms of the Bid Procedures shall control.

- ii. a bank or other account statement showing the ability of a Potential Bidder to pay cash for the Property;
  - iii. contact names and numbers for verification of financing sources; and
  - iv. current audited financial statements (or such other form of financial disclosure and credit-quality support or enhancement, acceptable to the Debtors), of the Potential Bidder or those entities that will guarantee in full the payment obligations of the Potential Bidder;
- d) Initial Overbid Amount and Bid Increments. At any Auction, the minimum initial overbid (the “**Initial Overbid**”) shall be a sum that results in value to the Debtors’ estates that is at least \$547,750 in excess of the Purchase Price. Subsequent bids shall be in increments of at least \$200,000.
- e) Irrevocability of Bid. A letter stating that the Potential Bidder’s offer is irrevocable until the first business day after the Property for which the Potential Bidder is submitting a bid has been sold pursuant to the closing of a sale or sales approved by the Bankruptcy Court;
- f) Performance Deposit. A cash deposit equal to ten percent (10%) of the Potential Bidder’s bid, by wire transfer, certified or cashier’s check, as a deposit that will constitute liquidated damages if the Potential Bidder shall default with respect to its offer;
- g) Identification of Executory Contract. The bid shall identify with particularity the Debtors’ executory contracts with respect to which the Potential Bidder seeks to receive an assignment and any designation rights it seeks;
- h) No Financing or Diligence Constituencies. The bid shall not contain any due diligence, financing or regulatory contingencies of any kind, though the bid may be subject to the satisfaction of specific conditions in all material respects at Closing;
- i) Consent to Jurisdiction and Authority to Enter Final Orders. The bid shall state that the offering party consents to the jurisdiction of the Bankruptcy Court and to the entry of a final judgment or order with respect to the Potential Bidder’s offer, as well as with respect to any aspect of this Motion, including the Bid Procedures, and all orders of the Bankruptcy Court entered with respect to the Sale, if it is determined that the Bankruptcy Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties;

- j) Corporate Authority. The bid shall include evidence of authorization and approval from the Potential Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the submitted purchase and sale agreement of the Potential Bidder; and
- k) Adequate Assurance Information. The bid shall include sufficient financial or other information (the "**Adequate Assurance Information**") to establish adequate assurance of future performance with respect to any lease or contract to be assumed and assigned to the Potential Bidder in connection with the proposed transaction. The bid shall also identify a contact person (with relevant contact information) that counterparties to any lease or contract can contact to obtain additional Adequate Assurance Information

In addition, the bid must satisfy the other requirements set forth under "Bid Requirements" in the Bid Procedures.

A "**Qualified Bidder**" is a Potential Bidder that delivers the documents described in subparagraphs (a)-(k) above, and that the Debtors determine is reasonably likely (based on financial information submitted by the Potential Bidder, the availability of financing, experience and other consideration deemed relevant by the Debtors) to be able to consummate a sale if selected as the Prevailing Purchaser. Notwithstanding the foregoing, the Stalking Horse shall be deemed a Qualified Bidder. Not later than two (2) business days after a Potential Bidder delivers all of the materials required by subparagraphs (a)-(k) above, the Debtors shall determine and shall notify the Potential Bidder, if such Potential Bidder is a Qualified Bidder. A bid from a Qualified Bidder is a "**Qualified Bid**."

Auction. If a Qualified Bid, other than that submitted by the Stalking Horse, has been received by the Debtors, the Debtors may conduct an auction (the "**Auction**") with respect to all or some of the Property. The Auction shall be conducted at the offices of Nelson Mullins Riley & Scarborough LLP, 104 South Main Street, Suite 900, Greenville, SC 29601 (the "**Auction Site**"), at a date and time determined by the Bankruptcy Court (the "**Auction Date**"), or such other place and time as the Debtors shall notify all Qualified Bidders who have submitted Qualified Bids and expressed their intent to participate in the Auction as set forth above. As the GERS Claim is currently subject to a bona fide dispute in the Litigation, GERS shall not be entitled to offset its secured claim against the purchase price of the Property pursuant to 11 U.S.C. § 363(k). Any and all liens against the Property shall attach to the proceeds of the Sale.

**C. Break-Up Fee and Expense Reimbursement**

42. To provide an incentive and to compensate the Stalking Horse for entering into the Purchase and Sale Agreement, the Debtors have agreed to the Bid Protections, including the Break-Up Fee and Expense Reimbursement.

43. The Debtors believe that offering the Bid Protections to the Stalking Horse will provide a post-petition benefit to the Debtors' estates by establishing a floor and promoting more competitive bidding. The availability of the Bid Protections is necessary to provide the Stalking Horse with some assurance that it will be compensated for the time and expense it has spent in putting together its offer for the Property and the risk that arises from participating in the bidding and subsequent Auction process. Moreover, the Stalking Horse has required the Break-Up Fee and Expense Reimbursement as a condition to its bid pursuant to the Purchase and Sale Agreement.

**D. Notice of Bid Procedures, Auction and Sale**

**i. Notice of Sale Hearing**

44. Upon the entry of the Bid Procedures Order, the Debtors shall serve this Motion and all exhibits to the Motion, by first-class mail, postage prepaid, upon (a) the United States Trustee for the District of Delaware; (b) Wells Fargo, as Indenture Trustee; (c) the creditors listed on the Debtors' consolidated list of 25 largest unsecured creditors, as filed with the Debtors' chapter 11 petitions; (d) counsel to the Stalking Horse; (e) all parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; (f) federal, state, county and city tax and regulatory authorities to which the Debtors are subject, to the extent reasonably known to the Debtors; (g) all entities known to have expressed an interest in a transaction with respect to the Property or that have been identified by the Debtors

or their advisors as a Potential Bidder of the Property; and (h) all parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the “**Sale Notice Parties**”).

**ii. Notice of Sale**

45. Within five (5) business days of the entry of the Bid Procedures Order (the “**Mailing Date**”) or as soon thereafter as practicable, the Debtors shall serve upon the Sale Notice Parties by first-class mail, postage prepaid, a sale notice (the “**Notice of Auction and Sale Hearing**”) substantially in the form attached to the Bid Procedures Order as **Schedule 2**, setting forth the dates established for submission of Qualified Bids, the Auction and the Sale Hearing.

**iii. Post-Auction Notice**

46. As soon as possible after the conclusion of the Auction, the Debtors shall file, but not serve, a notice (the “**Post Auction Notice**”) identifying any successful bidder (the “**Prevailing Purchaser**”).

**E. Cure Procedures**

47. The Debtors propose the following procedures (the “**Cure Procedures**”) for notifying counterparties to executory contracts and unexpired leases of potential Cure Amounts (as defined below) with respect to those executory contracts and unexpired leases that the Debtors may seek to assume and assign on the Closing Date.

48. Within five (5) business days of the entry of the Bid Procedures Order, the Debtors will file a notice of potential assumption, assignment and/or transfer of the executory contract listed therein (the “**Designated Executory Contract**”), substantially in the form attached to the Bid Procedures Order as **Schedule 3** (the “**Notice of Assumption and Assignment**”) and serve such notice on all non-debtor parties to the Designated Executory Contract (the “**Contract Notice Parties**”).



49. The Notice of Assumption and Assignment shall identify whether an individual Designated Executory Contract is a part of the Sale and the amount reflected in the Debtors' records with respect to each such agreement necessary to cure monetary defaults under each such Designated Executory Contract (the "**Cure Amounts**") as of such date (the "**Cure Date**"). Additionally, the Notice of Assumption and Assignment shall explain how a non-debtor party to an executory contract or unexpired lease may obtain "adequate assurance of future performance" information from the Stalking Horse (the "**Proposed Purchaser Adequate Assurance Information**"). The Notice of Assumption and Assignment shall set a deadline by which the non-debtor party may file an objection to the Cure Amount or the Proposed Purchaser Adequate Assurance Information. The Debtors request that this Court schedule the deadline to object to any Cure Amount or to the Proposed Purchaser Adequate Assurance Information as fifteen (15) calendar days after service of the Notice of Assumption and Assignment. The Debtors shall have the ability to file an amended Notice of Assumption and Assignment: (a) identifying additional executory contracts or unexpired leases that might be assumed by the Debtors and assigned to the Stalking Horse not set forth in the original Notice of Assumption and Assignment, (b) identifying executory contracts or unexpired leases that are removed from the original Notice of Assumption and Assignment, or (c) setting forth amended Cure Amounts. The Debtors propose that any parties affected by an amended Notice of Assumption and Assignment be provided fifteen (15) calendar days, after service of the amended Notice of Assumption and Assignment, to object to the Cure Amount described in the amended notice. Moreover, the Notice of Assumption and Assignment, and any amended notice, shall provide that objections to any Cure Amount or to the Proposed Purchaser Adequate Assurance Information will be heard at the Sale Hearing or at a later hearing, as determined by the Debtors in consultation with the Court. In the

event that the Prevailing Purchaser is not the Stalking Horse, the Debtors propose that any objections regarding “adequate assurance of future performance” may be raised at the Sale Hearing.

50. The Debtors or the Prevailing Purchaser may determine to exclude any Designated Executory Contract (an “**Excluded Contract**”) no later than three (3) business days prior to the Sale Hearing. The non-debtor party or parties to any such Excluded Contract will be notified of such exclusion by written notice mailed no later than the day that is one (1) Business Day after a Final Order determining the actions necessary to Cure or any request for adequate assurance of future performance.

51. At the Sale Hearing, the Debtors shall (a) present evidence necessary to demonstrate adequate assurance of future performance by the Prevailing Purchaser, and (b) request entry of an order requesting approval of the assumption and assignment of any or all executory contracts and unexpired leases to be assumed and assigned on the Closing Date to the Prevailing Purchaser. For the foregoing reasons, the Debtors believe that granting the relief requested in this Motion is appropriate and in the best interests of all constituencies.

#### **APPLICABLE AUTHORITY**

52. “Under Delaware law, the business judgment rule operates as a presumption ‘that directors making a business decision, not involving self-interest, act on an informed basis, in good faith and in the honest belief that their actions are in the corporation’s best interest.’” *Continuing Creditors’ Committee of Star Telecomms., Inc. v. Edgecomb*, 385 F. Supp. 2d 449, 462 (D. Del. 2004) (quoting *Grobow v. Perot*, 539 A.2d 180, 187 (Del. 1988)); see also *Ad Hoc Committee of Equity Holders of Tectonic Network, Inc. v. Wolford*, 554 F. Supp. 2d 538, 555 n.111 (D. Del. 2008). Thus, this Court should grant the relief requested in this Motion if the Debtors

demonstrate a sound business justification therefor. *See In re Del. Hudson Ry. Co.*, 124 B.R. 169, 179 (Bankr. D. Del. 1991).

53. As discussed above and below, the Debtors have sound business justifications for selling the Property at this time. After critical analysis, the Debtors concluded that their forecasted revenues were insufficient to adequately fund the Debtors' business operations, service the Premium payments, and pay their debt service requirements. Thus, following consultation with their advisors, the Debtors determined that, given their overly leveraged financial position and their conclusions about the valuation of the Debtors' business, the most effective way to preserve the Debtors' going concern value for the benefit of creditors was through a sale of the Debtors' assets following a thorough marketing process. A sale of the Debtors' assets will result in the transfer of the business on a going concern basis to a financially stable buyer that will be able to satisfy the going-forward capital requirements. Accordingly, the Debtors submit that the proposed sale will enable them to address their liquidity issues. Until these issues are addressed, however, the Debtors believe that the value of the business could erode. Accordingly, a sale consistent with the timeframe proposed herein is necessary to maximize the value of the Debtors' assets for the benefit of all constituencies in these Chapter 11 Cases.

A. **The Bid Procedures are Fair and are Designed to Maximize the Value Received for the Property.**

54. 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). The Debtors are confident that the Bid Procedures are appropriate under sections 105 and 363 of the Bankruptcy Code, will ensure that the bidding process is fair and reasonable, and will yield the maximum value for the estates and creditors. The Bid Procedures provide Potential Bidders with sufficient notice and an opportunity to acquire

information necessary to submit a timely and informed bid. The Bid Procedures proposed herein are designed to maximize the value received for the Property by facilitating a competitive bidding process in which all Potential Bidders are encouraged to participate and submit competing bids. The Bid Procedures will provide the Debtors with the opportunity to consider all competing offers and to select the highest or best offer for the sale of substantially all of the Property.

55. The Debtors request this Court's approval of the Bid Procedures, including the dates established thereby for an Auction and a Sale Hearing. Accordingly, the Debtors and all parties-in-interest can be assured that the consideration for the Property will be fair and reasonable, and there are sound business reasons to approve the Bid Procedures.

**B. The Bid Protections Are Necessary to Preserve the Value of the Debtors' Estates.**

56. Pursuant to Bankruptcy Rule 6004(f)(1), a sale of property outside the ordinary course of business may be by private sale or by public auction. The Debtors believe that having the ability to offer the Bid Protections to the Stalking Horse and conduct an Auction will likely maximize the realizable value of the Property for the benefit of the Debtors' estates, creditors and other parties-in-interest.

57. Approval of the Bid Protections to the Stalking Horse is governed by standards for determining the appropriateness of bid protections in the bankruptcy context. Courts have identified at least two instances in which bid protections may benefit the estate. First, a break-up fee or expense reimbursement may be necessary to preserve the value of the estate if assurance of the fee "promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." *Calpine Corp. v. O'Brien Env'tl. Energy, Inc. (In re O'Brien Env'tl. Energy, Inc.)*, 181 F.3d 527, 537 (3d Cir. 1999); *see also Reliant Energy Channelview LP v. Kelson Channelview LLC*, 594 F.3d 200, 206-07 (3d Cir. 2010). Second, if the availability of break-up fees and expense reimbursements were

to induce a bidder to research the value of the debtor and convert the value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth. *Reliant*, 594 F.3d at 206-07; *O'Brien*, 181 F.3d at 537.

58. The Break-Up Fee and Expense Reimbursement set forth in the Bid Procedures will enable the Debtors to secure an adequate floor for the Property and to therefore insist that competing bids be materially higher or otherwise better than the Purchase and Sale Agreement — a clear benefit to the Debtors' estates. Moreover, the Stalking Horse would not agree to act as a stalking horse without the protections of the Break-Up Fee and Expense Reimbursement. Without the Break-Up Fee and Expense Reimbursement, the Debtors might lose the opportunity to obtain the highest or best offer for the Property and would certainly lose the downside protection that will be afforded by the existence of the Stalking Horse and the Purchase and Sale Agreement which is conditioned upon the approval of the Break-Up Fee and Expense Reimbursement. Furthermore, without the benefit of the Stalking Horse, the bids received at Auction for the Property could be substantially lower than that offered by the Stalking Horse.

59. “The usual rule is that if break-up fees encourage bidding, they are enforceable; if they stifle bidding, they are not enforceable.” *The Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 660 (S.D.N.Y. 1992). As is customary, the Bid Protections are compensation for the Stalking Horse's investment of considerable time and expense in negotiating and entering into the Purchase and Sale Agreement. The Debtors do not believe the Bid Protections will stifle bidding. To the contrary, the Debtors believe that, should an auction be held, the Bid Protections will encourage bidding by serving “any of three possible useful functions: (1) to attract or retain a potentially

successful bid; (2) to establish a bid standard or minimum for other bidders to follow; or (3) to attract additional bidders.” *Id.* at 662. If the Property is sold to a competing bidder, the sale likely will be the result of Stalking Horse’s crucial role as an initial bidder generating interest in the Property and establishing a minimum acceptable price and offer against which other parties can bid.

60. In addition, “[a] break-up fee should constitute a fair and reasonable percentage of the proposed purchase price, and should be reasonably related to the risk, effort, and expenses of the prospective purchaser. When reasonable in relation to the bidder’s efforts and to the magnitude of the transaction, break-up fees are generally permissible.” *Id.*; *see also Integrated Res.*, 147 B.R. at 662 (breakup fee of up to 3.2%, plus reimbursement of expenses, found to be reasonable).

61. Here, the Break-Up Fee is equal to 3.5% of the aggregate Purchase Price and the Expense Reimbursement is limited documented, out-of-pocket expenses of the Stalking Horse, including documented legal fees and costs not to exceed \$350,000. Together, such amounts are consistent with the range of bid protections typically paid in sale transactions that have been approved by this Court. Given the size of the Purchase Price, the Debtors believe the amount of the Bid Protections is appropriate.

**C. Approval of the Sale is Warranted Under Bankruptcy Code 363(b).**

62. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, “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). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts in this district and elsewhere have found that a debtor’s sale or use of assets outside the ordinary course of business should be approved if the debtor can

demonstrate a sound business justification for the proposed transaction. *See, e.g., In re Eagle Picher Holdings, Inc.*, 2005 Bankr. LEXIS 2894, at ¶ 3 (Bankr. S.D. Ohio 2005); *In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983). Once the Debtors articulate a valid business justification, “[t]he business judgment rule ‘is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.’” *In re S.N.A. Nut Co.*, 186 B.R. 98 (Bankr. N.D. Ill. 1995); *see also In re Integrated Res., Inc.*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992); *In re Johns-Manville Corp.*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) (“a presumption of reasonableness attaches to a debtor’s management decisions”).

63. The sale of a debtor’s assets is appropriate where there are sound business reasons behind such a determination. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *see also Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp., (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (Bankr. D. Del. 1999); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986) (sale of substantially all assets of estate authorized where “a sound business purpose dictates such action”).

64. The Debtors have a sound business justification for selling the Property at this time. Based on a careful review of the Debtors’ liquidity constraints and their ongoing and future business prospects, the Debtors’ management and team of financial advisors have concluded that an expedited Sale of all of the Property in accordance with the procedures set forth in the Bid Procedures is the best method to maximize recoveries to the estates. Maximization of the Property value is a sound business purpose warranting authorization of any

proposed Sale. For the reasons discussed herein, the Debtors believe that an expedited sale of the Property is the best way to maximize value for the benefit of creditors and stem any further deterioration of the going concern value of the company.

65. The Debtors have proposed a fair and open process for achieving the objective of obtaining the highest or best offer and sale of their assets for the benefit of the Debtors' estates and their creditors. The Sale of the Property will be subject to competing bids, enhancing the Debtors' ability to receive the highest or otherwise best value for the Property. Consequently, the fairness and reasonableness of the consideration to be received by the Debtors will ultimately be demonstrated by a "market check" through the auction process, which is the best means for establishing whether a fair and reasonable price is being paid.

66. For the reasons outlined above, the Debtors assert that their entry into the Purchase and Sale Agreement and other ancillary documents is a sound exercise of their business judgment and supported by the facts and circumstances of these Chapter 11 Cases.

67. In addition, all creditors and parties-in-interest will receive adequate notice of the Bid Procedures and Sale Hearing, as set forth above. Such notice is reasonably calculated to provide timely and adequate notice to the Debtors' major creditor constituencies, those parties most interested in these Chapter 11 Cases, those parties potentially interested in bidding on the Property and others whose interests are potentially implicated by a proposed Sale. Accordingly, consummating the Sale as soon as possible is in the best interests of the Debtors and their creditors and parties-in-interest.

**D. The Proposed Sale Satisfies the Requirements of Section 363(f) for a Sale Free and Clear of Interests.**

68. Section 363(f) of the Bankruptcy Code permits the Debtors to sell assets free and clear of all liens, claims, interests, charges, and encumbrances (with any such liens, claims,



interests, charges, and encumbrances attaching to the net proceeds of the sale with the same rights and priorities therein as in the sold assets). As section 363(f) of the Bankruptcy Code is stated in the disjunctive, when proceeding pursuant to section 363(b), it is only necessary to meet one of the five conditions of section 363(f). *Citicorp Homeowners Servs., Inc. v. Elliot*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (stating that section 363(f) of the Bankruptcy Code is written in the disjunctive; holding that if any of the five conditions of section 363(f) are met, the trustee has the authority to conduct the sale free and clear of all liens). The Debtors believe that they will be able to demonstrate at the Sale Hearing that they have satisfied one or more of these conditions.

69. The asserted lien represented by the GERS Claim is subject to a bona fide dispute in the Litigation, and the sale of the Property free and clear of its asserted lien is proper under section 363(f)(4).

70. The Debtors believe that the holders of the 2008 Notes will consent to the sale free and clear under section 363(f)(2). In the event they do not, a sale free and clear can proceed pursuant to section 363(f)(5) of the Bankruptcy Code because the holders of the 2008 Notes will be paid from the proceeds of the Sale and the Debtors will establish at the Sale Hearing that the holders of the 2008 Notes can be compelled to accept a monetary satisfaction of their claims.

71. The Debtors propose that any bona fide and allowed claims or interests shall attach to the Sale proceeds with the same force, validity, effect, priority and enforceability as such Interests had in the Property prior to such Sale.

**E. The Purchaser Should be Entitled to the Protections of Section 363(m).**

72. Pursuant to section 363(m) of the Bankruptcy Code, a good faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *See In re Abbotts Dairies*, 788 F.2d at 147; *In re Mark Bell Furniture Warehouse, Inc.*, 992 F.2d 7, 9 (1st Cir. 1993); *In re Willemain V. Kivitz*, 764 F.2d 1019, 1023 (4th Cir. 1985).

73. The Purchase and Sale Agreement was negotiated at arm's length, with all parties represented by their own counsel. Additionally, the Debtors will adduce facts at the Sale Hearing demonstrating that any bidder who is deemed the Prevailing Purchaser for all of the Property had negotiated at arm's length, with all parties represented by their own counsel.

74. Accordingly, the Sale Order will include a provision that the Prevailing Purchaser for the Property, is a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code. The Debtors believe that providing the Prevailing Purchaser with such protection will ensure that the maximum price will be received by the Debtors for the Property and that closing of the Sale will occur promptly.

**F. The Assumption and Assignment of Executory Contracts and Unexpired Leases**

75. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or [unexpired] lease of the debtor." 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a debtor's decision to assume or reject an executory contract or unexpired lease is whether the debtor's reasonable business judgment supports assumption or rejection. *See e.g., In re Stable Mews Assoc., Inc.*, 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984). If the debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of an unexpired lease or executory contract. *See Grp. of Institutional Inv'rs v. Chi. M. St. P. & P.R.R. Co.*, 318 U.S. 523 (1943); *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39–40 (3d. Cir. 1989). The business judgment test "requires only that the trustee [or debtor-in-possession] demonstrate that [assumption or] rejection of the contract will benefit the estate." *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (quoting *Stable Mews*, 41 B.R. at 596). Any more exacting scrutiny would slow the administration of a debtor's estate and increase costs,

interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten this Court's ability to control a case impartially. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985). Moreover, pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must "cure, or provide adequate assurance that the debtor will promptly cure," any default, including compensation for any "actual pecuniary loss" relating to such default. 11 U.S.C. § 365(b)(1).

76. Once an executory contract is assumed, the trustee or debtor-in-possession may elect to assign such contract. *See In re Rickel Home Center, Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) ("[t]he Code generally favors free assignability as a means to maximize the value of the debtor's estate"); *see also Leonard v. Gen. Motors Corp. (In re Headquarters Dodge, Inc.)*, 13 F.3d 674, 682 (3d Cir. 1994) (noting purpose of section 365(f) is to assist trustee in realizing the full value of the debtor's assets).

77. Section 365(f) of the Bankruptcy Code provides that the "trustee may assign an executory contract . . . only if the trustee assumes such contract . . . and adequate assurance of future performance is provided." 11 U.S.C. § 365(f)(2). The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." *See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B. R. 524, 538 (Bankr. D.N.J. 1989); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent). Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *Accord In re Bygaph, Inc.*, 56 B.R. 596, 605–06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when a prospective

assignee of a lease from debtors has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

78. Additionally, information will be included in the Notice of Assumption and Assignment as part of the Proposed Purchaser Adequate Assurance Information, which will include contact information on where adequate assurance information can be obtained. Adequate assurance of future performance with respect to a Prevailing Purchaser who is not the Stalking Horse shall be presented at the Sale Hearing. Upon closing, the Prevailing Purchaser will have financial resources that are more than sufficient to perform under any executory contracts or unexpired leases it seeks to have assumed by the Debtors. Moreover, if necessary, the Debtors will adduce facts at the Sale Hearing on any objection demonstrating the financial wherewithal of the Stalking Horse or the Prevailing Purchaser, and their willingness and ability to perform under the executory contracts and unexpired leases to be assumed and assigned to it. The Sale Hearing therefore will provide this Court and other interested parties ample opportunity to evaluate and, if necessary, challenge the ability of the Prevailing Purchaser to provide adequate assurance of future performance under the executory contracts and unexpired leases that it seeks to assume.

79. Accordingly, the Debtors respectfully submit that the procedures proposed herein for executory contracts and unexpired leases being assumed and assigned on the Closing Date are appropriate and reasonably tailored to provide Contract Notice Parties with adequate notice in the form of the Notice of Assumption and Assignment of the proposed assumption and/or assignment of their applicable contract, as well as proposed Cure Amounts, if applicable.

80. Furthermore, to the extent that any defaults exist under any executory contracts and unexpired lease that is to be assumed and assigned in connection with the Sale of the

Property, the Prevailing Purchaser will cure any such default contemporaneously with or as soon as practicable after consummation of an assumption and assignment of such executory contract or unexpired lease.

81. Accordingly, this Court therefore should have a sufficient basis to authorize the Debtors to assume and assign executory contracts and unexpired leases as may be set forth in the Prevailing Purchaser's purchase and sale agreement.

**G. Relief Under Bankruptcy Rules 6004(h) and 6006(d) is Appropriate.**

82. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property... is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Additionally, Bankruptcy Rule 6006(d) provides that an "order authorizing the trustee to assign an executory contract or unexpired lease... is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." Pursuant to Local Rule 6004-1(b)(iv)(O), the Debtors hereby give notice and request that any Sale Order be effective immediately by providing that the 14-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

**NOTICE**

83. The Debtors shall serve a copy of this Motion by first-class mail, postage prepaid, upon the Sale Notice Parties and the Insureds under the Policies and Policy Owners, subject to proof of service to the Insureds under the Policies and Policy Owners to be filed under seal.<sup>7</sup> In

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<sup>7</sup> To include the names and addresses of the Insureds and Policy Owners in public filings could potentially violate the United States Department of Health privacy regulations under the Health Insurance Portability and Accountability Act of 1996 (the "**HIPAA Privacy Regulations**") and certain confidentiality provisions of certain transactional documents relating to the Policies (e.g., the Master Policy Purchase Agreement). Service on the Insureds and Policy Owners under seal would be consistent with the Debtors' requirements under the HIPAA Privacy Regulations and other applicable law, and the Debtors' confidentiality obligations and privacy policy under existing agreements. Finally, such service under seal on the Insureds Policy Owners would be consistent with the Guidelines for the Conduct of Asset Sales set forth in General Order M-331 applicable in these cases.

light of the nature of the relief requested, the Debtors submit that no further notice is required or needed under the circumstances.

WHEREFORE, the Debtors respectfully request that this Court enter the Bid Procedures Order, substantially in the form attached as **Exhibit A**, (a) approving the Bid Procedures; (b) approving the Break-Up Fee, Expense Reimbursement and other Bid Protections; (c) scheduling an Auction and a Sale Hearing to approve such sale, and approving the form and manner of notice thereof; (d) approving the Cure Procedures; and (e) granting such other and further relief as this Court deems appropriate. Additionally, the Debtors request that at the Sale Hearing, this Court enter a Sale Order, substantially in the form attached as **Exhibit B**, subject to the result of the Auction and to the Bid Procedures, (a) approving and authorizing the Sale; (b) authorizing the assumption and assignment of certain executory contracts and unexpired leases; and (c) granting such other and further relief as this Court deems appropriate.

*[Remainder of page intentionally left blank]*

Dated: January 29, 2019  
Wilmington, Delaware

BAYARD, P.A.

/s/ Evan T. Miller

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*Counsel to the Debtors and Debtors in  
Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

LIFE SETTLEMENTS ABSOLUTE  
RETURN I, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 17-13030 (MFW)  
(Jointly Administered)

**Hearing Date: 2/19/2019 @ 2:00 P.M. (ET)**

**Obj. Deadline: 2/12/2019 @ 4:00 P.M. (ET)**

**NOTICE OF MOTION PURSUANT TO 11 U.S.C. §§ 105, 363, 365, 503 AND 507  
AND BANKRUPTCY RULES 2002, 6004 AND 6006 FOR (I) ENTRY OF AN  
ORDER (A) ESTABLISHING BID AND AUCTION PROCEDURES  
RELATED TO THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS'  
ASSETS; (B) APPROVING RELATED BID PROTECTIONS; (C) SCHEDULING  
AN AUCTION AND SALE HEARING; (D) ESTABLISHING CERTAIN NOTICE  
PROCEDURES FOR DETERMINING CURE AMOUNTS FOR EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES TO BE ASSUMED AND ASSIGNED; AND  
(E) GRANTING RELATED RELIEF; AND (II) ENTRY OF AN ORDER  
(A) APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS  
FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS;  
AND (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

PLEASE TAKE NOTICE that on January 29, 2019, the above-captioned debtors and debtors in possession (collectively, the "**Debtors**") filed with the United States Bankruptcy Court for the District of Delaware (the "**Court**") the *Motion Pursuant to 11 U.S.C. §§ 105, 363, 365, 503 and 507 and Bankruptcy Rules 2002, 6004 and 6006 for (I) Entry of an Order (A) Establishing Bid and Auction Procedures Related to the Sale of Substantially All of the Debtors' Assets; (B) Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Certain Notice Procedures for Determining Cure Amounts for Executory*

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Life Settlements Absolute Return I, LLC (7992) and Senior LS Holdings, LLC (5731). The mailing address for the Debtors, solely for purposes of notices and communications, is: 6650 Rivers Avenue, Suite 105 #81921, North Charleston, SC 29406-4829, with copies to Nelson Mullins Riley & Scarborough LLP, c/o Shane G. Ramsey, 150 Fourth Avenue North, Suite 1100, Nashville, TN 37219 and Bayard, P.A., c/o Evan T. Miller, 600 N. King Street, Suite 400, Wilmington, DE 19801.



*Contracts and Unexpired Leases to be Assumed and Assigned; and (E) Granting Related Relief; and (II) Entry of an Order (A) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* (the "Motion"), a copy of which is being served on you with this notice.

PLEASE TAKE FURTHER NOTICE that, if needed, a hearing on the Motion will be held on **February 19, 2019 at 2:00 p.m. (Eastern Time)** before the Honorable Mary F. Walrath, United States Bankruptcy Judge, at the Court, 824 Market Street, 5th Floor, Courtroom No. 4, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that, objections, if any, to the Motion must be filed on or before **February 12, 2019 at 4:00 p.m. (Eastern Time)** (the "Objection Deadline") with the Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the response upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO PROPERLY FILE AND SERVE A RESPONSE ON OR BEFORE THE OBJECTION DEADLINE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: January 29, 2019  
Wilmington, Delaware

BAYARD, P.A.

/s/ Evan T. Miller

Evan T. Miller (No. 5364)  
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**EXHIBIT A**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

LIFE SETTLEMENTS ABSOLUTE  
RETURN I, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 17-13030 (MFW)  
(Jointly Administered)

Related D.I.: \_\_\_\_\_

**ORDER PURSUANT TO 11 U.S.C. §§ 105, 363, 365, 503 AND 507 AND FED. R. BANKR. P. 2002, 6004, AND 6006 (A) ESTABLISHING BID AND AUCTION PROCEDURES FOR THE PROPOSED SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS; (B) APPROVING THE PURCHASE AND SALE AGREEMENT; (C) APPROVING RELATED BID PROTECTIONS; (D) SCHEDULING AN AUCTION AND A SALE HEARING AND APPROVING NOTICE THEREOF; (E) APPROVING PROCEDURES FOR DETERMINING CURE AMOUNTS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES TO BE ASSUMED AND ASSIGNED AND NOTICE THEREOF; AND (F) GRANTING RELATED RELIEF**

Upon consideration of the *Motion Pursuant to 11 U.S.C. §§ 105, 363, 365, 503 And 507 and Bankruptcy Rules 2002, 6004 and 6006 for (I) Entry of an Order (A) Establishing Bid and Auction Procedures Related to the Sale of Substantially All of the Debtors' Assets; (B) Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Certain Notice Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases to be Assumed and Assigned; and (E) Granting Related Relief; and (II) Entry of an Order (A) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (B) Authorizing the Assumption*

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Life Settlements Absolute Return I, LLC (7992) and Senior LS Holdings, LLC (5731). The mailing address for the Debtors, solely for purposes of notices and communications, is: 6650 Rivers Avenue, Suite 105 #81921, North Charleston, SC 29406-4829, with copies to Nelson Mullins Riley & Scarborough LLP, c/o Shane G. Ramsey, 150 Fourth Avenue North, Suite 1100, Nashville, TN 37219 and Bayard, P.A., c/o Evan T. Miller, 600 N. King Street, Suite 400, Wilmington, DE 19801.

*and Assignment of Certain Executory Contracts and Unexpired Leases* (the “**Sale Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”); and the Court having determined that the relief provided herein is in the best interest of the Debtors, their estates, their creditors and other parties in interest; and due and adequate notice of the Sale Motion having been given under the circumstances; and upon the record of the hearing on the Sale Motion, and the full record of these cases; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby:

**FOUND AND DETERMINED:**<sup>3</sup>

A. This Court has jurisdiction over the Sale Motion and the transactions contemplated by the Purchase and Sale Agreement pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. Good and sufficient notice of the Sale Motion and the relief sought therein has been given under the circumstances, and no other or further notice is required except as set forth herein.

C. A reasonable opportunity to object or to be heard regarding the relief provided herein has been afforded to parties-in-interest.

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<sup>2</sup> Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion or the Purchase and Sale Agreement between BPCP Life Settlement LLC (the “**Proposed Purchaser**”) and Life Settlements Absolute Return I, LLC and Senior LS Holdings, LLC (the “**Purchase and Sale Agreement**”), as applicable.

<sup>3</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

D. The notice proposed by the Debtors is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the relief sought in the Sale Motion.

E. The Purchase and Sale Agreement represents the best offer the Debtors have received as a result of their post-petition efforts to market the Property.

F. No party, to date, has offered to enter into an agreement for the purchase of the Property on terms acceptable to the Debtors other than the Proposed Purchaser, as set forth in the Purchase and Sale Agreement. The execution of the Purchase and Sale Agreement is a necessary prerequisite to determining whether any party other than the Proposed Purchaser is willing to enter into a definitive agreement for the acquisition of the Property on terms acceptable to the Debtors and their creditor constituencies.

G. The Debtors have articulated good and sufficient business reasons for this Court to approve: (a) the Bid Procedures; (b) the scheduling of a bid deadline, Auction and Sale Hearing with respect to the proposed sale of the Property; (c) payment of the Break-Up Fee and Expense Reimbursement under the terms and conditions set forth in the Purchase and Sale Agreement; and (d) the establishment of procedures to fix the Cure Amounts to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption, assignment and/or transfer of certain executory contracts and unexpired nonresidential real property leases (the **“Designated Executory Contract”**).

H. The Bid Procedures are reasonably designed to maximize the value to be obtained for the Property.

I. Each of the Break-Up Fee and the Expense Reimbursement is: (a) commensurate to the real and substantial benefit conferred upon the Debtors’ estates by the Proposed Purchaser;

(b) reasonable and appropriate in light of the size and nature of the proposed sale, comparable transactions, the commitments that have been made, and the efforts that have been and will be expended by the Proposed Purchaser; and (c) necessary to induce the Proposed Purchaser to continue to pursue the purchase of the Property and to be bound by the Purchase and Sale Agreement.

J. The assurance of the payment of the Break-Up Fee and Expense Reimbursement: (a) will promote more competitive bidding by inducing the Proposed Purchaser's bid, which otherwise would not have been made and which may be the highest and/or best available offer for the Property; (b) induced the Proposed Purchaser to, conduct extensive due diligence and propose the transaction, including, among other things, submission of a bid that will serve as a minimum bid on which all other bidders can rely; and (c) will provide a benefit to the Debtors' estates by increasing the likelihood that the price at which the Property is sold will reflect market value.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. The request for entry of the Bid Procedures Order is **GRANTED** as provided herein.

2. All objections to the request for entry of the Bid Procedures Order or the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits.

**Approval of the Purchase and Sale Agreement and Bid Procedures**

3. Immediately upon entry of this Order, the Purchase and Sale Agreement shall be binding upon the parties thereto in accordance with its terms.

4. The Bid Procedures, in substantially the form attached hereto as **Schedule 1**, are incorporated herein, approved in their entirety and shall apply with respect to the sale of the

Property. The Debtors are authorized to take all actions incidental, necessary and appropriate to implement the Bid Procedures.

5. The Break-Up Fee and Expense Reimbursement are approved in their entirety.

6. The Break-Up Fee and Expense Reimbursement shall be paid to the Proposed Purchaser pursuant to the terms and conditions set forth in the Purchase and Sale Agreement without need for further order of the Court; *provided, however*, this Court shall retain jurisdiction to hear any dispute with respect to the Proposed Purchaser's entitlement to the Break-Up Fee or Expense Reimbursement pursuant to the terms Purchase and Sale Agreement.

7. As further described in the Bid Procedures, the deadline for submitting bids for the Property (the "**Bid Deadline**") is \_\_\_\_\_, **2019, at 5:00 p.m. (prevailing Eastern Time)**. No bid shall be deemed to be a Qualifying Bid (as defined in the Bid Procedures) or otherwise considered for any purposes unless such bid meets the requirements set forth in the Bid Procedures. As set forth in the Bid Procedures, any Qualifying Bid shall provide sufficient cash to pay, in full, at closing, an amount equal to or greater than the aggregate of (a) the consideration offered for the Property in the Purchase and Sale Agreement, plus (b) the sum of the Break-Up Fee and Expense Reimbursement, plus (c) \$200,000.00.

8. The Debtors may conduct an Auction in accordance with the Bid Procedures. If one or more Qualifying Bids are timely received by the Debtors in accordance with the Bid Procedures, the Auction shall take place on \_\_\_\_\_, **2019 at \_\_:\_\_.m. (prevailing Eastern Time)**, at the offices of Nelson Mullins Riley & Scarborough LLP, 104 South Main Street, Suite 900, Greenville, SC 29601, or such other place and time as the Debtors shall notify the Proposed Purchaser, any Qualifying Bidders (as defined in the Bid Procedures), and other invitees (as determined by the Debtors). If, however, no Qualifying Bid is received by the Bid



Deadline, then the Auction will not be held, and the Debtors shall designate the Proposed Purchaser as the Prevailing Purchaser and seek Bankruptcy Court approval of the Purchase and Sale Agreement.

9. At any Auction, Qualified Bidders must submit bids in cash increments of at least \$547,750 in excess of the Purchase Price, and then continue in minimum increments of at least \$200,000 higher than the previous bid, subject and as set forth in the Bid Procedures.

10. Each Qualifying Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale. All bidding activity at the Auction shall be transcribed, videotaped, or both. The Auction will be conducted openly, and any of the Debtors' creditors will be permitted to attend.

#### **Scheduling of Sale Hearing and Related Notices**

11. The Notice of Auction and Sale Hearing, substantially in the form attached as **Schedule 2** hereto (the "**Notice of Auction and Sale Hearing**"), is approved.

12. The Sale Hearing shall be held before this Court on **April 15, 2019 at 10:30 a.m. (prevailing Eastern Time)**.

13. Objections to the sale of the Property, or the relief requested in the Sale Motion, if any, must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the clerk of the Bankruptcy Court for the District of Delaware, Third Floor, 824 Market Street, Wilmington, Delaware 19801, on or before **4:00 p.m. (prevailing Eastern Time) on April 8, 2019** (the "**Objection Deadline**"); and (d) be served so as to be received by no later than the Objection Deadline, on the parties identified in **Exhibit A** attached hereto (the "**Notice Parties**"). All objections must state with specificity the nature of such objection and will be heard by the Court at the Sale Hearing.

14. On or before five (5) days after entry of this Order, the Debtors will cause the Notice of Auction and Sale Hearing and this Order to be sent by first-class mail postage prepaid to all parties that were served with the Sale Motion.

16. In addition to the foregoing, electronic notification of this Sale Motion, this Order and the Notice of Auction and Sale Hearing also will be posted on the Court's website at <http://www.deb.uscourts.gov>.

15. No later than five (5) days after the entry of this Order, the Debtors are instructed to contact all parties known or reasonably believed to have expressed an interest in acquiring some or all of the Property within the last twelve months.

**Procedures Related to Assumption and Assignment of Executory Contracts and Unexpired Leases**

16. On or before five (5) business days after the entry of this Order, the Debtors shall serve by first class mail, a notice of potential assumption, assignment and/or transfer of the Designated Executory Contract, substantially in the form attached hereto as **Schedule 3** (the "**Notice of Assumption and Assignment**") on all non-debtor parties to the Designated Executory Contracts, *provided, however*, that the identification of a contract or lease in a Notice of Assumption and Assignment does not constitute an admission by the Debtors that such contract or lease is an executory contract or unexpired lease within the meaning of section 365 of the Bankruptcy Code. The Debtors reserve all of their rights, claims and causes of action with respect to the contracts and leases listed in a Notice of Assumption and Assignment. The Notice of Assumption and Assignment shall identify whether a Designated Executory Contract is included as part of the Property and the cure amount(s) the Debtors assert, based on the Debtor's records, must be paid in order to cure defaults outstanding under each Designated Executory Contract to permit the Debtors to assume such contracts (the "**Cure Amounts**"), as of such date

(the “**Cure Date**”). Additionally, if the Debtors identify additional executory contracts or unexpired leases that may be assumed by the Debtors and assigned to Proposed Purchaser not set forth in the original Notice of Assumption and Assignment, the Debtors may send a supplemental notice (a “**Supplemental Notice of Assumption and Assignment**”) to the applicable counterparty or counterparties to such additional executory contracts and unexpired leases.

17. Unless the non-debtor counterparty to a Designated Executory Contract files an objection (the “**Cure Amount/Assignment Objection**”) to any of (a) the Cure Amount relating to a Designated Executory Contract, or (b) the proposed assumption and assignment of a Designated Executory Contract **no later than three (3) days before the Auction** (collectively, the “**Cure/Assignment Objection Deadline**”) and serves a copy of the Cure Amount/Assignment Objection so as to be actually received no later than the Cure/Assignment Objection Deadline by the Notice Parties, then such non-debtor counterparty shall (a) forever be barred from objecting to the Cure Amount and asserting any additional cure or other amounts as of the Cure Date, with respect to a Designated Executory Contract, and the Debtors shall be entitled to rely solely upon the Cure Amount, and (b) if the Designated Executory Contract is part of the Property, and the Proposed Purchaser is the Purchaser, be deemed to have consented to the assumption, assignment and/or transfer of such Designated Executory Contract to the Proposed Purchaser, and shall be forever barred and estopped from asserting or claiming against the Debtors, the Proposed Purchaser or such other Purchaser or any other assignee of the relevant Designated Executory Contract that any additional amounts are due or defaults exist, or conditions to assumption, assignment, and/or transfer must be satisfied, as of the Cure Date, under such Designated Executory Contract.

18. If an objection challenges a Cure Amount, the objection must set forth the pre-petition cure amount being claimed by the objecting party (the “**Claimed Cure Amount**”) with appropriate documentation in support thereof. Upon receipt of an objection to a Cure Amount, the Debtors may, in their sole discretion, hold an amount equal to the Claimed Cure Amount in reserve in an account with Wells Fargo Bank, N.A., as Indenture Trustee, pending further order of the Court or agreement between the Debtors and the objecting party. If the Debtors hold the Claimed Cure Amount in reserve, the Debtors may assume and assign the Designated Executory Contract subject to such objection without further delay.

19. In the event that the Proposed Purchaser is not the Purchaser for the Property and for the Designated Executory Contract identified in the Notice of Assumption and Assignment, immediately after the conclusion of the Auction for the Property, the Debtors will serve a notice identifying the Purchaser on the non-debtor counterparties to the Designated Executory Contract identified by such Purchaser. The non-debtor counterparties to such Designated Executory Contracts may, at or prior to the Sale Hearing, object to the assumption, assignment and/or transfer of such Designated Executory Contract to Purchaser solely on the issue of whether Purchaser can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code. Any non-debtor party to a Designated Executory Contract that does not object to the assignment of its respective Designated Executory Contract shall be deemed to have consented to the assumption and assignment of such Designated Executory Contract to Purchaser. Nothing in this paragraph shall extend or shorten or otherwise affect the Cure Amount/Assignment Objection Deadline.

20. The Notice of Assumption and Assignment to be issued in connection with the proposed sale of the Property, substantially in the form annexed hereto as **Schedule 3**, hereby is approved.

**D. Other Provisions**

21. The Sale Hearing may be adjourned, from time to time, without further notice to creditors or other parties-in-interest other than by announcement of said adjournment before this Court or on the agenda for the date scheduled for said hearing.

22. Subject to the provisions of the Purchase and Sale Agreement, the Bid Procedures and this Order, the Debtors shall have the right, as they may reasonably determine in their business judgment, to: (a) determine which bidders are Qualifying Bidders; (b) determine which bids are Qualifying Bids; (c) determine which Qualifying Bid is the highest and best bid and proposal and which is the next highest and best bid and proposal; (d) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bid Procedures or the requirements of the Bankruptcy Code or (iii) contrary to the best interests of the Debtors and their estates; (e) remove some portion of the Property from the Auction; (f) waive terms and conditions set forth herein with respect to all potential bidders; (g) impose additional terms and conditions with respect to all potential bidders and the Proposed Purchaser; (h) extend the deadlines set forth herein; (i) adjourn or cancel the Auction or Sale Hearing in open court without further notice; (j) modify the Bid Procedures; and (k) withdraw the Sale Motion at any time, with or without prejudice. For the avoidance of doubt, the Proposed Purchaser is a Qualifying Bidder and the transaction set forth in, and by virtue of, the Purchase and Sale Agreement, is a Qualifying Bid.

23. Notwithstanding anything to the contrary in this Order or the Motion, any payment, obligations, or other relief authorized by this Order shall be subject to the terms, conditions, and limitations of the order of this Court approving cash collateral use, including any budget in connection therewith; provided however, this shall not prevent, limit, or restrict in any way the payment of the Break-Up Fee or Expense Reimbursement to the Proposed Purchaser pursuant to the terms and conditions of the Purchase and Sale Agreement and this Order.

24. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014, or otherwise, the terms and conditions of this order shall be immediately effective and enforceable upon its entry, and no automatic stay of execution shall apply to this Order.

25. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

**Notice Parties**

1. The Debtors' counsel, (a) Nelson Mullins Riley & Scarborough LLP, 1320 Main Street, Columbia, SC 29201 (Attn: B. Keith Poston) and (b) Bayard P.A., 600 N. King Street, Suite 400, Wilmington, DE 19801 (Attn: Evan T. Miller);
2. The Debtors, Life Settlements Absolute Return I, LLC and Senior LS Holdings, LLC, 6650 Rivers Avenue, Suite 105 #81921, North Charleston, SC 29406-4829 (Attn: Robert J. Davey, III);
3. Counsel to the proposed Purchaser, Thompson Hine LLP, 3560 Lenox Road, Suite 1600, Atlanta, Georgia 30326 (Attn: John F. Isbell);
4. The Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801.

**Schedule 1**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

LIFE SETTLEMENTS ABSOLUTE  
RETURN I, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 17-13030 (MFW)  
(Jointly Administered)

**BID PROCEDURES**

1. By motion dated January 29, 2019 (the “**Motion**”) [D.I. \_\_\_\_], Life Settlements Absolute Return I, LLC and Senior LS Holdings, LLC (collectively, the “**Debtors**”) sought approval, among other things, of the procedures by which they will determine the highest or otherwise best price for the sale (the “**Sale**”) of substantially all of their assets (the “**Property**”), as described in the Purchase and Sale Agreement by and between BPCP Life Settlement LLC (the “**Proposed Purchaser**”) and Life Settlements Absolute Return I, LLC and Senior LS Holdings, LLC, dated as of January 29, 2019 (the “**Purchase and Sale Agreement**”), a copy of which is attached to the Motion.

2. On February \_\_, 2019, the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) entered an order (the “**Bid Procedures Order**”) that, among other things, authorized the Debtors to determine the highest or otherwise best bid for the Property through the process and procedures set forth below (the “**Bid Procedures**”). To the extent set forth in the Bid Procedures Order, the Debtors reserve the right to modify the Bid Procedures.

3. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Motion, Bid Procedures Order, or the Purchase and Sale Agreement, as applicable.

**A. Participation Requirements**

Any person that wishes to participate in the bidding process (each, a “**Potential Bidder**”) must become a Qualified Bidder. A “**Qualified Bidder**” is a Potential Bidder that delivers the documents described in section C, below, and that the Debtors determine is reasonably likely (based on financial information submitted by the Potential Bidder, the availability of financing,

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: Life Settlements Absolute Return I, LLC (7992) and Senior LS Holdings, LLC (5731). The mailing address for the Debtors, solely for purposes of notices and communications, is: 6650 Rivers Avenue, Suite 105 #81921, North Charleston, SC 29406-4829, with copies to Nelson Mullins Riley & Scarborough LLP, c/o Shane G. Ramsey, 150 Fourth Avenue North, Suite 1100, Nashville, TN 37219 and Bayard, P.A., c/o Evan T. Miller, 600 N. King Street, Suite 400, Wilmington, DE 19801.

experience and other consideration deemed relevant by the Debtors) to be able to consummate a sale if selected as the Prevailing Purchaser.

As a prerequisite to becoming a Qualified Bidder (and, thus, being able to conduct due diligence), a Potential Bidder:

- must deliver an executed confidentiality agreement in form and substance acceptable to the Debtors; and
- must be able, as determined by the Debtors, to consummate a purchase of the Property if selected as the successful bidder.

Not later than two (2) business days after a Potential Bidder delivers all of the materials required by subparagraphs (a)–(k) above, the Debtors shall determine and shall notify the Potential Bidder, if such Potential Bidder is a Qualified Bidder. The Proposed Purchaser is deemed a Qualified Bidder and the Purchase and Sale Agreement constitutes a Qualified Bid (as defined below) for all purposes.

**B. Due Diligence**

4. The Debtors shall afford Qualified Bidders the time and opportunity to conduct reasonable due diligence. The due diligence period shall extend through and including the Bid Deadline (as defined below). Neither the Debtors nor any of their representatives are obligated to furnish any information relating to the Property to any person other than to Qualified Bidders.

5. The Debtors shall not be obligated to furnish any due diligence information after the Bid Deadline. Neither the Debtors nor any of their employees, officers, directors, affiliates, subsidiaries, representatives, agents, advisors, attorneys, or other professionals are responsible for, nor shall they bear liability with respect to, any information obtained by Potential Bidders in connection with the sale of the Property.

6. The Debtors' counsel, Nelson Mullins Riley & Scarborough LLP ("**Nelson Mullins**"), shall coordinate their response to all reasonable requests for additional information and due diligence from Qualified Bidders. Contact information for Nelson Mullins is as follows:

Nelson Mullins Riley & Scarborough LLP  
Attn: B. Keith Poston  
1320 Main Street  
Columbia, SC 29201  
Telephone: 803-255-9518  
Email: keith.poston@nelsonmullins.com

7. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making a bid; that it has relied solely upon its own independent review, investigation and/or inspection of any documents and the Property in making its bid; and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express,

implied, by operation of law or otherwise regarding the Property, or the completeness of any information provided in connection therewith, except as expressly stated in these Bid Procedures.

8. The Debtors reserve the right to refuse any Potential Bidder or Qualified Bidder access to due diligence materials if such Potential Bidder's or Qualified Bidder's access is determined to be harmful to the Debtors' estates.

9. The Debtors or their agents shall publish Notice of the Auction in the *Life Settlements Report* and also with the Life Settlement Institute.

### C. Bid Requirements

To be deemed a "**Qualified Bid**," a bid must be received from a Qualified Bidder no later than the Bid Deadline (as defined below) including the following information:

- states such Qualified Bidder offers to purchase all or substantially all of the Property upon the terms and conditions substantially as set forth in the Purchase and Sale Agreement or pursuant to an alternative structure the Debtors, in its reasonable discretion, determines is no less favorable than the terms and conditions of the Purchase and Sale Agreement<sup>2</sup>;
- is accompanied by a duly executed purchase agreement (the "**Modified Purchase and Sale Agreement**") and a marked Modified Purchase and Sale Agreement, reflecting variations from the Purchase and Sale Agreement executed by the Proposed Purchaser;
- states such Qualified Bidder is financially capable of consummating the transactions contemplated by the Modified Purchase and Sale Agreement and provides written evidence in support thereof;
- states such Qualified Bidder's offer is irrevocable until the closing of the Sale;
- contains such financial and other information to allow the Debtors to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transactions contemplated by the Modified Purchase and Sale Agreement, including, without limitation, such financial and other information setting forth adequate assurance of future performance under contracts and leases to be assumed pursuant to section 365 of title 11 of the United States Code (the "**Bankruptcy Code**") in a form requested by the Debtors to allow the Debtors to serve, within two (2) business days after such receipt, such information on counter-parties to

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<sup>2</sup> As the claim (Claim No. 3-1, the "**GERS Claim**") asserted by the Government Employees' Retirement System of the Virgin Islands f/k/a the Employees' Retirement System of the Government of the Virgin Islands ("**GERS**") is currently subject to a bona fide dispute which is being litigated before the Court in Adversary Proceeding No. 18-50677 (MFW), GERS shall not be entitled to offset its secured claim against the purchase price of the Property for the purpose of bidding pursuant to 11 U.S.C. § 363(k).

any contracts or leases being assumed or assumed and assigned in connection with the proposed sale that have requested, in writing, such information;

- identifies with particularity each executory contract the assumption and, as applicable, assignment of which is a condition to closing;
- does not request or entitle such Qualified Bidder to any break-up fee, expense reimbursement, or similar type of payment;
- fully discloses the identity of each entity that will be bidding in the Sale or otherwise participating in connection with such bid, and the complete terms of any such participation;
- is likely to result in a value to the Debtors' estates in the Debtors' business judgment that is more than the aggregate of the value of the sum of: (i) the Purchase Price, as identified in the Purchase and Sale Agreement; plus (ii) the Proposed Purchaser's assumption of the Executory Contract as identified in the Purchase and Sale Agreement<sup>3</sup>; plus (iii) the sum of the Break-Up Fee and Expense Reimbursement; plus (iv) \$200,000;
- (i) does not contain any financing or diligence contingencies of any kind; and (ii) contains evidence that the Qualified Bidder has received debt and/or equity funding commitments or has financial resources readily available sufficient in the aggregate to consummate the Sale, which evidence is reasonably satisfactory to the Debtors in its reasonable discretion;
- includes evidence of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery and consummation of the Modified Purchase and Sale Agreement; and
- provides a purchase deposit equal to ten percent (10%) of the Qualified Bidder's bid, as contained in the Modified Purchase and Sale Agreement (each Qualified Bidder's deposit, a "**Bid Deposit**").

10. A competing bid satisfying all the above requirements shall constitute a Qualified Bid. The Debtors reserve the right to exercise their business judgment with respect to each bid

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<sup>3</sup> As set forth in the Motion, the Proposed Purchaser intends to assume the Executory Contract, which is the servicing agreement with Clear View Advisors Corporation ("**CVACorp**"). As stated in the *Declaration of Robert J. Davey, III in Support of Motion of Debtors for Order Authorizing Employment, Retention, and Compensation of Clear View Advisors Corporation as the Contractor to the Equity Representative in the Ordinary Course of Business Pursuant to 11 U.S.C. §327(b), Nunc Pro Tunc to the Petition Date* [D.I. 12], Robert J. Davey, III is the owner of CVACorp, is the Secretary/Treasurer of The Attilanus Fund I, L.P. ("**Attilanus**"), which is the sole member of LSAR, and is the Secretary/Treasurer of Anysia Financial Management, LLC, which conducts and manages the business of Attilanus.

and reject any bid if such bid is on terms more burdensome or conditional than the terms of the Purchase and Sale Agreement.

**D. Bid Deadline**

11. A Qualified Bidder that desires to make a binding bid, other than the Proposed Purchaser, shall deliver a written or electronic copy of its bid to the Notice Parties so as to be actually received by a date no later than **5:00 p.m. (prevailing Eastern Time) on [forty-five (45) days after entry of a Bid Procedures Order]** (the "**Bid Deadline**"), unless such date is extended by the Debtors, in their reasonable discretion.

**F. Evaluation of Qualified Bids**

12. The Debtors, in consultation with Christopher Tierney of Moore Colson & Company, P.C. ("**Moore Colson**"), the Debtors' Financial Advisor, shall make a determination regarding whether a bid is a Qualified Bid and shall notify bidders whether their bids have been determined to be qualified by a date no later than two (2) business days prior to the Auction Date. Prior to the Auction (as defined below), the Debtors, employing their business judgment, and in consultation with Moore Colson, shall determine which of the Qualified Bids is likely to be the highest or best. In the event a conflict arises between the Debtors and Moore Colson as to which of the Qualified Bids is likely to be the highest or best, Moore Colson shall determine which of the Qualified Bids is the highest or best.

**G. No Additional Qualified Bids**

13. If no timely, conforming Qualified Bid, other than the Qualified Bid submitted by the Proposed Purchaser, is submitted by the Bid Deadline, the Debtors shall not hold an Auction and instead shall request at the Sale Hearing (as defined below) that the Bankruptcy Court approve the Purchase and Sale Agreement with the Proposed Purchaser.

**H. Auction**

14. In the event that the Debtors timely receive a Qualified Bid in addition to the Qualified Bid submitted by the Proposed Purchaser, the Debtors shall conduct an auction (the "**Auction**") no later than [three (3) business days after the Bid Deadline] (the "**Auction Date**"), unless such date is extended by the Debtors, in their sole discretion. The Auction shall be conducted at the offices of Nelson Mullins Riley & Scarborough LLP, 104 South Main Street, Suite 900, Greenville, SC 29601 (the "**Auction Site**") or such other place as the Debtors shall notify all Qualified Bidders who have submitted Qualified Bids and expressed their intent to participate in the Auction as set forth above. The Auction shall be conducted according to the following procedures:

- only the Proposed Purchaser and the other Qualified Bidders shall be entitled to make any subsequent bids at the Auction;
- the Proposed Purchaser and the other Qualified Bidders shall appear in person at the Auction, or through a duly authorized representative;

- bidding shall commence at the amount of the highest Qualified Bid submitted by the Qualified Bidders prior to the Auction;
- Qualified Bidders may then submit successive bids in minimum increments of at least \$547,750 over and above the Purchase Price, with subsequent incremental bids in the minimum amount of \$200,000 higher than the previous bid; provided that the Debtors shall retain the right to modify the bid increment requirements at the Auction;
- Any bids made by the Proposed Purchaser at the Auction shall include a credit in the amount of the Break-Up Fee and Expense Reimbursement.
- Qualified Bidders shall have the right to submit additional bids and make additional modifications to the Purchase and Sale Agreement or Modified Purchase and Sale Agreement at the Auction, provided that any such modifications to the Purchase and Sale Agreement or Modified Purchase and Sale Agreement, on an aggregate basis and viewed in whole, shall not be less favorable to the Debtors than the terms of the Purchase and Sale Agreement, as determined by the Debtors, in consultation with Moore Colson;
- the Auction shall continue in one or more rounds of bidding and shall conclude after each participating bidder has had the opportunity to submit an additional bid with full knowledge of the then-existing highest bid or bids and the Auction shall continue until there is only one bid that the Debtors determine in their business judgment, after consultation with Moore Colson, is the highest or otherwise best from among the Qualified Bids submitted at the Auction (the “**Prevailing Bid**”). In making this decision, the Debtors, in consultation with Moore Colson, shall consider, without limitation, the amount of the purchase price, the form of consideration being offered, the likelihood of the bidder’s ability to close a transaction and the timing thereof, the number, type and nature of any changes to the Purchase and Sale Agreement requested by each bidder, and the net benefit to the Debtors’ estates. The bidder submitting the Prevailing Bid shall become the “**Prevailing Purchaser**,” and shall have such rights and responsibilities of the purchaser, as set forth in the applicable Purchase and Sale Agreement or Modified Purchase and Sale Agreement. In the event a conflict arises between the Debtors and Moore Colson as to which of the Qualified Bids is to be the Prevailing Bid, Moore Colson shall determine the Prevailing Bid; and
- within two (2) Business Days after the conclusion of the Auction, the Prevailing Purchaser shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Prevailing Bid was made;

- each Qualified Bidder participating in the Auction shall confirm that it has not engaged in any collusion with respect to the bidding; and
- all parties-in-interest in the Debtors' cases and Qualified Bidders may attend the Auction as long as such parties provide Debtors' counsel with written notice at least three (3) business days before Auction. The notice must include the name of the individuals who will represent such party's interest at the Auction. The Debtors reserve the right in their reasonable discretion to exclude a party-in-interest from the Auction.

15. The Debtors, after consultation with Moore Colson, may employ and announce at the Auction additional procedural rules reasonable under the circumstances for conducting the Auction, provided that such rules are not inconsistent with these Bid Procedures, the Bankruptcy Code or any Bankruptcy Court order entered in connection herewith.

**I. Sale Hearing**

16. The Prevailing Bid (or the Purchase and Sale Agreement if no Qualified Bid other than that of the Proposed Purchaser is received) will be subject to approval by the Bankruptcy Court. After the conclusion of the Auction, the Bankruptcy Court shall conduct a hearing (the "**Sale Hearing**") to approve the Sale. At the Sale Hearing, the Debtors will seek entry of an order substantially in the form attached as **Exhibit B** to the Motion (the "**Sale Order**") authorizing and approving the Sale to the Prevailing Purchaser(s), as determined by the Debtors and Moore Colson in accordance with the Bid Procedures, pursuant to the terms and conditions set forth in the Purchase and Sale Agreement or in any Modified Purchase and Sale Agreement submitted by the Prevailing Purchaser. The Sale Hearing may be adjourned or rescheduled without notice other than by an announcement of the adjourned date in open court. The Debtors' presentation of the Prevailing Bid to the Bankruptcy Court for approval does not constitute Debtors' acceptance of such Prevailing Bid. The Debtors will be deemed to have accepted the Prevailing Bid upon the Bankruptcy Court's approval of the Prevailing Bid at the Sale Hearing.

**J. Backup Bidder**

17. Following the approval of the Sale at the Sale Hearing, if the Debtors fail to consummate such approved Sale with the Prevailing Purchaser, the Debtors shall, subject to the approval of Moore Colson, deem the next highest or otherwise best Qualified Bid (the "**Back-Up Bid**") and the party submitting the Back-Up Bid, the "**Back-Up Bidder**", as disclosed at the Sale Hearing, the Prevailing Bid, and the Debtors shall be authorized to consummate the Sale with the Back-Up Bidder without further order of the Bankruptcy Court. The Back-Up Bid shall remain open until the first business day following the consummation of a Sale of the Property to the Prevailing Purchaser. Notwithstanding the foregoing, Proposed Purchaser has the right in its sole and absolute discretion to withdraw as Back-Up Bidder any time after the earlier of (i) the Closing Date or (ii) fourteen (14) days following entry of the Sale Order.

**K. Consent to Jurisdiction and Judicial Authority of the Bankruptcy Court To Finally Determine Disputes**

18. The Proposed Purchaser, the Prevailing Purchaser, and all Qualified Bidders shall be deemed to the fullest extent possible to have expressly consented to the authority of the Bankruptcy Court to enter final orders and to exercise its core jurisdiction, and to have waived any right to a jury trial, in connection with any disputes relating to or arising with respect to the Sale, the Auction or concerning the Purchase and Sale Agreement or any Modified Purchase and Sale Agreement, if any, the Sale Order, the Bid Procedures Order or the construction and enforcement of any such document.

**L. Disposition of Bid Deposits**

19. Bid Deposits shall be held by the Debtors in a segregated account. The Bid Deposit of the Prevailing Purchaser shall be applied to the Purchase Price. The Bid Deposit of the Back-up Bidder, if any, shall be held by the Debtors until the later of: (i) two (2) business days after the Closing of the Sale contemplated by the Prevailing Bid, or (ii) seven (7) business days after the Auction and thereafter returned to the Back-up Bidder. In the event a Sale to the Prevailing Purchaser shall fail to close, then the Bid Deposit of the Back-up Bidder, if any, shall be applied to the Purchase Price. Bid Deposits of all other Qualified Bidders shall be held by the Debtors until no later than two (2) business days after the Sale Hearing, and thereafter returned to the respective Qualified Bidders. Notwithstanding anything to the contrary herein, the Proposed Purchaser's Performance Deposit shall be paid, held, applied or refunded as applicable pursuant to the terms and conditions of the Purchase and Sale Agreement and the Escrow Agreement as defined therein.



**Schedule 2**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

LIFE SETTLEMENTS ABSOLUTE  
RETURN I, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 17-13030 (MFW)  
(Jointly Administered)

**Related D.I.:** \_\_\_\_\_

**NOTICE OF AUCTION AND SALE HEARING**

1. Debtors Life Settlements Absolute Return I, LLC and Senior LS Holdings, LLC (collectively, the “**Debtors**”) have entered into an agreement (the “**Purchase And Sale Agreement**”) with BPCP Life Settlement LLC (the “**Proposed Purchaser**”) to sell substantially all of their assets (the “**Property**”) to the Proposed Purchaser. The Debtors’ ability to close the transactions contemplated by the Purchase and Sale Agreement is subject to higher or better offers and the approval of the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

2. The Debtors are soliciting offers for the Property, and the Bankruptcy Court has entered the *Order Pursuant to 11 U.S.C. §§ 105, 363, 365, 503 and 507 and Fed. R. Bankr. P. 2002, 6004, And 6006 (A) Establishing Bid and Auction Procedures for the Proposed Sale of Substantially All of the Debtors’ Assets; (B) Approving the Purchase and Sale Agreement; (C) Approving Related Bid Protections; (D) Scheduling an Auction and a Sale Hearing and Approving Notice Thereof; (E) Approving Procedures for Determining Cure Amounts for*

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: Life Settlements Absolute Return I, LLC (7992) and Senior LS Holdings, LLC (5731). The mailing address for the Debtors, solely for purposes of notices and communications, is: 6650 Rivers Avenue, Suite 105 #81921, North Charleston, SC 29406-4829, with copies to Nelson Mullins Riley & Scarborough LLP, c/o Shane G. Ramsey, 150 Fourth Avenue North, Suite 1100, Nashville, TN 37219 and Bayard, P.A., c/o Evan T. Miller, 600 N. King Street, Suite 400, Wilmington, DE 19801.

*Executory Contracts and Unexpired Leases to be Assumed and Assigned and Notice Thereof; and (F) Granting Related Relief (the “**Bid Procedures Order**”) approving auction and sale procedures (the “**Bid Procedures**”) for the Property.<sup>2</sup>*

3. On January 29, 2019 the Debtors filed the *Motion Pursuant to 11 U.S.C. §§ 105, 363, 365, 503 and 507 and Bankruptcy Rules 2002, 6004 and 6006 for (I) Entry of an Order (A) Establishing Bid and Auction Procedures Related to the Sale of Substantially All of the Debtors’ Assets; (B) Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Certain Notice Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases to be Assumed and Assigned; and (E) Granting Related Relief; and (II) Entry of an Order (A) Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (the “**Sale Motion**”).<sup>3</sup>*

4. Pursuant to the Sale Motion, the Debtors propose to: (a) sell the Property to the Proposed Purchaser (or such other party that submits the highest or otherwise best bid at an auction (the “**Auction**”), free and clear of all liens, claims, or encumbrances thereon, except for certain assumed liabilities and permitted encumbrances specifically described in the Purchase and Sale Agreement; and (b) assume and assign certain executory contracts and unexpired leases of the Debtors to the Proposed Purchaser (or such other party that submits the highest or otherwise best bid at the Auction).

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<sup>2</sup> Copies of the Bid Procedures Order, the Bid Procedures, and the Purchase and Sale Agreement can be obtained from Debtors’ counsel.

<sup>3</sup> All capitalized terms not herein defined shall have the meanings ascribed to them in the Sale Motion.

5. The Bid Procedures approved by the Bid Procedures Order describe, *inter alia*, the terms of the bidding process, the requirements and deadlines for participation therein, required terms of any bids, and the time, location and conduct of the Auction.

6. The Bankruptcy Court has scheduled the Auction of the Property for \_\_:\_\_\_ \_\_.m. (prevailing Eastern Time) on \_\_\_\_\_, 2019 at the offices of at the offices of Nelson Mullins Riley & Scarborough LLP, 104 South Main Street, Suite 900, Greenville, SC 29601. All interested parties are invited to submit a qualifying bid to purchase the Property.

7. The Bankruptcy Court has scheduled a hearing for \_\_:\_\_\_ \_\_.m. (prevailing Eastern Time) on \_\_\_\_\_, 2019 (the “**Sale Hearing**”) to consider approval of the winning bid and confirm the results of the Auction. The Sale Hearing will be held before the Honorable Mary F. Walrath, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom No. 4, Wilmington, Delaware 19801.

8. Any objection to any of the relief to be requested at the Sale Hearing must be in writing, state the basis of such objection with specificity, and shall be filed with the Bankruptcy Court by \_\_\_\_\_, 2019 at 4:00 p.m. (prevailing Eastern Time) (the “**Sale Objection Deadline**”). At the same time, any objector must also serve a copy of the objection, so as to be received by the Sale Objection Deadline, on: (a) The Debtors’ counsel, (i) Nelson Mullins Riley & Scarborough LLP, 1320 Main Street, Columbia, SC 29201 (Attn: B. Keith Poston) and (ii) Bayard P.A., 600 N. King Street, Suite 400, Wilmington, DE 19801 (Attn: Evan T. Miller); and (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801.

9. All requests for information concerning the Property should be directed toward the Debtors' counsel, which can be contacted at:

Nelson Mullins Riley & Scarborough LLP  
Attn: B. Keith Poston  
1320 Main Street  
Columbia, SC 29201  
Telephone: 803-255-9518  
Email: keith.poston@nelsonmullins.com

10. The Auction or Sale Hearing or both may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court or on the agenda filed by the Debtors with the Bankruptcy Court.

**11. IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

*[Remainder of page intentionally left blank]*

Dated: January 29, 2019  
Wilmington, Delaware

BAYARD, P.A.

/s/ Evan T. Miller

Evan T. Miller (No. 5364)  
Sophie Macon (No. 6562)  
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- and -

B. Keith Poston (*admitted pro hac vice*)  
NELSON, MULLINS, RILEY &  
SCARBOROUGH LLP  
1320 Main Street  
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Shane G. Ramsey (*admitted pro hac vice*)  
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*Counsel to the Debtors and Debtors in Possession*

**Schedule 3**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

LIFE SETTLEMENTS ABSOLUTE  
RETURN I, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 17-13030 (MFW)  
(Jointly Administered)

**Related D.I.:** \_\_\_\_\_

**NOTICE OF EXECUTORY CONTRACTS AND UNEXPIRED  
LEASES WHICH MAY BE ASSUMED AND ASSIGNED, PURSUANT  
TO SECTION 365 OF THE BANKRUPTCY CODE, IN CONNECTION  
WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS  
AND THE PROPOSED CURE AMOUNTS WITH RESPECT THERETO**

PLEASE TAKE NOTICE THAT:

1. On January 29, 2019, Life Settlements Absolute Return I, LLC and Senior LS Holdings, LLC, as debtors and debtors-in-possession (collectively, the "**Debtors**") filed their *Motion Pursuant to 11 U.S.C. §§ 105, 363, 365, 503 And 507 and Bankruptcy Rules 2002, 6004 and 6006 for (I) Entry of an Order (A) Establishing Bid and Auction Procedures Related to the Sale of Substantially All of the Debtors' Assets; (B) Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Certain Notice Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases to be Assumed and Assigned; and (E) Granting Related Relief; and (II) Entry of an Order (A) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts*

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Life Settlements Absolute Return I, LLC (7992) and Senior LS Holdings, LLC (5731). The mailing address for the Debtors, solely for purposes of notices and communications, is: 6650 Rivers Avenue, Suite 105 #81921, North Charleston, SC 29406-4829, with copies to Nelson Mullins Riley & Scarborough LLP, c/o Shane G. Ramsey, 150 Fourth Avenue North, Suite 1100, Nashville, TN 37219 and Bayard, P.A., c/o Evan T. Miller, 600 N. King Street, Suite 400, Wilmington, DE 19801.



*and Unexpired Leases*(the “**Sale Motion**”)<sup>2</sup> with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801 (the “**Court**”).

2. Pursuant to the Sale Motion, the Debtors seek the entry of an order (a) establishing bidding procedures for the sale of Debtor’s assets (the “**Property**”); (b) approving proposed bid protections, including a break-up fee and expense reimbursement to BPCP Life Settlement LLC (the “**Proposed Purchaser**”), in accordance with that certain Asset Purchase Agreement, dated January 29, 2019 (the “**Purchase and Sale Agreement**”) for the purchase of the Purchased Property; (c) scheduling an auction (the “**Auction**”) and setting a date and time for a sale hearing (the “**Sale Hearing**”) for the sale of the Property (the “**Sale**”), and approving the form and manner of notice thereof; (d) establishing procedures (the “**Cure Procedures**”) for the assumption and assignment of contracts (“**Contracts**”) and leases (“**Leases**”), including notice of proposed cure amounts (the “**Cure Amounts**”); and (e) granting certain related relief. By the Motion, the Debtors further request that, at the Sale Hearing, subject to the results of the Auction, the Court enter a sale order (a) approving and authorizing the Sale; and (b) authorizing the assumption and assignment of the Contracts and Leases.

3. In accordance with the Cure Procedures, the Debtors are delivering this notice (the “**Cure Notice**”) identifying (a) those Contracts and Leases which may be assumed and assigned to the Purchaser, its designee(s) or such other Winning Bidder, on the Closing Date in connection with the Sale of the Purchased Property and in accordance with the procedures proposed in the Motion and (b) the proposed cure amount (the “**Cure Amount**”) for each Contract and Lease identified on the Cure Notice.

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<sup>2</sup> All capitalized terms not herein defined shall have the meanings ascribed to them in the Sale Motion.

4. Adequate assurance information for the Purchaser (the “**Proposed Purchaser Adequate Assurance Information**”) is available by contacting counsel to the Purchaser at:

Thompson Hine LLP  
3560 Lenox Road, Suite 1600  
Atlanta, Georgia 30326  
(Attn: John F. Isbell)

5. You have been identified as a party to a Contract or Lease that the Debtors may seek to assume and/or assign. The Contract or Lease with respect to which you have been identified as a non-Debtor counterparty, and the corresponding proposed Cure Amount, if any, has been set forth on **Exhibit A** attached hereto. The Debtors’ records reflect that all post-petition amounts owing under your Contract or Lease have been paid and will continue to be paid until the assumption and assignment or rejection of the Contract or Lease, and that other than the Cure Amount, there are no other defaults under the Contract or Lease.

6. Objections, if any, to the proposed Cure Amount or the Proposed Purchaser Adequate Assurance Information must be made in writing, filed with the Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, and served so as to be received by the parties listed below on or before **4:00 p.m. (prevailing Eastern Time) on \_\_\_\_\_, 2019** (the “**Cure Objection Deadline**”). Service should be made by mail to: (a) Debtors’ counsel (i) Nelson Mullins Riley & Scarborough LLP, 1320 Main Street, Columbia, SC 29201 (Attn: B. Keith Poston) and (ii) Bayard P.A., 600 N. King Street, Suite 400, Wilmington, DE 19801 (Attn: Evan T. Miller); (b) Debtors, Life Settlements Absolute Return I, LLC and Senior LS Holdings, LLC, 6650 Rivers Avenue, Suite 105 #81921, North Charleston, SC 29406-4829 (Attn: Robert J. Davey, III); (c) Counsel to the Proposed Purchaser, Thompson Hine LLP, 3560 Lenox Road, Suite 1600, Atlanta, Georgia 30326 (Attn: John F. Isbell); and (d) The Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35,

Wilmington, Delaware 19801. The objection must set forth (a) the basis for the objection, (b) the exact amount the party asserts as the Cure Amount and (c) sufficient documentation to support the Cure Amount alleged.

7. If an objection is timely filed, a hearing with respect to the objection will be held before The Honorable Mary F. Walrath, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801, on \_\_\_\_\_, 2019, at \_\_\_\_\_ .m. (**prevailing Eastern Time**) or at a later hearing, as determined by the Debtors in consultation with the Court. A hearing regarding the Cure Amount, if any, may be continued at the sole discretion of the Debtors.

8. UNLESS YOU FILE AN OBJECTION TO THE PROPOSED CURE AMOUNT SET FORTH ON **EXHIBIT A** HERETO AND SERVE SUCH OBJECTION IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE FOREVER BARRED FROM OBJECTING TO THE CURE AMOUNT SET FORTH ON **EXHIBIT A** AND FOREVER BARRED AND ESTOPPED FROM ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTORS, THE WINNING BIDDER OR ANY OTHER ASSIGNEE OF THE RELEVANT CONTRACT OR LEASE.

9. The presence of a contract or agreement listed on **Exhibit A** attached hereto does not constitute an admission that such contract or agreement is an executory contract or unexpired lease or that such contract will be assumed by the Debtors and assigned to the Winning Bidder. The Debtors reserve all of their rights, claims and causes of action with respect to the contracts and agreements listed on **Exhibit A** attached hereto.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

BAYARD, P.A.

/s/ Evan T. Miller

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Shane G. Ramsey (*admitted pro hac vice*)  
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john.baxter@nelsonmullins.com

*Counsel to the Debtors and Debtors in  
Possession*

# **Exhibit B**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

LIFE SETTLEMENTS ABSOLUTE  
RETURN I, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 17-13030 (MFW)  
(Jointly Administered)

Related D.I.: \_\_\_\_\_

**ORDER (A) AUTHORIZING AND APPROVING THE SALE OF  
SUBSTANTIALLY ALL OF DEBTORS' ASSETS TO BPCP LIFE SETTLEMENT LLC  
IN ACCORDANCE WITH THE TERMS OF THE PURCHASE AND SALE  
AGREEMENT FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES,  
AND OTHER INTERESTS, (B) APPROVING THE ASSUMPTION AND ASSIGNMENT  
OF THE ASSUMED CONTRACTS,  
AND (C) GRANTING RELATED RELIEF**

Upon the Debtors' *Motion Pursuant to 11 U.S.C. §§ 105, 363, 365, 503 and 507 and Bankruptcy Rules 2002, 6004, and 6006 for (I) Entry of an Order (A) Establishing Bid and Auction Procedures Related to the Sale of Substantially All of the Debtors' Assets; (B) Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Certain Notice Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases to be Assumed and Assigned; and (E) Granting Certain Related Relief; and (II) Entry of an Order (A) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [D.I. \_\_\_\_]

<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Life Settlements Absolute Return I, LLC (7992) and Senior LS Holdings, LLC (5731). The mailing address for the Debtors, solely for purposes of notices and communications, is: 6650 Rivers Avenue, Suite 105 #81921, North Charleston, SC 29406-4829, with copies to Nelson Mullins Riley & Scarborough LLP, c/o Shane G. Ramsey, 150 Fourth Avenue North, Suite 1100, Nashville, TN 37219 and Bayard, P.A., c/o Evan T. Miller, 600 N. King Street, Suite 400, Wilmington, DE 19801.

(the “**Sale Motion**”),<sup>2</sup> for entry of orders pursuant to sections 105, 363 and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”), and rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”): (a) authorizing a sale process for substantially all of Debtors’ assets and approving the sale of the assets free and clear of all liens, claims, encumbrances and other interests (excluding the buyer’s assumed obligations under the Purchase and Sale Agreement) pursuant to the terms and conditions of that certain Purchase and Sale Agreement (substantially in the form attached hereto as **Exhibit A**, the “**Purchase and Sale Agreement**”) by and between Life Settlements Absolute Return I, LLC and Senior LS Holdings, LLC (collectively, the “**Debtors**”), on the one hand, and BPCP Life Settlement LLC (the “**Buyer**”), on the other hand, dated as of January 29, 2019; (b) authorizing and approving the assumption and assignment of the Assumed Contracts; and (c) granting related relief; and the Court having entered the *Order Pursuant to 11 U.S.C. §§ 105, 363, 365, 503 and 507 And Fed. R. Bankr. P. 2002, 6004, and 6006 (A) Establishing Bid and Auction Procedures for the Proposed Sale of Substantially All of The Debtors’ Assets, (B) Approving the Purchase and Sale Agreement, (C) Approving Related Bid Protections, (D) Scheduling an Auction and a Sale Hearing and Approving Notice Thereof; (E) Approving Procedures for Determining Cure Amounts For Executory Contracts and Unexpired Leases to be Assumed and Assigned and Notice Thereof; and (F) Granting any Related Relief* [Docket No. \_\_] on [\_\_\_\_ \_\_, 2019] (the “**Bid Procedures Order**”); and upon adequate and sufficient notice of the Sale Motion, the Auction and the hearing held before the Court on [\_\_\_\_ \_\_, 2019] (the “**Sale Hearing**”); and the Court having reviewed and considered (a) the Sale Motion and all relief related thereto, (b)

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<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Purchase and Sale Agreement (as defined herein) and the Sale Motion, as applicable. To the extent of any inconsistency, the Purchase and Sale Agreement shall govern.

the objections and related responses thereto, and (c) the statements of counsel and evidence presented in support of the relief requested by the Debtors at the hearing after which the Bid Procedures Order was entered by the Court (the “**Bid Procedures Hearing**”) and at the Sale Hearing; and it appearing that the Court has jurisdiction over the Sale Motion and judicial authority to enter a final order with respect to this matter; and it further appearing that the legal and factual bases set forth in the Sale Motion, at the Bid Procedures Hearing and at the Sale Hearing establish just cause for the relief granted herein (the “**Sale Order**”); and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates, creditors and other parties in interest; and upon the record of the Bid Procedures Hearing and the Sale Hearing, and all other pleadings and proceedings in these Chapter 11 Cases, including the Sale Motion; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby **FOUND AND DETERMINED THAT**:<sup>3</sup>

**Jurisdiction, Final Order and Statutory Predicates**

A. This Court has jurisdiction to hear and determine the Sale Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a).

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<sup>3</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the Sale Motion are hereby incorporated herein to the extent not inconsistent herewith. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.



C. The statutory predicates for the relief requested in the Sale Motion are §§ 105(a), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014.

**Notice of the Sale and Auction**

D. In accordance with the Bid Procedures Order approving, among other things, the proposed procedures for bidding at the auction, actual written notice of the Sale Motion was provided to the following parties (the “**Notice Parties**”): (a) the United States Trustee for the District of Delaware; (b) the creditors listed on the Debtors’ consolidated list of 20 largest unsecured creditors, as filed with the Debtors’ chapter 11 petitions; (c) counsel to the Buyer; (c) all parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; (d) various federal, state, county and city tax and regulatory authorities; (e) all entities known to have expressed an interest in a transaction with respect to the Property or that has been identified by the Debtors or their advisors as a potential buyer of the Property; and (f) all parties requesting notice pursuant to Bankruptcy Rule 2002.

E. Notice of the Auction was published one day in the *Life Settlements Report* and also with the Life Settlement Institute.

F. Notice of the Auction and Sale Hearing was reasonably calculated to provide all interested parties with timely and proper notice of the Sale, Sale Hearing and Auction.

G. As evidenced by the affidavits of service previously filed with the Court, proper, timely, adequate, and sufficient notice of the Sale Motion, Auction, Sale Hearing, the Sale and the transactions contemplated thereby has been provided in accordance with the Bid Procedures Order, sections 105(a) and 363 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9008. The notices described above were good, sufficient and appropriate under the circumstances, and no other or further notice of the Sale Motion, Auction, Sale Hearing or the Sale is or shall be required.

H. The disclosures made by the Debtors concerning the Sale Motion, the Purchase and Sale Agreement, the Auction and the Sale are good, complete and adequate.

I. A reasonable opportunity to object and be heard with respect to the Sale and the Sale Motion and the relief requested therein has been afforded to all interested persons and entities, including the Notice Parties.

**Good Faith of Buyer**

J. The Purchase and Sale Agreement was negotiated, proposed and entered into by the Seller and the Buyer without collusion, in good faith and at arm's length.

K. Neither the Debtors nor the Buyer have engaged in any conduct that would cause or permit the Purchase and Sale Agreement to be avoided under section 363(n) of the Bankruptcy Code. Specifically, the Buyer has not acted in a collusive manner with any person and the aggregate price paid by Buyer for the Property (the "**Purchase Price**") was not controlled by any agreement among any potential or actual bidder for the Property.

L. The Buyer is purchasing the Property in good faith, is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code. The Buyer has proceeded in good faith in all respects in connection with this proceeding, as, *inter alia*: (a) the Buyer complied with the provisions in the Bid Procedures Order; (b) the Buyer's bid was subject to the competitive bidding procedures set forth in the Bid Procedures Order; and (c) all payments to be made by the Buyer in connection with the Sale have been disclosed.

**Highest and Best Offer**

M. The Debtors conducted an auction process in accordance with, and have otherwise complied in all respects with, the Bid Procedures Order. The auction process set forth in the Bid Procedures Order afforded a full, fair and reasonable opportunity for any person

or entity to make a higher or otherwise better offer to purchase the Property. The Auction was duly noticed and conducted in a fair, good faith manner and a reasonable opportunity has been given to all interested parties to make a higher and better offer for the Property and no evidence was presented as to any collusion among bidders or potential bidders.

N. The offer contained in the Purchase and Sale Agreement for the purchase of the Property constitutes the highest and best offer for the Property. The Debtors' determination that the Purchase and Sale Agreement constitutes the highest and best offer for the Property constitutes a valid and sound exercise of the Debtors' business judgment.

**No Fraudulent Transfer**

O. The consideration provided by the Buyer pursuant to the Purchase and Sale Agreement for the Property acquired from the Debtors (a) is fair and reasonable, (b) is the highest or best offer for the Property, and (c) constitutes fair consideration and reasonably equivalent value (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Voidable Transfer Act (as applicable), Uniform Fraudulent Conveyance Act and section 548 of the Bankruptcy Code) under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia.

P. The Debtors have subjected the Property to the market pursuant to the Bid Procedures Order and the process has not produced an offer of greater economic value to the Debtors estates than the Buyer's offer, as set forth in the Purchase and Sale Agreement.

Q. Approval of the Sale Motion and the Purchase and Sale Agreement and the consummation of the transactions contemplated thereby is in the best interests of the Debtors, their estates, creditors and other parties in interest.

R. The Buyer is not a continuation of the Debtors or of their estates, and there is no continuity of enterprise between the Buyer and the Debtors. The Buyer is not holding itself out

to the public as a continuation of the Debtors. The Buyer is not a successor to the Debtors or their estates and the Sale does not amount to a consolidation, merger or *de facto* merger of the Buyer and the Debtors.

### **Validity of Transfer**

S. Each Debtor (a) has full corporate power and authority to execute and deliver the Purchase and Sale Agreement and all other documents contemplated thereby, (b) has all corporate authority necessary to consummate the transactions contemplated by the Purchase and Sale Agreement and (c) has taken all corporate action necessary to authorize and approve the Purchase and Sale Agreement and the consummation of the transactions contemplated thereby. The Debtors' sale of the Property has been duly and validly authorized by all necessary corporate action. No consents or approvals, other than those expressly provided for in the Purchase and Sale Agreement, are required for the Debtors to consummate the Sale and the Purchase and Sale Agreement and the transactions contemplated thereby.

T. No evidence was presented to establish that (a) the Purchase and Sale Agreement was entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession or the District of Columbia, and (b) either the Debtors or the Buyer are entering into the transactions contemplated by the Purchase and Sale Agreement fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims.

U. The Debtors are the sole and lawful owners of the Property. Subject to section 363(f) of the Bankruptcy Code, the transfer of the Property to the Buyer will be, as of the closing of the transactions contemplated by the Purchase and Sale Agreement (the "**Closing**"), a legal, valid, and effective transfer of the Property, which transfer vests or will vest the Buyer with all right, title, and interest of the Debtors to the Property free and clear of all

liens of any kind (statutory, otherwise, or whether known or unknown, secured or unsecured or in the nature of setoff or recoupment, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or nonmaterial, disputed or undisputed, whether arising prior to or subsequent to the commencement of the Bankruptcy Case, and whether imposed by agreement, understanding, Law, equity, or otherwise, including claims otherwise arising under doctrines of successor liability) (collectively, “**Liens**”), encumbrances, claims (as defined in section 101(5) of the Bankruptcy Code), interests, rights, demands, charges, mortgages, deeds of trust, options, pledges, security interests or similar interests, title defects, hypothecations, security agreements, rights of recovery, rights of first refusal, preemptive rights, judgments, decrees, consent decrees, taxes, conditional sale or other title retention agreements, product liability or any claims based on any theory that Buyer is a successor, transferee or continuation of each Debtor or such Debtor’s business, and other impositions, imperfections or defects of title or restrictions on transfer or use of any nature whatsoever (collectively, “**Claims**”), including, but not limited to, any applicable Uniform Commercial Code filings and liens pursuant to state statutory lien laws or any other applicable local laws, relating to, accruing or arising any time prior to the Closing Date, with the exception of Buyer’s assumed obligations under the Purchase and Sale Agreement.

**Section 363(f) is Satisfied**

V. The Debtors may sell the Property free and clear of all Liens and Claims against the Debtors, their estates or any of the Property (other than the Buyer’s assumed obligations under the Purchase and Sale Agreement) because, in each case, one or more of the standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied. Those holders of Liens

or Claims against the Debtors, their estates or any of the Property who did not object, or who withdrew their objections, to the Sale or the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. All other holders of Liens or Claims (except to the extent that such Liens or Claims are the Buyer's assumed obligations) are adequately protected by having their Liens or Claims, if any, in each instance against the Debtors, their estates or any of the Property, attach to the net cash proceeds of the Sale ultimately attributable to the Property, in which such creditor alleges a Lien or Claim, in the same order of priority, with the same validity, force and effect that such Liens or Claims had prior to the Sale, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

W. Unless otherwise expressly included as the Buyer's assumed obligations, the Buyer shall not be responsible for any Liens or Claims, including in respect of the following: (a) any labor or employment agreements; (b) all mortgages, deeds of trust and security interests; (c) intercompany loans and receivables between the Debtors and any non-Debtor subsidiary; (d) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any Debtor; (e) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Act of 1988, (vii) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, (x) state

discrimination laws, (xi) state unemployment compensation laws or any other similar state laws or any other state or federal benefits or claims relating to any employment with any of the Debtors or any of their respective predecessors; (f) Claims or Liens arising under any Environmental Laws with respect to any assets owned or operated by Debtors or any corporate predecessor at any time prior to the Closing Date; (g) any other liabilities of the Debtors other than the Buyer's Assumed Obligations (collectively, the "**Excluded Liabilities**"); (h) any bulk sales or similar law; (i) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended and state tax statutes or ordinances providing for the payment of sales taxes; and/or (j) any theories of successor liability.

**Compelling Circumstances for an Immediate Sale**

X. Good and sufficient reasons for approval of the Purchase and Sale Agreement and the Sale have been articulated. The relief requested in the Sale Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest. The Debtors have demonstrated both (a) good, sufficient and sound business purposes and justifications and (b) compelling circumstances for the Sale other than in the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code before, and outside of, a plan of reorganization, in that, among other things, the immediate consummation of the Sale to the Buyer is necessary and appropriate to maximize the value of the Debtors' estates and the Sale will provide the means for the Debtors to maximize distributions to creditors. The Purchase and Sale Agreement does not impermissibly restructure the rights of the Debtors' creditors and does not impermissibly dictate the terms of a chapter 11 plan for the Debtors, and therefore does not constitute a *sub rosa* plan.

Y. To maximize the value of the Property and preserve the viability of the business to which the Property relate, it is essential that the Sale of the Property occur within the time

constraints set forth in the Purchase and Sale Agreement. Time is of the essence in consummating the Sale.

Z. Given all of the circumstances of these Chapter 11 Cases and the adequacy and fair value of the Purchase Price under the Purchase and Sale Agreement, the proposed Sale of the Property to the Buyer constitutes a reasonable and sound exercise of the Debtors' business judgment and should be approved.

AA. The consummation of the Sale and the assumption and assignment of the Assumed Contracts is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m) and 365 and all of the applicable requirements of such sections have been complied with in respect of the transaction.

**Adequate Assurance of Future Performance**

BB. The Buyer has demonstrated adequate assurance of future performance with respect to the Assumed Contracts pursuant to Bankruptcy Code section 365(b)(1)(C).

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

**General Provisions**

1. The relief requested in the Sale Motion is granted and approved as set forth in this Sale Order, and the Sale contemplated thereby is approved.

2. Any objections to the Sale Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court, and all reservations of rights included therein, are hereby denied and overruled with prejudice for the reasons articulated by the Court at the Sale Hearing.



**Approval of the Purchase and Sale Agreement**

3. The Purchase and Sale Agreement and all other ancillary documents, and all of the terms and conditions thereof, are hereby approved. The Buyer shall file final versions of the Purchase and Sale Agreement and all other ancillary documents (excluding related disclosure schedules) with the Court upon closing the Sale. Disclosure schedules that do not contain confidential information shall be provided to other parties only upon a reasonable written request to the Debtors.

4. Pursuant to sections 363(b) and (f) of the Bankruptcy Code, the Debtors are authorized and empowered to take any and all actions necessary or appropriate to (a) consummate the Sale of the Property to the Buyer pursuant to and in accordance with the terms and conditions of the Purchase and Sale Agreement, (b) close the Sale as contemplated in the Purchase and Sale Agreement and this Sale Order, (c) execute and deliver, perform under, consummate, implement, and close fully the Purchase and Sale Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase and Sale Agreement and the Sale.

5. This Sale Order shall be binding in all respects upon the Debtors, their estates, all creditors of, and holders of equity interests in, any Debtor, any holders of Liens, Claims or other interests in, against or on all or any portion of the Property (whether known or unknown), the Buyer and all successors and assigns of the Buyer, the Property and any trustees, if any, subsequently appointed in any of the Debtors' Chapter 11 Cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of the Debtors' cases. This Sale Order and the Purchase and Sale Agreement shall inure to the benefit of the Debtors, their estates and creditors, the Buyer and the respective successors and assigns of each of the foregoing.

6. The Purchase and Sale Agreement and any ancillary documentation may be modified, amended or supplemented by the parties thereto, in a writing signed by the parties and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

**Assumption and Assignment of Contracts**

7. Pursuant to Bankruptcy Code sections 105(a) and 365, and subject to and conditioned upon the closing of the Sale, the Debtors' assumption and assignment to the Buyer, and the Buyer's assumption on the terms set forth in the Purchase and Sale Agreement, of the Assumed Contracts is hereby approved and the requirements of Bankruptcy Code section 365(b)(1) with respect thereto are hereby deemed satisfied.

8. The Debtors are authorized and directed in accordance with sections 105(a), 363 and 365(a) of the Bankruptcy Code to (a) assume and assign to the Buyer, effective upon the Closing of the Sale, the Assumed Contracts, free and clear of all Claims, Liens or other interests of any kind or nature whatsoever; and (b) execute and deliver to Buyer such documents or other instruments as may be reasonably necessary to assign and transfer the Assumed Contracts to the Buyer.

9. The Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Buyer in accordance with their respective terms, notwithstanding any provision in any such Assigned Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts or conditions such assignment or transfer. In addition, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Assumed Contracts after such assignment

to, and assumption by, the Buyer, except as may be provided in the Purchase and Sale Agreement.

10. Defaults or other obligations of the Debtors under the Assumed Contracts arising or accruing prior to the Closing Date (without giving effect to any acceleration clauses or any default provisions of the kind specified in Bankruptcy Code section 365(b)(2)) shall be cured pursuant to the terms of the Purchase and Sale Agreement on the Closing Date, or as soon thereafter as is reasonably practicable.

11. To the extent a counterparty to an Assigned Contract failed to timely object to a Cure Amount, such Cure Amount shall be deemed to be finally determined and any such counterparty shall be prohibited from challenging, objecting to or denying the validity and finality of the Cure Amount at any time, and such Cure Amount, when paid, shall completely revive any Assigned Contract to which it relates. No sections or provisions of any Assigned Contract that purport to provide for additional payments, penalties, charges or other financial accommodations in favor of the non-debtor third party to the Assumed Contracts shall have any force and effect with respect to the Sale and assignments authorized by this Sale Order. Such provisions constitute unenforceable, anti-assignment provisions under section 365(f) of the Bankruptcy Code and are otherwise unenforceable under section 365(e) of the Bankruptcy Code. The non-debtor party to each Assigned Contract shall be deemed to have consented to such assignment under section 365(c)(1)(B) of the Bankruptcy Code and Buyer shall enjoy all of the Debtors' rights and benefits under each such Assigned Contract as of the applicable date of assumption without the necessity of obtaining such non-debtor party's consent to the assumption or assignment thereof.

12. With respect to objections to any Cure Amounts that remain unresolved as of the Sale Hearing, such objections shall be resolved in accordance with the procedures set forth in the Bid Procedures Order.

13. Nothing in this Sale Order, the Sale Motion or in any notice or any other document is or shall be deemed an admission by the Debtors that any contract is an executory contract or must be assumed and assigned pursuant to the Purchase and Sale Agreement or in order to consummate the Sale.

14. The failure of the Debtors or the Buyer to enforce at any time one or more terms or conditions of any Assigned Contract shall not be a waiver of such terms or conditions or of the Debtors' and Buyer's rights to enforce every term and condition of such Assigned Contract.

15. All parties to the Assumed Contracts are forever barred and enjoined from raising or asserting against the Buyer any assignment fee, default, breach, Claim, pecuniary loss or condition to assignment arising under or related to the Assumed Contracts existing as of the Closing Date or arising by reason of the Closing, except for any amounts that are Buyer's Assumed Obligations.

### **Transfer of the Property**

16. Pursuant to sections 105(a), 363(b), and 363(f) of the Bankruptcy Code, the Debtors are authorized to transfer the Property to the Buyer on the Closing Date, and such transfer shall constitute a legal, valid, binding, and effective transfer of such Property and shall vest the Buyer with title to the Property, upon the Debtors' receipt of the Purchase Price and with the exception of the Buyer's assumed obligations, free and clear of all Liens, Claims and other interests of any kind or nature whatsoever, including but not limited to, successor or successor-in-interest liability and Claims in respect of the Excluded Liabilities, with all such Liens, Claims or other interests to attach to the net cash proceeds, ultimately attributable to the property against

or in which such Liens, Claims or interests are asserted, subject to the terms thereof, with the same validity, force and effect, and in the same order of priority, which such Liens, Claims or interests now have against the Property, subject to any rights, claims and defenses the Debtors or their estates, as applicable, may possess with respect thereto. Upon the Closing, the Buyer shall take title to and possession of the Property subject only to the Buyer's assumed obligations.

17. Except with respect to the Buyer's assumed obligations, all persons and entities that are in possession of some or all of the Property on the Closing Date are directed to surrender possession of such Property to the Buyer at the Closing. On the Closing Date, or as soon as possible thereafter, each of the Debtors' creditors is authorized and directed, and the Buyer is hereby authorized, on behalf of each of the Debtors' creditors, to execute such documents and take all other actions as may be reasonably necessary to release such creditor's Liens, Claims or other interests in the Property, if any, as such Liens, Claims or interests may have been recorded or may otherwise exist.

18. The Debtors are authorized to take any and all actions necessary to consummate the Purchase and Sale Agreement, including any actions that otherwise would require further approval by members, managers, shareholders or a board of directors without the need of obtaining such approvals.

19. On the Closing Date, this Sale Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Debtors' interests in the Property. Each and every federal, state, and local governmental agency and department is directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase and Sale Agreement.

20. A certified copy of this Sale Order may be filed with the appropriate clerk and/or recorded with the recorder to act to cancel any Liens, Claims, and other encumbrances of record, except the Buyer's Assumed Obligations and Permitted Encumbrances.

21. If any person or entity which has filed statements or other documents or agreements evidencing Liens on, or interests in, all or any portion of the Property (other than statements or documents with respect to Buyer's assumed obligations) shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all liens or interests which the person or entity has or may assert with respect to all or any portion of the Property, the Debtors are authorized and directed, and the Buyer is authorized, on behalf of the Debtors and each of the Debtors' creditors, to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Property.

22. This Sale Order is and shall be effective as a determination that on the Closing Date, all Liens, Claims or other interest of any kind or nature whatsoever existing as to the Property prior to the Closing Date, other than the Buyer's assumed obligations, shall have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected; provided, however, that notwithstanding anything to the contrary in this Sale Order, all Liens, Claims or other interests of any kind or nature whatsoever existing as to the assets of the Debtors other than the Property shall have the same validity, force, priority and effect that such Liens, Claims or interests had prior to the Sale, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

23. This Sale Order is and shall be binding upon and govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase and Sale Agreement. As of the Closing Date, each insurer in connection with the policies transferred pursuant to the Purchase and Sale Agreement (the “**Policies**”) shall record and conform its books and records of the Policies to establish the Buyer as the sole owner and beneficiary of the Policies.

24. As of the Closing Date, the Buyer, its successors and assigns, shall be designated and appointed the Debtors’ true and lawful attorney with full power of substitution in the Debtors’ name and stead on behalf of and for the benefit of the Buyer, its successors and assigns, for the following sole and limited purposes: have the power to demand and receive from any third party any and all of the Property and to give receipts and releases for and in respect of the Property, or any part thereof, and from time to time to institute and prosecute against third parties for the benefit of the Buyer, its successors and assigns, any and all proceedings at law, in equity or otherwise, which the Buyer, its successors and assigns, may deem proper for the collection or reduction to possession of any of the Property.

25. To the extent permitted by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Property sold, transferred or conveyed to the Buyer on account of the filing or pendency of the Debtors' Chapter 11 Cases or the consummation of the transactions contemplated by the Purchase and Sale Agreement.

26. As of the Closing Date, the Buyer shall be authorized, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the Property, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, deemed to be transferred to the Buyer as of the Closing Date.

**Prohibition of Actions Against the Buyer**

27. Except for the Buyer's assumed obligations, the Buyer shall not have any liability or other obligation of the Debtors. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein or in the Purchase and Sale Agreement, the Buyer shall not be liable for any Claims against the Debtors or any of its predecessors or affiliates, and the Buyer shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, under any theory of antitrust, environmental, successor or transferee liability, labor law, *de facto* merger, mere continuation, or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether asserted or un-asserted, whether legal or equitable, whether liquidated or unliquidated, including, but not limited to, liabilities on account of warranties, intercompany loans and receivables between the Debtors and any non-Debtor subsidiary, liabilities relating to or arising from any Environmental Laws, and any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of any of the Property prior to the Closing.



28. Except with respect to the Buyer's assumed obligations, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors, litigation claimants and other creditors, holding Liens, Claims or other interests of any kind or nature whatsoever against or in all or any portion of the Property (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinate), arising under or out of, in connection with, or in any way relating to the Debtors, the Property, the operation of the Debtors' Business prior to the Closing Date or the transfer of the Property to the Buyer, hereby are forever barred, estopped and permanently enjoined from asserting against the Buyer, any of its affiliates, its successors or assigns, its property or the Property, such persons' or entities' Liens, Claims or interests in and to the Property, including, without limitation, the following actions: (a) commencing or continuing in any manner any action or other proceeding against the Buyer, any of its affiliates, its successors, assets or properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Buyer, any of its affiliates, its successors, assets or properties; (c) creating, perfecting, or enforcing any Lien or other Claim against the Buyer, any of its affiliates, its successors, assets, or properties; (d) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due to the Buyer, any of its affiliates or successors; (e) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Sale Order or other orders of the Court, or the agreements or actions contemplated or taken in respect thereof; or (f) revoking, terminating or failing or refusing to transfer or renew any license, permit or authorization to operate any of the Property or conduct any of the businesses operated with the Property.

29. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Property to the Buyer in accordance with the terms of the Purchase and Sale Agreement and this Sale Order.

30. Except to the extent expressly included in the Buyer's assumed obligations, or by applicable law or statute, the Buyer and its affiliates shall have no liability, obligation or responsibility under the WARN Act (29 U.S.C. §§ 210 *et seq.*), the Comprehensive Environmental Response Compensation and Liability Act or any foreign, federal, state or local labor, employment or Environmental Law by virtue of the Buyer's purchase of the Property or assumption of the Assumed Obligations.

#### **Other Provisions**

31. The Buyer shall assume the Buyer's assumed obligations set forth in the Purchase and Sale Agreement.

32. The transactions contemplated by the Purchase and Sale Agreement are undertaken by the Buyer in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale, unless such authorization and such Sale are duly stayed pending such appeal. The Buyer is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

33. The purchase of the Property may not be avoided under section 363(n) of the Bankruptcy Code, as the Purchase Price and consideration for the Property was not a result of collusion nor controlled by an agreement among potential bidders at such sale.

34. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in (a) these chapter 11 cases, (b) any subsequent chapter 7 case into which any such chapter 11 case may be converted, or (c) any related proceeding subsequent to entry of this Sale Order, shall conflict with or derogate from the provisions of the Purchase and Sale Agreement or the terms of this Sale Order, including, without limitation, the distribution of net Sale proceeds authorized above.

35. No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Sale.

36. The failure specifically to include any particular provision of the Purchase and Sale Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase and Sale Agreement be authorized and approved in its entirety; *provided, however*, that this Sale Order shall govern if there is any inconsistency between the Purchase and Sale Agreement (including all ancillary documents executed in connection therewith) and this Sale Order. Likewise, all of the provisions of this Sale Order are non-severable and mutually dependent.

37. The Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order and the Purchase and Sale Agreement, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned by the Debtors to the Buyer, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Property to Buyer; (b) interpret, implement and enforce the provisions of this Sale

Order; and (c) protect Buyer against any Liens, Claims or other interest in or against the Sellers or the Property of any kind or nature whatsoever, attaching to the proceeds of the Sale.

38. Nothing in this Sale Order or the Purchase and Sale Agreement (a) releases, nullifies, or enjoins the enforcement of any liability to a governmental unit under police and regulatory statutes or regulations that any entity would be subject to as the owner or operator of property after the date of entry of this Sale Order or (b) authorizes the transfer or assignment to Buyer of any license, permit, registration, authorization, or approval of or with respect to a governmental unit without Buyer's complying with all applicable legal requirements under non-bankruptcy law governing such transfers or assignments.

39. All time periods set forth in this Sale Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

40. Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), this Sale Order shall be effective immediately upon its entry.

41. To the extent that this Sale Order is inconsistent with any prior order or pleading with respect to the Sale Motion in these chapter 11 cases, the terms of this Sale Order shall govern.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

\_\_\_\_\_  
THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

# **Exhibit C**

## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (the “Agreement”), dated as of January 29, 2019 (the “Effective Date”), is entered into by and between LIFE SETTLEMENTS ABSOLUTE RETURN I, LLC (“LSAR”) and SENIOR LS HOLDINGS, LLC (“LS”) (LSAR and LS are each referred to herein as a “Seller” and collectively as the “Sellers”), and BPCP Life Settlement LLC, a Georgia limited liability company (“Purchaser”).

### RECITALS

**WHEREAS**, on December 29, 2017, Sellers filed voluntary petitions for relief under Chapter 11 of the United States Code (the “Bankruptcy Code”) thereby commencing a bankruptcy case (the “Bankruptcy Case”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”); and

**WHEREAS**, the Sellers desire to sell to the Purchaser, and the Purchaser desires to purchase from the Sellers, the Assets (as hereinafter defined), in accordance with sections 105(a), 363 and other applicable provisions of the Bankruptcy Code and pursuant to authorization to be granted by the Bankruptcy Court (the “Sale”), as provided in a sale order substantially in the form attached hereto as Exhibit A (“Sale Order”).

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

##### SECTION 1.01 Definitions.

Capitalized terms used herein and not otherwise defined in this Agreement shall have the following meanings:

“Affiliate” means, with respect to any Person, any other Person controlling or controlled by or under common control with such specified Person. For purposes of this definition, “control,” when used with respect to a specific Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Assets” means (a) the pool of Life Settlement Policies and other assets of LSAR and LS, respectively, identified on the Schedule of Assets attached hereto as Schedule 1 (“Schedule 1”), including, with respect to the Life Settlement Policies, rights to collect Benefit Proceeds from the

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Issuing Insurance Companies, rights to premiums paid, cash values, proceeds of Policy Loans or withdrawals post-Closing, rights to proceed against any state guarantee fund with respect to any Life Settlement Policy and other property and interests in property related thereto, including all monies due and to become due in respect to any of the foregoing (whether in respect of principal, interest, fees, expenses, indemnities, rescission payments or otherwise), (b) the balance of the Premium Reserve Account at Closing as maintained in accordance with the terms of the Indenture and Policy Administration Agreement and into which any Benefits Proceeds received prior to Closing shall be deposited and (c) all of LSAR's and LS' respective powers, rights and interests relevant to and/or required by any Issuing Insurance Company to effectuate the change in ownership and/or change of beneficiary with respect to the Life Settlement Policies by virtue of the sale of the Life Settlement Policies by the Sellers to the Purchaser pursuant to this Agreement.

“Bankruptcy Auction” means the auction of the Assets held in accordance with the Bidding Procedures Order.

“Bankruptcy Case” has the meaning set forth in the Recitals.

“Bankruptcy Code” has the meaning set forth in the Recitals.

“Bankruptcy Court” has the meaning set forth in the Recitals.

“Bankruptcy Orders” means, collectively, the Sale Order, Bidding Procedures Order, and any other order of the Bankruptcy Court necessary to consummate the transactions contemplated herein.

“Benefit Proceeds” means, with respect to any Life Settlement Policy, as of any date of determination, the death benefit payable under such Life Settlement Policy net of any Policy Loan (and accrued Policy Loan interest not yet paid on or capitalized into any related Policy Loan) as of such date of determination.

“Bidding Procedures Order” means the bidding procedures order substantially in the form attached hereto as Exhibit B.

“Break-Up Fee” has the meaning set forth in Section 6.01(b).

“Business Day” means any day other than a Saturday, Sunday, legal holiday or other day on which commercial banking institutions in the City of New York are authorized or obligated by law, regulation, executive order or governmental decree to be closed.

“Closing” has the meaning set forth in Section 2.05.

“Closing Date” means (i) the first Business Day after the day on which the last of the conditions described in Article VII and Article VIII have been satisfied, but not later than \_\_\_\_\_, 2019, or (ii) such other date as the Purchaser and the Sellers mutually agree upon in writing.

“Closing Documents” means this Agreement and such other documents and certificates executed in connection with this Agreement.

“Confidential Information” has the meaning set forth in the Confidentiality Agreement.

“Confidentiality Agreement” means the Mutual Non-Disclosure Agreement executed between the Sellers and the Purchaser.

“Data Room” means the on-line data room maintained by counsel for Sellers that contains information and documentation about the Assets and the business and operations of the Sellers made available to the Purchaser and its counsel and advisors.

“Deposit” has the meaning set forth in Section 2.02.

“Executory Contract” means the servicing agreement with Clear View Advisors Corporation for the servicing of the Life Settlement Policies, excluding, however, any undertakings or obligations provided for thereunder in respect of the Policy Administration Agreement or the Indenture.

“Expense Reimbursement” has the meaning set forth in Section 6.01(b).

“Highest Bidder” means the bidder that is determined by the Bankruptcy Court to have submitted the highest and best bid in the Bankruptcy Auction.

“Indenture” shall mean that certain Trust Indenture dated as of June 12, 2008 by and between the LSAR and Wells Fargo Bank, National Association.

“Insured” means, with respect to any Life Settlement Policy, the individual (or each one of the individuals) whose life (lives) is (are) insured by such Life Settlement Policy.

“Issuing Insurance Company” means, with respect to any Life Settlement Policy, the insurance company that issued the policy and/or is obligated to pay the related Benefit Proceeds upon the death of the related Insured by the terms of such Life Settlement Policy (or the successor to such obligation).

“Knowledge of Seller,” “Knowledge of Sellers” or any other similar knowledge qualification with respect to Sellers means the actual knowledge of Robert J. Davey.

“Lien” means any lien, pledge, collateral assignment, mortgage, security interest, claim, charge, option, right of first refusal, restriction, easement or other encumbrance, including a claim as defined in the Bankruptcy Code, but, with respect to a Life Settlement Policy, does not include the interest of the Issuing Insurance Company therein if such interest arises solely from or with respect to a related Policy Loan.

“Life Expectancy” means, with respect to any Life Settlement Policy, the related Insured’s life expectancy.



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“Life Settlement Policies” means each and all of the life insurance policies identified on Schedule 1 or, as indicated by context, a specific Life Settlement Policy identified on Schedule 1 in all cases with Premiums paid through a date not earlier than nine (9) months after the Closing Date.

“Matured Policy” has the meaning set forth in Section 2.01(b).

“Overbid Protection” has the meaning set forth in Section 6.01(b).

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, limited liability company, trust, unincorporated association, governmental authority or any other entity.

“Policy Administration Agreement” shall have the meaning ascribed to such term in the Indenture.

“Policy Loan” means, with respect to any Life Settlement Policy, any loan or other cash advance against, or cash withdrawal from, the cash value of such Life Settlement Policy, pursuant to the terms and conditions of such Life Settlement Policy.

“Premium” means, with respect to any Life Settlement Policy, as indicated by the context, any past due premium with respect thereto, or any scheduled premium, determined and projected by the servicer of the Life Settlement Policy.

“Premium Reserve Account” shall have the meaning ascribed to such term in the Indenture.

“Purchase Price” means \$5,650,000.

“Purchaser” has the meaning set forth in the Recitals.

“Qualified Bidder” has the meaning set forth in the Bidding Procedures Order.

“Sale” has the meaning set forth in the Recitals.

“Sale Motion” means the motion dated January 29, 2019, Pursuant to 11 U.S.C. §§ 105, 363, 365, 503 and 507 and Bankruptcy Rules 2002, 6004 and 6006 for (I) Entry of an Order (A) Establishing Bid and Auction Procedures Related to the Sale of Substantially All of the Debtors’ Assets; (B) Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Certain Notice Procedures for Determining Cure Amounts for Executory Contract and Unexpired Leases to be Assumed and Assigned; and (E) Granting Related Relief; and (II) Entry of an Order (A) Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (B) Authorizing the Assumption and Assignment of Certain Executory Contract and Unexpired Leases.

“Sale Order” means a final, non-appealable order substantially in the form attached hereto as Exhibit A.

“Schedule of Assets” means the schedule of Life Settlement Policies identified on Schedule 1.

“Sellers” shall have the meaning set forth in the Recitals.

“Termination Date” means the date this Agreement is terminated by the parties pursuant to Article IX.

“UCC” means the Uniform Commercial Code as in effect in the State of New York.

“Wire Transfer” means payment in immediately available funds by wire transfer in lawful money of the United States of America to such account or accounts as shall have been designated by written notice from the party to receive such funds to the paying party.

### **SECTION 1.02 Usage of Terms.**

The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement and article, section, subsection, exhibit and schedule references contained in this Agreement are references to articles, sections, subsections, exhibits and schedules in or to this Agreement unless otherwise specified; with respect to all terms in this Agreement, the singular includes the plural and the plural the singular; words importing any gender include the other genders; references to “writing” include printing, typing, lithography and other means of reproducing words in a visible form; references to agreements and other contractual instruments include all subsequent amendments, amendments and restatements and supplements thereto or changes therein entered into in accordance with their respective terms and not prohibited by this Agreement; references to Person includes such Person’s permitted successors and assigns; references to laws include their amendments and supplements, the rules and regulations thereunder and any successors thereto; and the term “including” means “including without limitation.”

## **ARTICLE II**

### **PURCHASE AND SALE**

#### **SECTION 2.01 Purchase and Sale of Assets and Assumption of Certain Executory Contract.**

(a) Subject to the terms and conditions of this Agreement, at Closing the Sellers hereby agree to sell their respective right, title and interest in and to the Assets, free and clear of Liens, to the Purchaser and the Purchaser agrees to purchase the Assets, free and clear of Liens, from the Sellers, in exchange for the Purchase Price.

(b) Following the Effective Date through the Closing, the Seller shall provide Purchaser with prompt notice of the death of any Insured. In such event, if Benefit Proceeds are paid on the applicable Life Settlement Policy prior to the Closing Date, such Benefit Proceeds shall be

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deposited into the Premium Reserve Account and the matured Life Settlement Policy(ies) (each, a “Matured Policy”) shall be removed from Schedule 1; all Death Benefit Proceeds paid on or after the Closing Date shall be the sole property of Purchaser.

(c) At Closing, pursuant to section 365 of the Bankruptcy Code, Sellers shall assign and Purchaser shall assume the Executory Contract and/or amend, renegotiate or replace the Executory Contract such that Sellers shall have no further liability in respect thereof in respect of any period after Closing.

**SECTION 2.02 Purchaser’s Deposit.**

Upon the entry of the Bidding Procedures Order, Purchaser shall pay to Sellers a deposit in the amount of \$250,000 (the “Deposit”) to be credited against the Purchase Price at the Closing. The Deposit and any accrued interest shall be refunded to the Purchaser in the event that the sale of the Assets is not consummated for any reason other than a breach of the Agreement by Purchaser. Otherwise, the Deposit and any accrued interest will be retained by Sellers.

**SECTION 2.03 Purchase Price.** On the Closing Date, the Purchaser shall Wire Transfer the Purchase Price less the Deposit.

**SECTION 2.04. [Reserved].****SECTION 2.05 Closing.**

The closing of the transaction contemplated hereby (the “Closing”) will take place at the offices of Nelson Mullins Riley & Scarborough LLP, 104 South Main Street, Suite 900, Greenville, SC 29601, or at such other place as the Purchaser and the Sellers mutually agree, at 10:00 a.m. local time, within three (3) business days following the entry of the Sale Order (the “Closing Date”).

**SECTION 2.06 Post-Closing Cooperation.**

From time to time after the Closing, (i) Sellers will execute and deliver, or cause to be executed and delivered, such documents to Purchaser as Purchaser shall reasonably request in order to consummate the transactions contemplated by this Agreement including the transfer of the Assets and the Executory Contract to Purchaser and (ii) Purchaser will execute and deliver, or cause to be executed and delivered, such documents to Sellers as Sellers shall reasonably request in order to consummate the transactions contemplated by this Agreement including with respect to the Executory Contract.

**ARTICLE III****REPRESENTATIONS AND WARRANTIES OF THE SELLERS**

Each Seller hereby represents and warrants to the Purchaser as follows:

**SECTION 3.01 Organization and Good Standing.**

Each Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of Delaware and has the organizational power and authority to own its respective properties and to conduct its business.

**SECTION 3.02 Due Authorization, Execution and Delivery.**

Subject to the entry of the Sale Order, each Seller has full power and authority to execute and deliver this Agreement, and power and authority to perform its obligations hereunder, and has taken all necessary action to authorize and has duly authorized the execution and delivery of this Agreement and the performance of such obligations.

**SECTION 3.03 No Violation or Conflict.**

Subject to the entry of the Sale Order, the execution, delivery and performance of this Agreement by the Sellers and the consummation by the Sellers of the transactions contemplated hereby will not violate, result in the breach of any terms and provisions of, or constitute an event of default under, its organization documents, or violate or breach any of the terms or provisions of, or constitute a material default under, any material agreement to which either Seller is a party or by which either Seller is bound; or violate any order, judgment or decree applicable to either Seller of any court, regulatory body or administrative agency having jurisdiction with respect to either Seller or their respective properties.

**SECTION 3.04 Title.** Upon the completion of the Closing, Sellers shall have transferred and delivered to Purchaser good and marketable title to the Assets free of Liens.

**SECTION 3.05 No Consents.**

Except for the Sale Order, to the Knowledge of Sellers, no consent, approval, permit, license, authorization or order of or declaration from or filing with any Person or governmental authority is required to be obtained by either Seller for the consummation of the transactions contemplated by this Agreement, except such as have been duly made or obtained.

**SECTION 3.06 Brokers.**

Neither Seller has employed any broker or finder, and neither Seller has incurred or will incur any other broker's, finder's, investment banking or similar fees or commissions in connection with the origination, negotiation or execution of this Agreement.

**SECTION 3.07 Patriot Act.**

No Affiliate or Person affiliated with the Sellers or that makes funds available to any Affiliate of the Sellers in order to allow the Sellers to fulfill their respective obligations under the Closing Documents is: (A) a Person listed in the Annex to Executive Order No. 13224 (2001)

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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 the Purchaser pursuant to applicable U.S. anti-money laundering, anti-terrorist and asset control laws, regulations, rules or orders.

**SECTION 3.08 No Representations and Warranties as to the Life Settlement Policies.**

The Sellers make no representations or warranties except for the express representations and warranties made in Article III. For avoidance of doubt, the Sellers make no representations or warranties as to (i) the Life Expectancies of the Insureds, (ii) the value of the Assets, (iii) the amount the Purchaser ultimately will recover as Benefit Proceeds of any Life Settlement Policy or the timing of its receipt of any such amounts, or (iv) the amount of the Premiums required to maintain any Life Settlement Policy in effect.

**ARTICLE IV****REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser hereby represents and warrants to the Sellers as follows:

**SECTION 4.01 Organization and Good Standing.**

The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Georgia, and has organizational power and authority to own its properties and to conduct its business.

**SECTION 4.02 Due Authorization, Execution and Delivery.**

The Purchaser has full power and authority to execute and deliver this Agreement to perform its obligations hereunder, including the power and authority to purchase the Assets and assume or enter into a replacement of the Executory Contract as contemplated hereby and has taken all necessary action to authorize the execution and delivery of this Agreement and the performance of such obligations.

**SECTION 4.03 No Violation or Conflict.**

The execution, delivery and performance of this Agreement and the consummation by the Purchaser of the transactions contemplated hereby shall not violate or conflict with or result in the breach of any terms and provisions of, or constitute an event of default under, its organizational documents, or violate or breach any of the terms or provisions of, or constitute an event of default under, any agreement to which the Purchaser is a party or by which it shall be

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bound; or violate any order, judgment or decree applicable to the Purchaser of any court, regulatory body or administrative agency or other governmental instrumentality having jurisdiction over the Purchaser or its properties.

**SECTION 4.04 No Proceedings.**

There is no action, suit or proceeding before or by any court or governmental agency or body, domestic or foreign, now pending, or to the Purchaser's knowledge, threatened, against or affecting the Purchaser or its assets or properties: (a) asserting the invalidity of this Agreement, (b) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or (c) seeking any determination or ruling that might materially and adversely affect the performance by the Purchaser of its obligations under, or the validity or enforceability of this Agreement.

**SECTION 4.05 No Consents.**

Except for the Sale Order, no consent, approval, permit, license, authorization or order of or declaration or filing with any governmental authority is required to be obtained by the Purchaser for the consummation of the transactions contemplated by this Agreement, except such as have been duly made or obtained.

**SECTION 4.06 Brokers.**

The Purchaser has not employed any financial advisor, broker or finder, and has not incurred and will not incur any other broker's, finder's, investment banking or similar fees, commissions or expenses, in connection with the origination, negotiation or execution of this Agreement.

**SECTION 4.07 Patriot Act.**

No Affiliate or Person affiliated with the Purchaser or that makes funds available to any Affiliate of the Purchaser in order to allow the Purchaser to fulfill its obligations under the Closing Documents or for the purpose of funding the investment in the Purchaser made by such Affiliate of the 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 the Purchaser pursuant to applicable U.S. anti-money laundering, anti-terrorist and asset control laws, regulations, rules or orders.

**SECTION 4.08 Qualified Bidder, Financing.**

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The Purchaser (a) is a Qualified Bidder, (b) has, and at the Closing Date will have, sufficient funds available to pay the Purchase Price and any expenses incurred by Purchaser in connection with the transaction contemplated by this Agreement, (c) will have, at the Closing Date, the resources and capabilities (financial and otherwise) to perform its obligations under this Agreement, and (d) has not incurred any obligation, commitment, restriction or losses of any kind, which would impair or adversely affect its ability to perform its obligations under this Agreement.

**SECTION 4.09 Solvency.**

Immediately after giving effect to the consummation of the transaction contemplated by this Agreement: (i) the fair saleable value (determined on a going concern basis) of the assets of Purchaser shall be greater than the total amount of its liabilities (including all liabilities, whether or not reflected in a balance sheet prepared in accordance with GAAP, and whether direct or indirect, fixed or contingent, secured or unsecured, disputed or undisputed); (ii) Purchaser will be able to pay its debts and obligations in the ordinary course of business as they become due; and (iii) Purchaser will have adequate capital to carry on its business.

**SECTION 4.10 Adequacy of Purchaser's Review.**

Purchaser agrees and acknowledges that, upon Purchaser's Closing of the Sale, it (a) has had a sufficient opportunity to conduct due diligence regarding the Assets via the Data Room and otherwise as provided in Section 7.01 prior to entry of the Sale Order and does not require further due diligence, (b) has relied solely upon its own independent review, investigation, and/or inspection of the Assets and documents and other relevant information in making its bid and executing and delivering this Agreement, and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties of any kind or nature, including any that are express, are implied, arise by operation of law, or that may otherwise be deemed to apply, regarding the Assets, or the completeness of any documentation or information provided in connection therewith.

**SECTION 4.11 Economic Risk; No Reliance; Independent Judgment.**

Purchaser has experience in the purchasing of life insurance policies such as the Life Settlement Policies. Purchaser possesses such knowledge and experience in respect of business, tax and financial matters as is necessary to properly evaluate the potential benefits and risks of the purchase of the Assets and assumption of the Executory Contract as contemplated by this Agreement. Purchaser is aware of, and has had an opportunity to consider, evaluate and plan for management of, the investment, financial, tax, or other risks inherent in the transactions contemplated by this Agreement. Purchaser understands and is willing and able to bear the risk of acquiring the Assets and assuming the Executory Contract, which include, but are not limited to the risk: (i) that the actual life span of an Insured under the related Life Settlement Policy may significantly exceed such Insured's estimated Life Expectancy; (ii) that an Issuing Insurance Company may become insolvent; (iii) that laws may change in a manner that adversely impacts the transactions contemplated hereunder; and (iv) that the cost of insurance over the premium

projections made in connection with the acquisition of any Life Settlement Policy may change. Purchaser takes full responsibility for the economic and tax consequences of the purchase of the Assets and assumption of the Executory Contract pursuant to this Agreement.

## **ARTICLE V**

### **COVENANTS**

#### **SECTION 5.01 Assets and Premiums.**

(a) Subject to any obligations as debtors-in-possession under the Bankruptcy Code and except as otherwise contemplated herein or with the prior consent of the Purchaser, such consent not to be unreasonably withheld, conditioned or delayed, from the date of this Agreement to the earlier of (i) the Closing Date or (ii) the Termination Date, the Sellers will not encumber, including by taking Policy Loans, sell, transfer or otherwise dispose of any of the Assets or terminate any of the Executory Contract.

(b) The Sellers shall pay Premiums due, accrued and/or accruing on the Life Settlement Policies such that Premiums will be paid through a date not earlier than nine (9) months after the Closing Date, regardless of whether billings are issued for such Premiums prior to the Closing Date and without giving effect to any grace period applicable to payment of such Premiums, and any such Premiums so required to be paid after the Effective Date shall be paid pursuant to the terms of the Indenture.

#### **SECTION 5.02 Further Assurances.**

From the Effective Date to the Closing Date, each Party shall execute, acknowledge, and deliver all such further conveyances, notices, assumptions, releases, and other instruments, and shall take such further actions, as may be reasonably necessary or appropriate to assure fully to Purchaser and Sellers and their respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers, and privileges intended to be conveyed to Purchaser or Sellers under this Agreement and to otherwise make effective the transactions contemplated hereby and thereby.

#### **SECTION 5.03 Bankruptcy Orders.**

The parties hereto shall use their commercially reasonable efforts to obtain the Bankruptcy Orders and shall assist each other to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper, or advisable, including pursuing such filings and applications required to consummate and make effective, in the most expeditious manner reasonably practicable, the transactions contemplated hereby. Purchaser and Sellers understand and agree that the transactions and timeframes contemplated herein are subject to approval by the Bankruptcy Court.



**ARTICLE VI****CERTAIN BANKRUPTCY MATTERS****SECTION 6.01 Bankruptcy Court Approval.**

(a) The Sellers hereby confirm that it is in the best interest of their estates to consummate an orderly sale of the Assets and the assumption of the Executory Contract by Purchaser, to enter into this Agreement, and to present the Bankruptcy Court with arrangements for obtaining the highest and best offer received for the Assets.

(b) As promptly as practicable after the Effective Date, the Sellers and Purchaser shall use commercially reasonable efforts to obtain the entry of the Bidding Procedures Order, which shall provide, among other things, (i) that Sellers shall be required to pay to Purchaser out of the proceeds of the sale of the Assets to a party other than Purchaser a single break-up fee in the amount of 3.5% of the ultimate winning bid for the Assets (the “Break-Up Fee”), plus documented, out-of-pocket expenses of the Purchaser, including documented legal fees and costs of Purchaser in the aggregate amount not to exceed \$350,000 (the “Expense Reimbursement”), and (ii) that the first competing bid shall be in the sum of \$547,750 over and above the Purchase Price, with subsequent incremental bids in the minimum amount of \$200,000 (the “Overbid Protection”).

(c) As promptly as practicable after the Effective Date, the Sellers and the Purchaser shall use commercially reasonable efforts to obtain the entry of the Sale Order. The Sale Order shall, among other things, (i) permit the sale of the Assets to and the assumption of the Executory Contract by the Purchaser pursuant to Section 363(b) of the Bankruptcy Code, (ii) include a finding of the Purchaser’s good faith and provide for finality under Section 363(m) of the Bankruptcy Code and a waiver of the stays set forth in Bankruptcy Rules 6004(h) and 6006(d), (iii) provide that other than the obligations and liabilities related to the Executory Contract that the Purchaser shall have no liability for any claims existing prior to the Closing Date which may be asserted against the Sellers or Sellers’ bankruptcy estate including any “successor liability” claims; and (iv) provide for the retention of jurisdiction by the Bankruptcy Court to resolve any and all disputes that may arise under this Agreement or in the Bankruptcy Case as between Sellers and Purchaser.

(d) Subject to the Sale Order, the Sellers and the Purchaser shall promptly make any filings, take all actions, and use commercially reasonable efforts to obtain any and all other approvals and orders necessary or appropriate for consummation of the transactions contemplated hereby.

(e) In the event an appeal of the Sale Order is taken, or a stay pending appeal is requested or reconsideration is sought from the Sale Order, the Sellers shall immediately notify the Purchaser of such appeal or stay request and shall provide to the Purchaser within three (3) Business Days a copy of the related notice of appeal or order of stay or application for reconsideration. The Sellers shall also provide the Purchaser with written notice, and copies of any other or further notice of appeal, motion or application filed in connection with any appeal from or application for reconsideration of, either of such orders and any related appellate briefs.

**SECTION 6.02 Bankruptcy Notices.**

The Sellers shall notify the Purchaser and, as is required by the Bankruptcy Code, all parties entitled to notice of all motions, notices and orders required to consummate the transactions contemplated by this Agreement, including the Sale Order and Bidding Procedures Order, as modified by orders in respect of notice which may be issued at any time and from time to time by the Bankruptcy Court.

**ARTICLE VII****CONDITIONS PRECEDENT TO PURCHASER'S OBLIGATIONS**

The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser in whole or in part to the extent permitted by applicable law):

**SECTION 7.01 Due Diligence.**

Purchaser shall have received and had the opportunity to review all documentation and information reasonably required by Purchaser to evaluate and confirm the Assets and all matters relevant to the validity and valuation thereof, including, without limitation, all documentation in effect with each Issuing Insurance Company with respect to each Life Settlement Policy, identifying, among other things, all parties indicated as having interests therein, and all such documentation and information shall be satisfactory to Purchaser in Purchaser's sole discretion.

**SECTION 7.02 Representations and Warranties.**

The representations and warranties of the Sellers contained in this Agreement shall be true and correct in all respects (in the case of any representation or warranty qualified as to materiality) or in all material respects (in the case of any representation or warranty not so qualified) at and as of the Closing Date with the same effect as though such representations and warranties were made at and as of the Closing Date, except (a) for changes expressly contemplated by this Agreement and (b) that representations and warranties given as of a specific date or time shall be true and correct in all respects (in case of any representation or warranty qualified as to materiality) or in all material respects (in the case of any representation or warranty not so qualified) as of such date or time. If the Purchaser has knowledge of a breach that would constitute a basis for not consummating the transactions contemplated herein, but the Purchaser nevertheless elects to consummate the Closing, such election shall not constitute a waiver of such breach and a release of any right to damages from the Sellers in respect thereof.

**SECTION 7.03 Performance.**

The Sellers shall have performed and complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by it on

or prior to the Closing, and shall have provided to the Purchaser such evidence of Sellers' performance and compliance as the Purchaser may reasonably request.

**SECTION 7.04 No Injunction.**

There shall not be any statute, rule or regulation enjoining or prohibiting the consummation of the Closing and no court of competent jurisdiction shall have issued, and there shall not have been commenced and be continuing any action seeking, any order, decree or ruling enjoining or prohibiting the consummation of the Closing.

**SECTION 7.04 Bankruptcy Court Approval.**

The Sale Order shall be in form and substance acceptable to Purchasers and shall have been entered by the Bankruptcy Court and such orders shall not have been stayed, modified, reversed or amended in any manner adverse to the Purchaser; and the Sellers shall have received from the Bankruptcy Court all other orders, approvals and consents required to transfer the Assets free and clear of all Liens, assign the Executory Contract, and to consummate the transactions contemplated by this Agreement, and the Purchaser shall have received evidence thereof satisfactory to the Purchaser and its counsel.

**ARTICLE VIII**

**CONDITIONS PRECEDENT TO SELLERS' OBLIGATIONS**

The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Sellers in whole or in part to the extent permitted by applicable law):

**SECTION 8.01 Representations and Warranties.**

The representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all respects (in the case of any representation or warranty qualified as to materiality) or in all material respects (in the case of any representation or warranty not so qualified) at and as of the Closing Date with the same effect as though such representations and warranties were made at and as of the Closing Date, except (a) for changes expressly contemplated by this Agreement and (b) that representations and warranties given as of a specific date or time, which shall be true and correct in all respects (in the case of any representation or warranty qualified as to materiality) or in all material respects (in the case of any representation or warranty not so qualified) as of such date or time.

**SECTION 8.02 Performance.**

**EXECUTION VERSION**

The Purchaser shall have performed and complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing.

**SECTION 8.03 No Injunction.**

There shall not be any statute, rule or regulation enjoining or prohibiting the consummation of the Closing and no court of competent jurisdiction shall have issued, and there shall not have been commenced and be continuing any action by any governmental entity seeking, any order, decree or ruling enjoining or prohibiting the consummation of the Closing.

**SECTION 8.04 Release and Deposit and Payment of Purchase Price.**

The Purchaser shall have delivered the Purchase Price to Sellers by Wire Transfer.

**SECTION 8.05 Bankruptcy Court Approval.**

The Sales Order shall have been entered by the Bankruptcy Court and such orders shall not have been stayed, modified, reversed or amended; and the Sellers shall have received from the Bankruptcy Court all other orders, approvals and consents required to transfer the Assets free and clear of all Liens, assign the Executory Contract for assumption by the Purchaser, and to consummate the transactions contemplated by this Agreement, and the Sellers shall have received evidence thereof satisfactory to the Sellers and its counsel.

**ARTICLE IX**

**TERMINATION**

**SECTION 9.01 Termination.**

This Agreement may be terminated as follows:

- (a) by mutual written agreement of the Sellers and the Purchaser prior to the Closing Date;
- (b) by the Purchaser at any time before the Closing if any of the conditions set forth in Article VII shall have not been satisfied or become incapable of fulfillment or cure and shall not have been waived by the Purchaser, provided that the Purchaser is not then in breach of this Agreement;
- (c) by the Sellers at any time before the Closing if any of the conditions set forth in Article VIII shall not have been satisfied or become incapable of fulfillment or cure and shall not have been waived by the Sellers, provided that the Sellers are not then in breach of this Agreement;
- (d) by either party at any time after April 18, 2019 if the Closing fails to occur on or before such date, unless such failure is due to the action or inaction of, or breach of this Agreement by, such party;

(e) at any time after April 15, 2019, by either party if by such date the Sale Order has not been entered; or

(f) by the Sellers at any time before the Closing if (i) Benefit Proceeds that become payable after the Effective Date exceed \$10,000,000 in the aggregate or (ii) the Sellers, in the good faith exercise of their fiduciary duties and their business judgment, determine that the sale of the Assets pursuant to this Agreement is no longer in the best interests of either of the Sellers, their respective estates or creditors.

**SECTION 9.02 Effect of Termination.**

If this Agreement is terminated by either party under Section 9.01, written notice thereof shall forthwith be given to the other party and this Agreement shall thereafter become void and have no further force and effect and, except for those provisions that expressly survive the termination of this Agreement, all further obligations of the Sellers and the Purchaser to each other under this Agreement shall terminate without further obligation or liability of either of the foregoing to the other, except that:

(a) each party shall return all Confidential Information (as defined in the Confidentiality Agreement) documents, work papers and other material of any other party relating to the transactions contemplated by this Agreement, whether so obtained before or after the execution of this Agreement, to the party furnishing the same;

(b) the Confidentiality Agreement shall remain in full force and effect; and

(c) this Section 9.02 will survive any termination of this Agreement.

**ARTICLE X**

**MISCELLANEOUS PROVISIONS**

**SECTION 10.01 Governing Law; Jurisdiction.**

This Agreement shall in all respects be governed by and construed in accordance with the internal laws of the State of Delaware, without reference to its conflicts of laws provisions, and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws. The parties agree that any action, proceeding or claim it commences against any other party pursuant to this Agreement shall be brought exclusively in the Bankruptcy Court; provided, that if the Bankruptcy Court is unwilling or unable to hear any such action, proceeding or claim, then the courts of the State of South Carolina, sitting in Greenville County, United States District Court for the District of South Carolina shall have exclusive jurisdiction over such action, proceeding or claim.

**SECTION 10.02 Notices.**

**EXECUTION VERSION**

Any notices or other communications required or permitted hereunder shall be deemed to have been properly given and delivered if in writing by either party or its legal representative and delivered personally or sent by electronic mail, facsimile, certified mail or nationally recognized overnight courier service guaranteeing overnight delivery, addressed as follows: (a) in the case of the Sellers, to Robert J. Davey, III, Secretary/Treasurer, The Attilanus Fund I, L.P., Anysia Financial Management, LLC, general partner, 6650 Rivers Avenue, Suite 105 #81921, North Charleston, SC 29406-4829; facsimile: 419-791-7371; electronic mail: rjdavey@anysia.net; with a copy (which shall not constitute notice) to: Nelson Mullins Riley & Scarborough LLP, Attn: Keith Poston, 1320 Main Street, Columbia, SC 29201; electronic mail: keith.poston@nelsonmullins.com; (b) in the case of the Purchaser, to Charles Andros, 3050 Peachtree Road NW, Suite 2, Atlanta, GA 30305, electronic mail: charlesandros@baypointadvisors.com, with a copy to: John Isbell, Esq., Thompson Hine LLP, Two Alliance Center, 3560 Lenox Road, Suite 1600, Atlanta, Georgia 30326, electronic mail: John.Isbell@thompsonhine.com, or, as to any of such Persons, at such other address or facsimile number as shall be designated by such Person in a written notice to the other Persons party hereto. Such demands, notices, requests, reports and communications shall be deemed given in the case of (i) personal delivery, electronic mail or facsimile, when actually received; (ii) overnight courier, on the day designated for delivery, or (iii) certified mail, five days after deposit in the mail.

**SECTION 10.03 Waiver and Amendment.**

Any representation, warranty, covenant, term or condition of this Agreement which may legally be waived, may be waived, or the time of performance hereof extended, at any time by the party hereto entitled to the benefit hereof, and any term, condition or covenant hereof may be amended by the parties hereto at any time. Any such waiver, extension or amendment shall be evidenced by an instrument in writing executed on behalf of the appropriate party by a person who has been authorized by such party to execute waivers, extensions or amendments on its behalf. No waiver by any party hereto, whether express or implied, of its rights under any provision of this Agreement shall constitute a waiver of such party's rights under such provisions at any other time or a waiver of such party's rights under any other provision of this Agreement. No failure by any party hereto to take any action against any breach of this Agreement or default by another party shall constitute a waiver of the former party's right to enforce any provision of this Agreement or to take action against such breach or default or any subsequent breach or default by such other party.

**SECTION 10.04 Expenses.**

Except for the Expense Reimbursement to be paid if the Break-up Fee becomes due and payable, each party agrees to pay, without right of reimbursement from the other party, the costs incurred by it incident to the performance of its obligations under this Agreement and the consummation of the transactions contemplated hereby, including costs incident to the preparation of this Agreement, and the fees and disbursements of counsel, accountants and consultants employed by such party in connection herewith. Any payments for sales, transfer or other taxes or fees applicable to the conveyance and transfer to the Purchaser of the Assets

**EXECUTION VERSION**

arising as a result of the transactions contemplated by this Agreement shall be borne by the Purchaser. The provisions of this Section 10.04 shall survive any termination of this Agreement.

**SECTION 10.05 Headings.**

Article titles and headings to sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. Schedule 1 shall be construed with and as an integral part of this Agreement to the same extent as if it was set forth verbatim herein. The specification of any dollar amount in the representations or warranties contained in this Agreement or the inclusion of any specific item in Schedule 1 is not intended to imply that such amounts, or higher or lower amounts, or the items so included or other items, are or are not material, and neither party shall use the fact of the setting of such amounts or the inclusion of any such item in any dispute or controversy between the parties as to whether any obligation, item or matter not described herein or included in Schedule 1 is or is not material for purposes of this Agreement.

**SECTION 10.06 Remedies Cumulative; Specific Performance.**

The rights and remedies of the parties hereto shall be cumulative (and not alternative). The parties to this Agreement agree that, in the event of any breach or threatened breach by any party to this Agreement of any covenant, obligation or other provision set forth herein for the benefit of any other party to this Agreement, such other party shall be entitled (in addition to any other remedy that may be available to it) to seek (a) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision, and (b) an injunction restraining such breach or threatened breach.

**SECTION 10.07 Severability of Provisions.**

In the event that any one or more of the provisions contained in this Agreement shall for any reason whatsoever be declared invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect, and such invalid, void or unenforceable provision shall be interpreted as closely as possible to the manner in which it was written.

**SECTION 10.08 Counterparts.**

This Agreement may be executed in any number of counterparts (and by different parties on separate counterparts), each of which shall be an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopy or by e-mail image shall be effective as delivery of a manually executed counterpart of this Agreement.

**SECTION 10.09 Third-Party Beneficiaries.**

Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any Person other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

**SECTION 10.10 Merger and Integration.**

Except as specifically stated otherwise herein, this Agreement and the exhibits and schedules hereto set forth the entire understanding of the parties hereto relating to the subject matter hereof, and all prior understandings, written or oral, are superseded by this Agreement. The Purchaser expressly acknowledges that the Sellers have not made any representations and warranties other than as set forth herein and in this Agreement. The Purchaser represents and warrants to the Sellers that, independently and without reliance upon the Sellers (other than its reliance on the Sellers' representations, warranties and covenants set forth in this Agreement) and based upon such documents and information as it has deemed appropriate, it has made its own appraisal of the Assets and its own decision to enter into this Agreement and to take, or omit to take, action.

**SECTION 10.11 Successors and Assigns.**

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto.

**SECTION 10.12 Disclosures.**

Any disclosure on a schedule shall be deemed disclosure under all schedules. Disclosure of any matter on a schedule shall not constitute an expression of a view that such matter is material or is required to be disclosed pursuant to this Agreement. To the extent that any representation or warranty set forth herein is qualified by the materiality of the matters to which the representation or warranty relates, the inclusion of any matter on a schedule does not constitute a determination by the Sellers that any such matter is material.

**[The remainder of this page intentionally left blank]**

**[Signature page follows]**



**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

**SELLERS:**

LIFE SETTLEMENTS ABSOLUTE RETURN I, LLC

By:   
Name: Robert J. Davey, III  
Title: Secretary / Treasurer

SENIOR LS HOLDINGS, LLC

By:   
Name: Robert J. Davey, III  
Title: Secretary / Treasurer

**PURCHASER:**

BPCP LIFE SETTLEMENT LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXECUTION VERSION**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective officers as of the day and year first above written.

**SELLERS:**

LIFE SETTLEMENTS ABSOLUTE RETURN I, LLC


By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SENIOR LS HOLDINGS, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PURCHASER:**

BPCP LIFE SETTLEMENT LLC

By:   
Name: Charles Andros  
Title: Authorized Signatory

**Schedule 1**  
**(Schedule of Assets)**

<b>Case Number</b>	<b>Name of Institution</b>	<b>Last 4 Digits of Policy Number</b>	<b>Type of Policy</b>	<b>Face Amount of Policy</b>
02	General American	7876	Life	\$600,000.00
03	West Coast Life	5097	Life	\$1,139,000.00
07	United of Omaha	4928	Life	\$1,000,000.00
11	Lincoln Financial	8137	Life	\$2,985,202.00
15	AIG	991L	Life	\$1,000,000.00
16	Lincoln Financial	7194	Life	\$1,000,000.00
17	AIG	067L	Life	\$1,000,000.00
18	AIG	069L	Life	\$1,017,141.00
19	Canada Life	640	Life	\$2,838,663.00
20	ING	351E	Life	\$2,300,000.00
21	Hartford Life	8921	Life	\$3,000,000.00
23	John Hancock	0057	Life	\$1,500,000.00
26	Pioneer Mutual	4830	Life	\$2,000,000.00
33	Pacific Life	8710	Life	\$2,000,000.00
37	Lincoln Financial	4680	Life	\$1,000,000.00
38	Athene	2300	Life	\$5,000,000.00
39	MetLife	3626	Life	\$1,500,000.00
40	West Coast Life	0515	Life	\$2,000,000.00
47	Hartford Life	0133	Life	\$1,000,000.00
48	Lincoln Financial	1486	Life	\$3,884,000.00
49	Athene	6429	Life	\$425,000.00
50	John Hancock	2598	Life	\$1,500,000.00
54	AIG	978L	Life	\$3,000,000.00
55	Hartford Life	4055	Life	\$1,000,000.00
61	Pacific Life	4950	Life	\$6,500,000.00
62	Hartford Life	9637	Life	\$1,000,000.00
63	Hartford Life	5198	Life	\$1,000,000.00
64	Phoenix Life	0902	Life	\$8,650,000.00
66	John Hancock	8079	Life	\$5,074,170.00
67	John Hancock	7147	Life	\$2,500,000.00
69	John Hancock	7663	Life	\$1,059,754.00
70	John Hancock	7689	Life	\$3,164,942.00
71	John Hancock	7618	Life	\$3,183,803.00
77	Pacific Life	9870	Life	\$600,000.00
78	Sun Life	5694	Life	\$3,000,000.00
80	Transamerica	7794	Life	\$500,000.00
85	Transamerica	2743	Life	\$4,000,000.00
87	AXA Equitable	0016	Life	\$5,000,000.00
89	Banner Life	3947	Life	\$300,000.00
93	Nationwide	0290	Life	\$325,000.00
94	Transamerica	9437	Life	\$1,000,000.00
95	Lincoln Financial	9583	Life	\$5,000,000.00
<b>Total Face Value of Policy Portfolio</b>				<b>\$95,546,675.00</b>

**Exhibit A**  
**(Form of Sale Order)**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

LIFE SETTLEMENTS ABSOLUTE  
RETURN I, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 17-13030 (MFW)  
(Jointly Administered)

Related D.I.: \_\_\_\_\_

**ORDER (A) AUTHORIZING AND APPROVING THE SALE OF  
SUBSTANTIALLY ALL OF DEBTORS' ASSETS TO BPCP LIFE SETTLEMENT LLC  
IN ACCORDANCE WITH THE TERMS OF THE PURCHASE AND SALE  
AGREEMENT FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES,  
AND OTHER INTERESTS, (B) APPROVING THE ASSUMPTION AND ASSIGNMENT  
OF THE ASSUMED CONTRACTS,  
AND (C) GRANTING RELATED RELIEF**

Upon the Debtors' *Motion Pursuant to 11 U.S.C. §§ 105, 363, 365, 503 and 507 and Bankruptcy Rules 2002, 6004, and 6006 for (I) Entry of an Order (A) Establishing Bid and Auction Procedures Related to the Sale of Substantially All of the Debtors' Assets; (B) Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Certain Notice Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases to be Assumed and Assigned; and (E) Granting Certain Related Relief; and (II) Entry of an Order (A) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases [D.I. \_\_\_\_]*

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Life Settlements Absolute Return I, LLC (7992) and Senior LS Holdings, LLC (5731). The mailing address for the Debtors, solely for purposes of notices and communications, is: 6650 Rivers Avenue, Suite 105 #81921, North Charleston, SC 29406-4829, with copies to Nelson Mullins Riley & Scarborough LLP, c/o Shane G. Ramsey, 150 Fourth Avenue North, Suite 1100, Nashville, TN 37219 and Bayard, P.A., c/o Evan T. Miller, 600 N. King Street, Suite 400, Wilmington, DE 19801.

(the “**Sale Motion**”),<sup>2</sup> for entry of orders pursuant to sections 105, 363 and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”), and rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”): (a) authorizing a sale process for substantially all of Debtors’ assets and approving the sale of the assets free and clear of all liens, claims, encumbrances and other interests (excluding the buyer’s assumed obligations under the Purchase and Sale Agreement) pursuant to the terms and conditions of that certain Purchase and Sale Agreement (substantially in the form attached hereto as **Exhibit A**, the “**Purchase and Sale Agreement**”) by and between Life Settlements Absolute Return I, LLC and Senior LS Holdings, LLC (collectively, the “**Debtors**”), on the one hand, and BPCP Life Settlement LLC (the “**Buyer**”), on the other hand, dated as of January 29, 2019; (b) authorizing and approving the assumption and assignment of the Assumed Contracts; and (c) granting related relief; and the Court having entered the *Order Pursuant to 11 U.S.C. §§ 105, 363, 365, 503 and 507 And Fed. R. Bankr. P. 2002, 6004, and 6006 (A) Establishing Bid and Auction Procedures for the Proposed Sale of Substantially All of The Debtors’ Assets, (B) Approving the Purchase and Sale Agreement, (C) Approving Related Bid Protections, (D) Scheduling an Auction and a Sale Hearing and Approving Notice Thereof; (E) Approving Procedures for Determining Cure Amounts For Executory Contracts and Unexpired Leases to be Assumed and Assigned and Notice Thereof; and (F) Granting any Related Relief* [Docket No. \_\_\_] on [\_\_\_\_\_, 2019] (the “**Bid Procedures Order**”); and upon adequate and sufficient notice of the Sale Motion, the Auction and the hearing held before the Court on [\_\_\_\_\_, 2019] (the “**Sale Hearing**”); and the Court having reviewed and considered (a) the Sale Motion and all relief related thereto, (b)

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<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Purchase and Sale Agreement (as defined herein) and the Sale Motion, as applicable. To the extent of any inconsistency, the Purchase and Sale Agreement shall govern.

the objections and related responses thereto, and (c) the statements of counsel and evidence presented in support of the relief requested by the Debtors at the hearing after which the Bid Procedures Order was entered by the Court (the “**Bid Procedures Hearing**”) and at the Sale Hearing; and it appearing that the Court has jurisdiction over the Sale Motion and judicial authority to enter a final order with respect to this matter; and it further appearing that the legal and factual bases set forth in the Sale Motion, at the Bid Procedures Hearing and at the Sale Hearing establish just cause for the relief granted herein (the “**Sale Order**”); and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates, creditors and other parties in interest; and upon the record of the Bid Procedures Hearing and the Sale Hearing, and all other pleadings and proceedings in these Chapter 11 Cases, including the Sale Motion; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby **FOUND AND DETERMINED THAT:**<sup>3</sup>

**Jurisdiction, Final Order and Statutory Predicates**

A. This Court has jurisdiction to hear and determine the Sale Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a).

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<sup>3</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the Sale Motion are hereby incorporated herein to the extent not inconsistent herewith. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.



C. The statutory predicates for the relief requested in the Sale Motion are §§ 105(a), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014.

**Notice of the Sale and Auction**

D. In accordance with the Bid Procedures Order approving, among other things, the proposed procedures for bidding at the auction, actual written notice of the Sale Motion was provided to the following parties (the “**Notice Parties**”): (a) the United States Trustee for the District of Delaware; (b) the creditors listed on the Debtors’ consolidated list of 20 largest unsecured creditors, as filed with the Debtors’ chapter 11 petitions; (c) counsel to the Buyer; (c) all parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; (d) various federal, state, county and city tax and regulatory authorities; (e) all entities known to have expressed an interest in a transaction with respect to the Property or that has been identified by the Debtors or their advisors as a potential buyer of the Property; and (f) all parties requesting notice pursuant to Bankruptcy Rule 2002.

E. Notice of the Auction was published one day in the *Life Settlements Report* and also with the Life Settlement Institute.

F. Notice of the Auction and Sale Hearing was reasonably calculated to provide all interested parties with timely and proper notice of the Sale, Sale Hearing and Auction.

G. As evidenced by the affidavits of service previously filed with the Court, proper, timely, adequate, and sufficient notice of the Sale Motion, Auction, Sale Hearing, the Sale and the transactions contemplated thereby has been provided in accordance with the Bid Procedures Order, sections 105(a) and 363 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9008. The notices described above were good, sufficient and appropriate under the circumstances, and no other or further notice of the Sale Motion, Auction, Sale Hearing or the Sale is or shall be required.

H. The disclosures made by the Debtors concerning the Sale Motion, the Purchase and Sale Agreement, the Auction and the Sale are good, complete and adequate.

I. A reasonable opportunity to object and be heard with respect to the Sale and the Sale Motion and the relief requested therein has been afforded to all interested persons and entities, including the Notice Parties.

**Good Faith of Buyer**

J. The Purchase and Sale Agreement was negotiated, proposed and entered into by the Seller and the Buyer without collusion, in good faith and at arm's length.

K. Neither the Debtors nor the Buyer have engaged in any conduct that would cause or permit the Purchase and Sale Agreement to be avoided under section 363(n) of the Bankruptcy Code. Specifically, the Buyer has not acted in a collusive manner with any person and the aggregate price paid by Buyer for the Property (the "**Purchase Price**") was not controlled by any agreement among any potential or actual bidder for the Property.

L. The Buyer is purchasing the Property in good faith, is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code. The Buyer has proceeded in good faith in all respects in connection with this proceeding, as, *inter alia*: (a) the Buyer complied with the provisions in the Bid Procedures Order; (b) the Buyer's bid was subject to the competitive bidding procedures set forth in the Bid Procedures Order; and (c) all payments to be made by the Buyer in connection with the Sale have been disclosed.

**Highest and Best Offer**

M. The Debtors conducted an auction process in accordance with, and have otherwise complied in all respects with, the Bid Procedures Order. The auction process set forth in the Bid Procedures Order afforded a full, fair and reasonable opportunity for any person

or entity to make a higher or otherwise better offer to purchase the Property. The Auction was duly noticed and conducted in a fair, good faith manner and a reasonable opportunity has been given to all interested parties to make a higher and better offer for the Property and no evidence was presented as to any collusion among bidders or potential bidders.

N. The offer contained in the Purchase and Sale Agreement for the purchase of the Property constitutes the highest and best offer for the Property. The Debtors' determination that the Purchase and Sale Agreement constitutes the highest and best offer for the Property constitutes a valid and sound exercise of the Debtors' business judgment.

**No Fraudulent Transfer**

O. The consideration provided by the Buyer pursuant to the Purchase and Sale Agreement for the Property acquired from the Debtors (a) is fair and reasonable, (b) is the highest or best offer for the Property, and (c) constitutes fair consideration and reasonably equivalent value (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Voidable Transfer Act (as applicable), Uniform Fraudulent Conveyance Act and section 548 of the Bankruptcy Code) under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia.

P. The Debtors have subjected the Property to the market pursuant to the Bid Procedures Order and the process has not produced an offer of greater economic value to the Debtors estates than the Buyer's offer, as set forth in the Purchase and Sale Agreement.

Q. Approval of the Sale Motion and the Purchase and Sale Agreement and the consummation of the transactions contemplated thereby is in the best interests of the Debtors, their estates, creditors and other parties in interest.

R. The Buyer is not a continuation of the Debtors or of their estates, and there is no continuity of enterprise between the Buyer and the Debtors. The Buyer is not holding itself out

to the public as a continuation of the Debtors. The Buyer is not a successor to the Debtors or their estates and the Sale does not amount to a consolidation, merger or *de facto* merger of the Buyer and the Debtors.

### **Validity of Transfer**

S. Each Debtor (a) has full corporate power and authority to execute and deliver the Purchase and Sale Agreement and all other documents contemplated thereby, (b) has all corporate authority necessary to consummate the transactions contemplated by the Purchase and Sale Agreement and (c) has taken all corporate action necessary to authorize and approve the Purchase and Sale Agreement and the consummation of the transactions contemplated thereby. The Debtors' sale of the Property has been duly and validly authorized by all necessary corporate action. No consents or approvals, other than those expressly provided for in the Purchase and Sale Agreement, are required for the Debtors to consummate the Sale and the Purchase and Sale Agreement and the transactions contemplated thereby.

T. No evidence was presented to establish that (a) the Purchase and Sale Agreement was entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession or the District of Columbia, and (b) either the Debtors or the Buyer are entering into the transactions contemplated by the Purchase and Sale Agreement fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims.

U. The Debtors are the sole and lawful owners of the Property. Subject to section 363(f) of the Bankruptcy Code, the transfer of the Property to the Buyer will be, as of the closing of the transactions contemplated by the Purchase and Sale Agreement (the "**Closing**"), a legal, valid, and effective transfer of the Property, which transfer vests or will vest the Buyer with all right, title, and interest of the Debtors to the Property free and clear of all

liens of any kind (statutory, otherwise, or whether known or unknown, secured or unsecured or in the nature of setoff or recoupment, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or nonmaterial, disputed or undisputed, whether arising prior to or subsequent to the commencement of the Bankruptcy Case, and whether imposed by agreement, understanding, Law, equity, or otherwise, including claims otherwise arising under doctrines of successor liability) (collectively, “**Liens**”), encumbrances, claims (as defined in section 101(5) of the Bankruptcy Code), interests, rights, demands, charges, mortgages, deeds of trust, options, pledges, security interests or similar interests, title defects, hypothecations, security agreements, rights of recovery, rights of first refusal, preemptive rights, judgments, decrees, consent decrees, taxes, conditional sale or other title retention agreements, product liability or any claims based on any theory that Buyer is a successor, transferee or continuation of each Debtor or such Debtor’s business, and other impositions, imperfections or defects of title or restrictions on transfer or use of any nature whatsoever (collectively, “**Claims**”), including, but not limited to, any applicable Uniform Commercial Code filings and liens pursuant to state statutory lien laws or any other applicable local laws, relating to, accruing or arising any time prior to the Closing Date, with the exception of Buyer’s assumed obligations under the Purchase and Sale Agreement.

**Section 363(f) is Satisfied**

V. The Debtors may sell the Property free and clear of all Liens and Claims against the Debtors, their estates or any of the Property (other than the Buyer’s assumed obligations under the Purchase and Sale Agreement) because, in each case, one or more of the standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied. Those holders of Liens

or Claims against the Debtors, their estates or any of the Property who did not object, or who withdrew their objections, to the Sale or the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. All other holders of Liens or Claims (except to the extent that such Liens or Claims are the Buyer's assumed obligations) are adequately protected by having their Liens or Claims, if any, in each instance against the Debtors, their estates or any of the Property, attach to the net cash proceeds of the Sale ultimately attributable to the Property, in which such creditor alleges a Lien or Claim, in the same order of priority, with the same validity, force and effect that such Liens or Claims had prior to the Sale, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

W. Unless otherwise expressly included as the Buyer's assumed obligations, the Buyer shall not be responsible for any Liens or Claims, including in respect of the following: (a) any labor or employment agreements; (b) all mortgages, deeds of trust and security interests; (c) intercompany loans and receivables between the Debtors and any non-Debtor subsidiary; (d) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any Debtor; (e) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Act of 1988, (vii) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, (x) state

discrimination laws, (xi) state unemployment compensation laws or any other similar state laws or any other state or federal benefits or claims relating to any employment with any of the Debtors or any of their respective predecessors; (f) Claims or Liens arising under any Environmental Laws with respect to any assets owned or operated by Debtors or any corporate predecessor at any time prior to the Closing Date; (g) any other liabilities of the Debtors other than the Buyer's Assumed Obligations (collectively, the "**Excluded Liabilities**"); (h) any bulk sales or similar law; (i) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended and state tax statutes or ordinances providing for the payment of sales taxes; and/or (j) any theories of successor liability.

**Compelling Circumstances for an Immediate Sale**

X. Good and sufficient reasons for approval of the Purchase and Sale Agreement and the Sale have been articulated. The relief requested in the Sale Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest. The Debtors have demonstrated both (a) good, sufficient and sound business purposes and justifications and (b) compelling circumstances for the Sale other than in the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code before, and outside of, a plan of reorganization, in that, among other things, the immediate consummation of the Sale to the Buyer is necessary and appropriate to maximize the value of the Debtors' estates and the Sale will provide the means for the Debtors to maximize distributions to creditors. The Purchase and Sale Agreement does not impermissibly restructure the rights of the Debtors' creditors and does not impermissibly dictate the terms of a chapter 11 plan for the Debtors, and therefore does not constitute a *sub rosa* plan.

Y. To maximize the value of the Property and preserve the viability of the business to which the Property relate, it is essential that the Sale of the Property occur within the time

constraints set forth in the Purchase and Sale Agreement. Time is of the essence in consummating the Sale.

Z. Given all of the circumstances of these Chapter 11 Cases and the adequacy and fair value of the Purchase Price under the Purchase and Sale Agreement, the proposed Sale of the Property to the Buyer constitutes a reasonable and sound exercise of the Debtors' business judgment and should be approved.

AA. The consummation of the Sale and the assumption and assignment of the Assumed Contracts is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m) and 365 and all of the applicable requirements of such sections have been complied with in respect of the transaction.

**Adequate Assurance of Future Performance**

BB. The Buyer has demonstrated adequate assurance of future performance with respect to the Assumed Contracts pursuant to Bankruptcy Code section 365(b)(1)(C).

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

**General Provisions**

1. The relief requested in the Sale Motion is granted and approved as set forth in this Sale Order, and the Sale contemplated thereby is approved.

2. Any objections to the Sale Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court, and all reservations of rights included therein, are hereby denied and overruled with prejudice for the reasons articulated by the Court at the Sale Hearing.



**Approval of the Purchase and Sale Agreement**

3. The Purchase and Sale Agreement and all other ancillary documents, and all of the terms and conditions thereof, are hereby approved. The Buyer shall file final versions of the Purchase and Sale Agreement and all other ancillary documents (excluding related disclosure schedules) with the Court upon closing the Sale. Disclosure schedules that do not contain confidential information shall be provided to other parties only upon a reasonable written request to the Debtors.

4. Pursuant to sections 363(b) and (f) of the Bankruptcy Code, the Debtors are authorized and empowered to take any and all actions necessary or appropriate to (a) consummate the Sale of the Property to the Buyer pursuant to and in accordance with the terms and conditions of the Purchase and Sale Agreement, (b) close the Sale as contemplated in the Purchase and Sale Agreement and this Sale Order, (c) execute and deliver, perform under, consummate, implement, and close fully the Purchase and Sale Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase and Sale Agreement and the Sale.

5. This Sale Order shall be binding in all respects upon the Debtors, their estates, all creditors of, and holders of equity interests in, any Debtor, any holders of Liens, Claims or other interests in, against or on all or any portion of the Property (whether known or unknown), the Buyer and all successors and assigns of the Buyer, the Property and any trustees, if any, subsequently appointed in any of the Debtors' Chapter 11 Cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of the Debtors' cases. This Sale Order and the Purchase and Sale Agreement shall inure to the benefit of the Debtors, their estates and creditors, the Buyer and the respective successors and assigns of each of the foregoing.

6. The Purchase and Sale Agreement and any ancillary documentation may be modified, amended or supplemented by the parties thereto, in a writing signed by the parties and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

**Assumption and Assignment of Contracts**

7. Pursuant to Bankruptcy Code sections 105(a) and 365, and subject to and conditioned upon the closing of the Sale, the Debtors' assumption and assignment to the Buyer, and the Buyer's assumption on the terms set forth in the Purchase and Sale Agreement, of the Assumed Contracts is hereby approved and the requirements of Bankruptcy Code section 365(b)(1) with respect thereto are hereby deemed satisfied.

8. The Debtors are authorized and directed in accordance with sections 105(a), 363 and 365(a) of the Bankruptcy Code to (a) assume and assign to the Buyer, effective upon the Closing of the Sale, the Assumed Contracts, free and clear of all Claims, Liens or other interests of any kind or nature whatsoever; and (b) execute and deliver to Buyer such documents or other instruments as may be reasonably necessary to assign and transfer the Assumed Contracts to the Buyer.

9. The Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Buyer in accordance with their respective terms, notwithstanding any provision in any such Assigned Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts or conditions such assignment or transfer. In addition, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Assumed Contracts after such assignment

to, and assumption by, the Buyer, except as may be provided in the Purchase and Sale Agreement.

10. Defaults or other obligations of the Debtors under the Assumed Contracts arising or accruing prior to the Closing Date (without giving effect to any acceleration clauses or any default provisions of the kind specified in Bankruptcy Code section 365(b)(2)) shall be cured pursuant to the terms of the Purchase and Sale Agreement on the Closing Date, or as soon thereafter as is reasonably practicable.

11. To the extent a counterparty to an Assigned Contract failed to timely object to a Cure Amount, such Cure Amount shall be deemed to be finally determined and any such counterparty shall be prohibited from challenging, objecting to or denying the validity and finality of the Cure Amount at any time, and such Cure Amount, when paid, shall completely revive any Assigned Contract to which it relates. No sections or provisions of any Assigned Contract that purport to provide for additional payments, penalties, charges or other financial accommodations in favor of the non-debtor third party to the Assumed Contracts shall have any force and effect with respect to the Sale and assignments authorized by this Sale Order. Such provisions constitute unenforceable, anti-assignment provisions under section 365(f) of the Bankruptcy Code and are otherwise unenforceable under section 365(e) of the Bankruptcy Code. The non-debtor party to each Assigned Contract shall be deemed to have consented to such assignment under section 365(c)(1)(B) of the Bankruptcy Code and Buyer shall enjoy all of the Debtors' rights and benefits under each such Assigned Contract as of the applicable date of assumption without the necessity of obtaining such non-debtor party's consent to the assumption or assignment thereof.

12. With respect to objections to any Cure Amounts that remain unresolved as of the Sale Hearing, such objections shall be resolved in accordance with the procedures set forth in the Bid Procedures Order.

13. Nothing in this Sale Order, the Sale Motion or in any notice or any other document is or shall be deemed an admission by the Debtors that any contract is an executory contract or must be assumed and assigned pursuant to the Purchase and Sale Agreement or in order to consummate the Sale.

14. The failure of the Debtors or the Buyer to enforce at any time one or more terms or conditions of any Assigned Contract shall not be a waiver of such terms or conditions or of the Debtors' and Buyer's rights to enforce every term and condition of such Assigned Contract.

15. All parties to the Assumed Contracts are forever barred and enjoined from raising or asserting against the Buyer any assignment fee, default, breach, Claim, pecuniary loss or condition to assignment arising under or related to the Assumed Contracts existing as of the Closing Date or arising by reason of the Closing, except for any amounts that are Buyer's Assumed Obligations.

### **Transfer of the Property**

16. Pursuant to sections 105(a), 363(b), and 363(f) of the Bankruptcy Code, the Debtors are authorized to transfer the Property to the Buyer on the Closing Date, and such transfer shall constitute a legal, valid, binding, and effective transfer of such Property and shall vest the Buyer with title to the Property, upon the Debtors' receipt of the Purchase Price and with the exception of the Buyer's assumed obligations, free and clear of all Liens, Claims and other interests of any kind or nature whatsoever, including but not limited to, successor or successor-in-interest liability and Claims in respect of the Excluded Liabilities, with all such Liens, Claims or other interests to attach to the net cash proceeds, ultimately attributable to the property against

or in which such Liens, Claims or interests are asserted, subject to the terms thereof, with the same validity, force and effect, and in the same order of priority, which such Liens, Claims or interests now have against the Property, subject to any rights, claims and defenses the Debtors or their estates, as applicable, may possess with respect thereto. Upon the Closing, the Buyer shall take title to and possession of the Property subject only to the Buyer's assumed obligations.

17. Except with respect to the Buyer's assumed obligations, all persons and entities that are in possession of some or all of the Property on the Closing Date are directed to surrender possession of such Property to the Buyer at the Closing. On the Closing Date, or as soon as possible thereafter, each of the Debtors' creditors is authorized and directed, and the Buyer is hereby authorized, on behalf of each of the Debtors' creditors, to execute such documents and take all other actions as may be reasonably necessary to release such creditor's Liens, Claims or other interests in the Property, if any, as such Liens, Claims or interests may have been recorded or may otherwise exist.

18. The Debtors are authorized to take any and all actions necessary to consummate the Purchase and Sale Agreement, including any actions that otherwise would require further approval by members, managers, shareholders or a board of directors without the need of obtaining such approvals.

19. On the Closing Date, this Sale Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Debtors' interests in the Property. Each and every federal, state, and local governmental agency and department is directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase and Sale Agreement.

20. A certified copy of this Sale Order may be filed with the appropriate clerk and/or recorded with the recorder to act to cancel any Liens, Claims, and other encumbrances of record, except the Buyer's Assumed Obligations and Permitted Encumbrances.

21. If any person or entity which has filed statements or other documents or agreements evidencing Liens on, or interests in, all or any portion of the Property (other than statements or documents with respect to Buyer's assumed obligations) shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all liens or interests which the person or entity has or may assert with respect to all or any portion of the Property, the Debtors are authorized and directed, and the Buyer is authorized, on behalf of the Debtors and each of the Debtors' creditors, to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Property.

22. This Sale Order is and shall be effective as a determination that on the Closing Date, all Liens, Claims or other interest of any kind or nature whatsoever existing as to the Property prior to the Closing Date, other than the Buyer's assumed obligations, shall have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected; provided, however, that notwithstanding anything to the contrary in this Sale Order, all Liens, Claims or other interests of any kind or nature whatsoever existing as to the assets of the Debtors other than the Property shall have the same validity, force, priority and effect that such Liens, Claims or interests had prior to the Sale, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

23. This Sale Order is and shall be binding upon and govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase and Sale Agreement. As of the Closing Date, each insurer in connection with the policies transferred pursuant to the Purchase and Sale Agreement (the “**Policies**”) shall record and conform its books and records of the Policies to establish the Buyer as the sole owner and beneficiary of the Policies.

24. As of the Closing Date, the Buyer, its successors and assigns, shall be designated and appointed the Debtors’ true and lawful attorney with full power of substitution in the Debtors’ name and stead on behalf of and for the benefit of the Buyer, its successors and assigns, for the following sole and limited purposes: have the power to demand and receive from any third party any and all of the Property and to give receipts and releases for and in respect of the Property, or any part thereof, and from time to time to institute and prosecute against third parties for the benefit of the Buyer, its successors and assigns, any and all proceedings at law, in equity or otherwise, which the Buyer, its successors and assigns, may deem proper for the collection or reduction to possession of any of the Property.

25. To the extent permitted by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Property sold, transferred or conveyed to the Buyer on account of the filing or pendency of the Debtors' Chapter 11 Cases or the consummation of the transactions contemplated by the Purchase and Sale Agreement.

26. As of the Closing Date, the Buyer shall be authorized, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the Property, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, deemed to be transferred to the Buyer as of the Closing Date.

**Prohibition of Actions Against the Buyer**

27. Except for the Buyer's assumed obligations, the Buyer shall not have any liability or other obligation of the Debtors. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein or in the Purchase and Sale Agreement, the Buyer shall not be liable for any Claims against the Debtors or any of its predecessors or affiliates, and the Buyer shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, under any theory of antitrust, environmental, successor or transferee liability, labor law, *de facto* merger, mere continuation, or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether asserted or un-asserted, whether legal or equitable, whether liquidated or unliquidated, including, but not limited to, liabilities on account of warranties, intercompany loans and receivables between the Debtors and any non-Debtor subsidiary, liabilities relating to or arising from any Environmental Laws, and any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of any of the Property prior to the Closing.



28. Except with respect to the Buyer's assumed obligations, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors, litigation claimants and other creditors, holding Liens, Claims or other interests of any kind or nature whatsoever against or in all or any portion of the Property (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinate), arising under or out of, in connection with, or in any way relating to the Debtors, the Property, the operation of the Debtors' Business prior to the Closing Date or the transfer of the Property to the Buyer, hereby are forever barred, estopped and permanently enjoined from asserting against the Buyer, any of its affiliates, its successors or assigns, its property or the Property, such persons' or entities' Liens, Claims or interests in and to the Property, including, without limitation, the following actions: (a) commencing or continuing in any manner any action or other proceeding against the Buyer, any of its affiliates, its successors, assets or properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Buyer, any of its affiliates, its successors, assets or properties; (c) creating, perfecting, or enforcing any Lien or other Claim against the Buyer, any of its affiliates, its successors, assets, or properties; (d) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due to the Buyer, any of its affiliates or successors; (e) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Sale Order or other orders of the Court, or the agreements or actions contemplated or taken in respect thereof; or (f) revoking, terminating or failing or refusing to transfer or renew any license, permit or authorization to operate any of the Property or conduct any of the businesses operated with the Property.

29. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Property to the Buyer in accordance with the terms of the Purchase and Sale Agreement and this Sale Order.

30. Except to the extent expressly included in the Buyer's assumed obligations, or by applicable law or statute, the Buyer and its affiliates shall have no liability, obligation or responsibility under the WARN Act (29 U.S.C. §§ 210 *et seq.*), the Comprehensive Environmental Response Compensation and Liability Act or any foreign, federal, state or local labor, employment or Environmental Law by virtue of the Buyer's purchase of the Property or assumption of the Assumed Obligations.

#### **Other Provisions**

31. The Buyer shall assume the Buyer's assumed obligations set forth in the Purchase and Sale Agreement.

32. The transactions contemplated by the Purchase and Sale Agreement are undertaken by the Buyer in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale, unless such authorization and such Sale are duly stayed pending such appeal. The Buyer is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

33. The purchase of the Property may not be avoided under section 363(n) of the Bankruptcy Code, as the Purchase Price and consideration for the Property was not a result of collusion nor controlled by an agreement among potential bidders at such sale.

34. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in (a) these chapter 11 cases, (b) any subsequent chapter 7 case into which any such chapter 11 case may be converted, or (c) any related proceeding subsequent to entry of this Sale Order, shall conflict with or derogate from the provisions of the Purchase and Sale Agreement or the terms of this Sale Order, including, without limitation, the distribution of net Sale proceeds authorized above.

35. No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Sale.

36. The failure specifically to include any particular provision of the Purchase and Sale Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase and Sale Agreement be authorized and approved in its entirety; *provided, however*, that this Sale Order shall govern if there is any inconsistency between the Purchase and Sale Agreement (including all ancillary documents executed in connection therewith) and this Sale Order. Likewise, all of the provisions of this Sale Order are non-severable and mutually dependent.

37. The Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order and the Purchase and Sale Agreement, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned by the Debtors to the Buyer, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Property to Buyer; (b) interpret, implement and enforce the provisions of this Sale

Order; and (c) protect Buyer against any Liens, Claims or other interest in or against the Sellers or the Property of any kind or nature whatsoever, attaching to the proceeds of the Sale.

38. Nothing in this Sale Order or the Purchase and Sale Agreement (a) releases, nullifies, or enjoins the enforcement of any liability to a governmental unit under police and regulatory statutes or regulations that any entity would be subject to as the owner or operator of property after the date of entry of this Sale Order or (b) authorizes the transfer or assignment to Buyer of any license, permit, registration, authorization, or approval of or with respect to a governmental unit without Buyer's complying with all applicable legal requirements under non-bankruptcy law governing such transfers or assignments.

39. All time periods set forth in this Sale Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

40. Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), this Sale Order shall be effective immediately upon its entry.

41. To the extent that this Sale Order is inconsistent with any prior order or pleading with respect to the Sale Motion in these chapter 11 cases, the terms of this Sale Order shall govern.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

\_\_\_\_\_  
THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**  
**(Form of Bidding Procedures Order)**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

LIFE SETTLEMENTS ABSOLUTE  
RETURN I, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 17-13030 (MFW)  
(Jointly Administered)

Related D.I.: \_\_\_\_\_

**ORDER PURSUANT TO 11 U.S.C. §§ 105, 363, 365, 503 AND 507 AND FED. R. BANKR. P. 2002, 6004, AND 6006 (A) ESTABLISHING BID AND AUCTION PROCEDURES FOR THE PROPOSED SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS; (B) APPROVING THE PURCHASE AND SALE AGREEMENT; (C) APPROVING RELATED BID PROTECTIONS; (D) SCHEDULING AN AUCTION AND A SALE HEARING AND APPROVING NOTICE THEREOF; (E) APPROVING PROCEDURES FOR DETERMINING CURE AMOUNTS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES TO BE ASSUMED AND ASSIGNED AND NOTICE THEREOF; AND (F) GRANTING RELATED RELIEF**

Upon consideration of the *Motion Pursuant to 11 U.S.C. §§ 105, 363, 365, 503 And 507 and Bankruptcy Rules 2002, 6004 and 6006 for (I) Entry of an Order (A) Establishing Bid and Auction Procedures Related to the Sale of Substantially All of the Debtors' Assets; (B) Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Certain Notice Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases to be Assumed and Assigned; and (E) Granting Related Relief; and (II) Entry of an Order (A) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (B) Authorizing the Assumption*

<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Life Settlements Absolute Return I, LLC (7992) and Senior LS Holdings, LLC (5731). The mailing address for the Debtors, solely for purposes of notices and communications, is: 6650 Rivers Avenue, Suite 105 #81921, North Charleston, SC 29406-4829, with copies to Nelson Mullins Riley & Scarborough LLP, c/o Shane G. Ramsey, 150 Fourth Avenue North, Suite 1100, Nashville, TN 37219 and Bayard, P.A., c/o Evan T. Miller, 600 N. King Street, Suite 400, Wilmington, DE 19801.

*and Assignment of Certain Executory Contracts and Unexpired Leases* (the “**Sale Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”); and the Court having determined that the relief provided herein is in the best interest of the Debtors, their estates, their creditors and other parties in interest; and due and adequate notice of the Sale Motion having been given under the circumstances; and upon the record of the hearing on the Sale Motion, and the full record of these cases; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby:

**FOUND AND DETERMINED:**<sup>3</sup>

A. This Court has jurisdiction over the Sale Motion and the transactions contemplated by the Purchase and Sale Agreement pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. Good and sufficient notice of the Sale Motion and the relief sought therein has been given under the circumstances, and no other or further notice is required except as set forth herein.

C. A reasonable opportunity to object or to be heard regarding the relief provided herein has been afforded to parties-in-interest.

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<sup>2</sup> Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion or the Purchase and Sale Agreement between BPCP Life Settlement LLC (the “**Proposed Purchaser**”) and Life Settlements Absolute Return I, LLC and Senior LS Holdings, LLC (the “**Purchase and Sale Agreement**”), as applicable.

<sup>3</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

D. The notice proposed by the Debtors is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the relief sought in the Sale Motion.

E. The Purchase and Sale Agreement represents the best offer the Debtors have received as a result of their post-petition efforts to market the Property.

F. No party, to date, has offered to enter into an agreement for the purchase of the Property on terms acceptable to the Debtors other than the Proposed Purchaser, as set forth in the Purchase and Sale Agreement. The execution of the Purchase and Sale Agreement is a necessary prerequisite to determining whether any party other than the Proposed Purchaser is willing to enter into a definitive agreement for the acquisition of the Property on terms acceptable to the Debtors and their creditor constituencies.

G. The Debtors have articulated good and sufficient business reasons for this Court to approve: (a) the Bid Procedures; (b) the scheduling of a bid deadline, Auction and Sale Hearing with respect to the proposed sale of the Property; (c) payment of the Break-Up Fee and Expense Reimbursement under the terms and conditions set forth in the Purchase and Sale Agreement; and (d) the establishment of procedures to fix the Cure Amounts to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption, assignment and/or transfer of certain executory contracts and unexpired nonresidential real property leases (the **“Designated Executory Contract”**).

H. The Bid Procedures are reasonably designed to maximize the value to be obtained for the Property.

I. Each of the Break-Up Fee and the Expense Reimbursement is: (a) commensurate to the real and substantial benefit conferred upon the Debtors’ estates by the Proposed Purchaser;



(b) reasonable and appropriate in light of the size and nature of the proposed sale, comparable transactions, the commitments that have been made, and the efforts that have been and will be expended by the Proposed Purchaser; and (c) necessary to induce the Proposed Purchaser to continue to pursue the purchase of the Property and to be bound by the Purchase and Sale Agreement.

J. The assurance of the payment of the Break-Up Fee and Expense Reimbursement: (a) will promote more competitive bidding by inducing the Proposed Purchaser's bid, which otherwise would not have been made and which may be the highest and/or best available offer for the Property; (b) induced the Proposed Purchaser to, conduct extensive due diligence and propose the transaction, including, among other things, submission of a bid that will serve as a minimum bid on which all other bidders can rely; and (c) will provide a benefit to the Debtors' estates by increasing the likelihood that the price at which the Property is sold will reflect market value.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. The request for entry of the Bid Procedures Order is **GRANTED** as provided herein.

2. All objections to the request for entry of the Bid Procedures Order or the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits.

**Approval of the Purchase and Sale Agreement and Bid Procedures**

3. Immediately upon entry of this Order, the Purchase and Sale Agreement shall be binding upon the parties thereto in accordance with its terms.

4. The Bid Procedures, in substantially the form attached hereto as **Schedule 1**, are incorporated herein, approved in their entirety and shall apply with respect to the sale of the

Property. The Debtors are authorized to take all actions incidental, necessary and appropriate to implement the Bid Procedures.

5. The Break-Up Fee and Expense Reimbursement are approved in their entirety.

6. The Break-Up Fee and Expense Reimbursement shall be paid to the Proposed Purchaser pursuant to the terms and conditions set forth in the Purchase and Sale Agreement without need for further order of the Court; *provided, however*, this Court shall retain jurisdiction to hear any dispute with respect to the Proposed Purchaser's entitlement to the Break-Up Fee or Expense Reimbursement pursuant to the terms Purchase and Sale Agreement.

7. As further described in the Bid Procedures, the deadline for submitting bids for the Property (the "**Bid Deadline**") is \_\_\_\_\_, **2019, at 5:00 p.m. (prevailing Eastern Time)**. No bid shall be deemed to be a Qualifying Bid (as defined in the Bid Procedures) or otherwise considered for any purposes unless such bid meets the requirements set forth in the Bid Procedures. As set forth in the Bid Procedures, any Qualifying Bid shall provide sufficient cash to pay, in full, at closing, an amount equal to or greater than the aggregate of (a) the consideration offered for the Property in the Purchase and Sale Agreement, plus (b) the sum of the Break-Up Fee and Expense Reimbursement, plus (c) \$200,000.00.

8. The Debtors may conduct an Auction in accordance with the Bid Procedures. If one or more Qualifying Bids are timely received by the Debtors in accordance with the Bid Procedures, the Auction shall take place on \_\_\_\_\_, **2019 at \_\_:\_\_ .m. (prevailing Eastern Time)**, at the offices of Nelson Mullins Riley & Scarborough LLP, 104 South Main Street, Suite 900, Greenville, SC 29601, or such other place and time as the Debtors shall notify the Proposed Purchaser, any Qualifying Bidders (as defined in the Bid Procedures), and other invitees (as determined by the Debtors). If, however, no Qualifying Bid is received by the Bid

Deadline, then the Auction will not be held, and the Debtors shall designate the Proposed Purchaser as the Prevailing Purchaser and seek Bankruptcy Court approval of the Purchase and Sale Agreement.

9. At any Auction, Qualified Bidders must submit bids in cash increments of at least \$547,750 in excess of the Purchase Price, and then continue in minimum increments of at least \$200,000 higher than the previous bid, subject and as set forth in the Bid Procedures.

10. Each Qualifying Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale. All bidding activity at the Auction shall be transcribed, videotaped, or both. The Auction will be conducted openly, and any of the Debtors' creditors will be permitted to attend.

**Scheduling of Sale Hearing and Related Notices**

11. The Notice of Auction and Sale Hearing, substantially in the form attached as **Schedule 2** hereto (the "**Notice of Auction and Sale Hearing**"), is approved.

12. The Sale Hearing shall be held before this Court on **April 15, 2019 at 10:30 a.m. (prevailing Eastern Time)**.

13. Objections to the sale of the Property, or the relief requested in the Sale Motion, if any, must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the clerk of the Bankruptcy Court for the District of Delaware, Third Floor, 824 Market Street, Wilmington, Delaware 19801, on or before **4:00 p.m. (prevailing Eastern Time) on April 8, 2019** (the "**Objection Deadline**"); and (d) be served so as to be received by no later than the Objection Deadline, on the parties identified in **Exhibit A** attached hereto (the "**Notice Parties**"). All objections must state with specificity the nature of such objection and will be heard by the Court at the Sale Hearing.

14. On or before five (5) days after entry of this Order, the Debtors will cause the Notice of Auction and Sale Hearing and this Order to be sent by first-class mail postage prepaid to all parties that were served with the Sale Motion.

16. In addition to the foregoing, electronic notification of this Sale Motion, this Order and the Notice of Auction and Sale Hearing also will be posted on the Court's website at <http://www.deb.uscourts.gov>.

15. No later than five (5) days after the entry of this Order, the Debtors are instructed to contact all parties known or reasonably believed to have expressed an interest in acquiring some or all of the Property within the last twelve months.

**Procedures Related to Assumption and Assignment of Executory Contracts and Unexpired Leases**

16. On or before five (5) business days after the entry of this Order, the Debtors shall serve by first class mail, a notice of potential assumption, assignment and/or transfer of the Designated Executory Contract, substantially in the form attached hereto as **Schedule 3** (the "**Notice of Assumption and Assignment**") on all non-debtor parties to the Designated Executory Contracts, *provided, however*, that the identification of a contract or lease in a Notice of Assumption and Assignment does not constitute an admission by the Debtors that such contract or lease is an executory contract or unexpired lease within the meaning of section 365 of the Bankruptcy Code. The Debtors reserve all of their rights, claims and causes of action with respect to the contracts and leases listed in a Notice of Assumption and Assignment. The Notice of Assumption and Assignment shall identify whether a Designated Executory Contract is included as part of the Property and the cure amount(s) the Debtors assert, based on the Debtor's records, must be paid in order to cure defaults outstanding under each Designated Executory Contract to permit the Debtors to assume such contracts (the "**Cure Amounts**"), as of such date

(the “**Cure Date**”). Additionally, if the Debtors identify additional executory contracts or unexpired leases that may be assumed by the Debtors and assigned to Proposed Purchaser not set forth in the original Notice of Assumption and Assignment, the Debtors may send a supplemental notice (a “**Supplemental Notice of Assumption and Assignment**”) to the applicable counterparty or counterparties to such additional executory contracts and unexpired leases.

17. Unless the non-debtor counterparty to a Designated Executory Contract files an objection (the “**Cure Amount/Assignment Objection**”) to any of (a) the Cure Amount relating to a Designated Executory Contract, or (b) the proposed assumption and assignment of a Designated Executory Contract **no later than three (3) days before the Auction** (collectively, the “**Cure/Assignment Objection Deadline**”) and serves a copy of the Cure Amount/Assignment Objection so as to be actually received no later than the Cure/Assignment Objection Deadline by the Notice Parties, then such non-debtor counterparty shall (a) forever be barred from objecting to the Cure Amount and asserting any additional cure or other amounts as of the Cure Date, with respect to a Designated Executory Contract, and the Debtors shall be entitled to rely solely upon the Cure Amount, and (b) if the Designated Executory Contract is part of the Property, and the Proposed Purchaser is the Purchaser, be deemed to have consented to the assumption, assignment and/or transfer of such Designated Executory Contract to the Proposed Purchaser, and shall be forever barred and estopped from asserting or claiming against the Debtors, the Proposed Purchaser or such other Purchaser or any other assignee of the relevant Designated Executory Contract that any additional amounts are due or defaults exist, or conditions to assumption, assignment, and/or transfer must be satisfied, as of the Cure Date, under such Designated Executory Contract.

18. If an objection challenges a Cure Amount, the objection must set forth the pre-petition cure amount being claimed by the objecting party (the “**Claimed Cure Amount**”) with appropriate documentation in support thereof. Upon receipt of an objection to a Cure Amount, the Debtors may, in their sole discretion, hold an amount equal to the Claimed Cure Amount in reserve in an account with Wells Fargo Bank, N.A., as Indenture Trustee, pending further order of the Court or agreement between the Debtors and the objecting party. If the Debtors hold the Claimed Cure Amount in reserve, the Debtors may assume and assign the Designated Executory Contract subject to such objection without further delay.

19. In the event that the Proposed Purchaser is not the Purchaser for the Property and for the Designated Executory Contract identified in the Notice of Assumption and Assignment, immediately after the conclusion of the Auction for the Property, the Debtors will serve a notice identifying the Purchaser on the non-debtor counterparties to the Designated Executory Contract identified by such Purchaser. The non-debtor counterparties to such Designated Executory Contracts may, at or prior to the Sale Hearing, object to the assumption, assignment and/or transfer of such Designated Executory Contract to Purchaser solely on the issue of whether Purchaser can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code. Any non-debtor party to a Designated Executory Contract that does not object to the assignment of its respective Designated Executory Contract shall be deemed to have consented to the assumption and assignment of such Designated Executory Contract to Purchaser. Nothing in this paragraph shall extend or shorten or otherwise affect the Cure Amount/Assignment Objection Deadline.

20. The Notice of Assumption and Assignment to be issued in connection with the proposed sale of the Property, substantially in the form annexed hereto as **Schedule 3**, hereby is approved.

**D. Other Provisions**

21. The Sale Hearing may be adjourned, from time to time, without further notice to creditors or other parties-in-interest other than by announcement of said adjournment before this Court or on the agenda for the date scheduled for said hearing.

22. Subject to the provisions of the Purchase and Sale Agreement, the Bid Procedures and this Order, the Debtors shall have the right, as they may reasonably determine in their business judgment, to: (a) determine which bidders are Qualifying Bidders; (b) determine which bids are Qualifying Bids; (c) determine which Qualifying Bid is the highest and best bid and proposal and which is the next highest and best bid and proposal; (d) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bid Procedures or the requirements of the Bankruptcy Code or (iii) contrary to the best interests of the Debtors and their estates; (e) remove some portion of the Property from the Auction; (f) waive terms and conditions set forth herein with respect to all potential bidders; (g) impose additional terms and conditions with respect to all potential bidders and the Proposed Purchaser; (h) extend the deadlines set forth herein; (i) adjourn or cancel the Auction or Sale Hearing in open court without further notice; (j) modify the Bid Procedures; and (k) withdraw the Sale Motion at any time, with or without prejudice. For the avoidance of doubt, the Proposed Purchaser is a Qualifying Bidder and the transaction set forth in, and by virtue of, the Purchase and Sale Agreement, is a Qualifying Bid.

23. Notwithstanding anything to the contrary in this Order or the Motion, any payment, obligations, or other relief authorized by this Order shall be subject to the terms, conditions, and limitations of the order of this Court approving cash collateral use, including any budget in connection therewith; provided however, this shall not prevent, limit, or restrict in any way the payment of the Break-Up Fee or Expense Reimbursement to the Proposed Purchaser pursuant to the terms and conditions of the Purchase and Sale Agreement and this Order.

24. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014, or otherwise, the terms and conditions of this order shall be immediately effective and enforceable upon its entry, and no automatic stay of execution shall apply to this Order.

25. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

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THE HONORABLE MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE



**EXHIBIT A**

**Notice Parties**

1. The Debtors' counsel, (a) Nelson Mullins Riley & Scarborough LLP, 1320 Main Street, Columbia, SC 29201 (Attn: B. Keith Poston) and (b) Bayard P.A., 600 N. King Street, Suite 400, Wilmington, DE 19801 (Attn: Evan T. Miller);
2. The Debtors, Life Settlements Absolute Return I, LLC and Senior LS Holdings, LLC, 6650 Rivers Avenue, Suite 105 #81921, North Charleston, SC 29406-4829 (Attn: Robert J. Davey, III);
3. Counsel to the proposed Purchaser, Thompson Hine LLP, 3560 Lenox Road, Suite 1600, Atlanta, Georgia 30326 (Attn: John F. Isbell);
4. The Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

LIFE SETTLEMENTS ABSOLUTE  
RETURN I, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 17-13030 (MFW)  
(Jointly Administered)

**BID PROCEDURES**

1. By motion dated January 29, 2019 (the “**Motion**”) [D.I. \_\_\_\_], Life Settlements Absolute Return I, LLC and Senior LS Holdings, LLC (collectively, the “**Debtors**”) sought approval, among other things, of the procedures by which they will determine the highest or otherwise best price for the sale (the “**Sale**”) of substantially all of their assets (the “**Property**”), as described in the Purchase and Sale Agreement by and between BPCP Life Settlement LLC (the “**Proposed Purchaser**”) and Life Settlements Absolute Return I, LLC and Senior LS Holdings, LLC, dated as of January 29, 2019 (the “**Purchase and Sale Agreement**”), a copy of which is attached to the Motion.

2. On February \_\_, 2019, the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) entered an order (the “**Bid Procedures Order**”) that, among other things, authorized the Debtors to determine the highest or otherwise best bid for the Property through the process and procedures set forth below (the “**Bid Procedures**”). To the extent set forth in the Bid Procedures Order, the Debtors reserve the right to modify the Bid Procedures.

3. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Motion, Bid Procedures Order, or the Purchase and Sale Agreement, as applicable.

**A. Participation Requirements**

Any person that wishes to participate in the bidding process (each, a “**Potential Bidder**”) must become a Qualified Bidder. A “**Qualified Bidder**” is a Potential Bidder that delivers the documents described in section C, below, and that the Debtors determine is reasonably likely (based on financial information submitted by the Potential Bidder, the availability of financing,

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: Life Settlements Absolute Return I, LLC (7992) and Senior LS Holdings, LLC (5731). The mailing address for the Debtors, solely for purposes of notices and communications, is: 6650 Rivers Avenue, Suite 105 #81921, North Charleston, SC 29406-4829, with copies to Nelson Mullins Riley & Scarborough LLP, c/o Shane G. Ramsey, 150 Fourth Avenue North, Suite 1100, Nashville, TN 37219 and Bayard, P.A., c/o Evan T. Miller, 600 N. King Street, Suite 400, Wilmington, DE 19801.

experience and other consideration deemed relevant by the Debtors) to be able to consummate a sale if selected as the Prevailing Purchaser.

As a prerequisite to becoming a Qualified Bidder (and, thus, being able to conduct due diligence), a Potential Bidder:

- must deliver an executed confidentiality agreement in form and substance acceptable to the Debtors; and
- must be able, as determined by the Debtors, to consummate a purchase of the Property if selected as the successful bidder.

Not later than two (2) business days after a Potential Bidder delivers all of the materials required by subparagraphs (a)–(k) above, the Debtors shall determine and shall notify the Potential Bidder, if such Potential Bidder is a Qualified Bidder. The Proposed Purchaser is deemed a Qualified Bidder and the Purchase and Sale Agreement constitutes a Qualified Bid (as defined below) for all purposes.

**B. Due Diligence**

4. The Debtors shall afford Qualified Bidders the time and opportunity to conduct reasonable due diligence. The due diligence period shall extend through and including the Bid Deadline (as defined below). Neither the Debtors nor any of their representatives are obligated to furnish any information relating to the Property to any person other than to Qualified Bidders.

5. The Debtors shall not be obligated to furnish any due diligence information after the Bid Deadline. Neither the Debtors nor any of their employees, officers, directors, affiliates, subsidiaries, representatives, agents, advisors, attorneys, or other professionals are responsible for, nor shall they bear liability with respect to, any information obtained by Potential Bidders in connection with the sale of the Property.

6. The Debtors' counsel, Nelson Mullins Riley & Scarborough LLP ("**Nelson Mullins**"), shall coordinate their response to all reasonable requests for additional information and due diligence from Qualified Bidders. Contact information for Nelson Mullins is as follows:

Nelson Mullins Riley & Scarborough LLP  
Attn: B. Keith Poston  
1320 Main Street  
Columbia, SC 29201  
Telephone: 803-255-9518  
Email: keith.poston@nelsonmullins.com

7. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making a bid; that it has relied solely upon its own independent review, investigation and/or inspection of any documents and the Property in making its bid; and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express,

implied, by operation of law or otherwise regarding the Property, or the completeness of any information provided in connection therewith, except as expressly stated in these Bid Procedures.

8. The Debtors reserve the right to refuse any Potential Bidder or Qualified Bidder access to due diligence materials if such Potential Bidder's or Qualified Bidder's access is determined to be harmful to the Debtors' estates.

9. The Debtors or their agents shall publish Notice of the Auction in the *Life Settlements Report* and also with the Life Settlement Institute.

### C. Bid Requirements

To be deemed a "**Qualified Bid**," a bid must be received from a Qualified Bidder no later than the Bid Deadline (as defined below) including the following information:

- states such Qualified Bidder offers to purchase all or substantially all of the Property upon the terms and conditions substantially as set forth in the Purchase and Sale Agreement or pursuant to an alternative structure the Debtors, in its reasonable discretion, determines is no less favorable than the terms and conditions of the Purchase and Sale Agreement<sup>2</sup>;
- is accompanied by a duly executed purchase agreement (the "**Modified Purchase and Sale Agreement**") and a marked Modified Purchase and Sale Agreement, reflecting variations from the Purchase and Sale Agreement executed by the Proposed Purchaser;
- states such Qualified Bidder is financially capable of consummating the transactions contemplated by the Modified Purchase and Sale Agreement and provides written evidence in support thereof;
- states such Qualified Bidder's offer is irrevocable until the closing of the Sale;
- contains such financial and other information to allow the Debtors to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transactions contemplated by the Modified Purchase and Sale Agreement, including, without limitation, such financial and other information setting forth adequate assurance of future performance under contracts and leases to be assumed pursuant to section 365 of title 11 of the United States Code (the "**Bankruptcy Code**") in a form requested by the Debtors to allow the Debtors to serve, within two (2) business days after such receipt, such information on counter-parties to

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<sup>2</sup> As the claim (Claim No. 3-1, the "**GERS Claim**") asserted by the Government Employees' Retirement System of the Virgin Islands f/k/a the Employees' Retirement System of the Government of the Virgin Islands ("**GERS**") is currently subject to a bona fide dispute which is being litigated before the Court in Adversary Proceeding No. 18-50677 (MFW), GERS shall not be entitled to offset its secured claim against the purchase price of the Property for the purpose of bidding pursuant to 11 U.S.C. § 363(k).

any contracts or leases being assumed or assumed and assigned in connection with the proposed sale that have requested, in writing, such information;

- identifies with particularity each executory contract the assumption and, as applicable, assignment of which is a condition to closing;
- does not request or entitle such Qualified Bidder to any break-up fee, expense reimbursement, or similar type of payment;
- fully discloses the identity of each entity that will be bidding in the Sale or otherwise participating in connection with such bid, and the complete terms of any such participation;
- is likely to result in a value to the Debtors' estates in the Debtors' business judgment that is more than the aggregate of the value of the sum of: (i) the Purchase Price, as identified in the Purchase and Sale Agreement; plus (ii) the Proposed Purchaser's assumption of the Executory Contract as identified in the Purchase and Sale Agreement<sup>3</sup>; plus (iii) the sum of the Break-Up Fee and Expense Reimbursement; plus (iv) \$200,000;
- (i) does not contain any financing or diligence contingencies of any kind; and (ii) contains evidence that the Qualified Bidder has received debt and/or equity funding commitments or has financial resources readily available sufficient in the aggregate to consummate the Sale, which evidence is reasonably satisfactory to the Debtors in its reasonable discretion;
- includes evidence of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery and consummation of the Modified Purchase and Sale Agreement; and
- provides a purchase deposit equal to ten percent (10%) of the Qualified Bidder's bid, as contained in the Modified Purchase and Sale Agreement (each Qualified Bidder's deposit, a "**Bid Deposit**").

10. A competing bid satisfying all the above requirements shall constitute a Qualified Bid. The Debtors reserve the right to exercise their business judgment with respect to each bid

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<sup>3</sup> As set forth in the Motion, the Proposed Purchaser intends to assume the Executory Contract, which is the servicing agreement with Clear View Advisors Corporation ("**CVACorp**"). As stated in the *Declaration of Robert J. Davey, III in Support of Motion of Debtors for Order Authorizing Employment, Retention, and Compensation of Clear View Advisors Corporation as the Contractor to the Equity Representative in the Ordinary Course of Business Pursuant to 11 U.S.C. §327(b), Nunc Pro Tunc to the Petition Date* [D.I. 12], Robert J. Davey, III is the owner of CVACorp, is the Secretary/Treasurer of The Attilanus Fund I, L.P. ("**Attilanus**"), which is the sole member of LSAR, and is the Secretary/Treasurer of Anysia Financial Management, LLC, which conducts and manages the business of Attilanus.

and reject any bid if such bid is on terms more burdensome or conditional than the terms of the Purchase and Sale Agreement.

**D. Bid Deadline**

11. A Qualified Bidder that desires to make a binding bid, other than the Proposed Purchaser, shall deliver a written or electronic copy of its bid to the Notice Parties so as to be actually received by a date no later than **5:00 p.m. (prevailing Eastern Time) on [forty-five (45) days after entry of a Bid Procedures Order]** (the "**Bid Deadline**"), unless such date is extended by the Debtors, in their reasonable discretion.

**F. Evaluation of Qualified Bids**

12. The Debtors, in consultation with Christopher Tierney of Moore Colson & Company, P.C. ("**Moore Colson**"), the Debtors' Financial Advisor, shall make a determination regarding whether a bid is a Qualified Bid and shall notify bidders whether their bids have been determined to be qualified by a date no later than two (2) business days prior to the Auction Date. Prior to the Auction (as defined below), the Debtors, employing their business judgment, and in consultation with Moore Colson, shall determine which of the Qualified Bids is likely to be the highest or best. In the event a conflict arises between the Debtors and Moore Colson as to which of the Qualified Bids is likely to be the highest or best, Moore Colson shall determine which of the Qualified Bids is the highest or best.

**G. No Additional Qualified Bids**

13. If no timely, conforming Qualified Bid, other than the Qualified Bid submitted by the Proposed Purchaser, is submitted by the Bid Deadline, the Debtors shall not hold an Auction and instead shall request at the Sale Hearing (as defined below) that the Bankruptcy Court approve the Purchase and Sale Agreement with the Proposed Purchaser.

**H. Auction**

14. In the event that the Debtors timely receive a Qualified Bid in addition to the Qualified Bid submitted by the Proposed Purchaser, the Debtors shall conduct an auction (the "**Auction**") no later than [three (3) business days after the Bid Deadline] (the "**Auction Date**"), unless such date is extended by the Debtors, in their sole discretion. The Auction shall be conducted at the offices of Nelson Mullins Riley & Scarborough LLP, 104 South Main Street, Suite 900, Greenville, SC 29601 (the "**Auction Site**") or such other place as the Debtors shall notify all Qualified Bidders who have submitted Qualified Bids and expressed their intent to participate in the Auction as set forth above. The Auction shall be conducted according to the following procedures:

- only the Proposed Purchaser and the other Qualified Bidders shall be entitled to make any subsequent bids at the Auction;
- the Proposed Purchaser and the other Qualified Bidders shall appear in person at the Auction, or through a duly authorized representative;

- bidding shall commence at the amount of the highest Qualified Bid submitted by the Qualified Bidders prior to the Auction;
- Qualified Bidders may then submit successive bids in minimum increments of at least \$547,750 over and above the Purchase Price, with subsequent incremental bids in the minimum amount of \$200,000 higher than the previous bid; provided that the Debtors shall retain the right to modify the bid increment requirements at the Auction;
- Any bids made by the Proposed Purchaser at the Auction shall include a credit in the amount of the Break-Up Fee and Expense Reimbursement.
- Qualified Bidders shall have the right to submit additional bids and make additional modifications to the Purchase and Sale Agreement or Modified Purchase and Sale Agreement at the Auction, provided that any such modifications to the Purchase and Sale Agreement or Modified Purchase and Sale Agreement, on an aggregate basis and viewed in whole, shall not be less favorable to the Debtors than the terms of the Purchase and Sale Agreement, as determined by the Debtors, in consultation with Moore Colson;
- the Auction shall continue in one or more rounds of bidding and shall conclude after each participating bidder has had the opportunity to submit an additional bid with full knowledge of the then-existing highest bid or bids and the Auction shall continue until there is only one bid that the Debtors determine in their business judgment, after consultation with Moore Colson, is the highest or otherwise best from among the Qualified Bids submitted at the Auction (the “**Prevailing Bid**”). In making this decision, the Debtors, in consultation with Moore Colson, shall consider, without limitation, the amount of the purchase price, the form of consideration being offered, the likelihood of the bidder’s ability to close a transaction and the timing thereof, the number, type and nature of any changes to the Purchase and Sale Agreement requested by each bidder, and the net benefit to the Debtors’ estates. The bidder submitting the Prevailing Bid shall become the “**Prevailing Purchaser**,” and shall have such rights and responsibilities of the purchaser, as set forth in the applicable Purchase and Sale Agreement or Modified Purchase and Sale Agreement. In the event a conflict arises between the Debtors and Moore Colson as to which of the Qualified Bids is to be the Prevailing Bid, Moore Colson shall determine the Prevailing Bid; and
- within two (2) Business Days after the conclusion of the Auction, the Prevailing Purchaser shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Prevailing Bid was made;

- each Qualified Bidder participating in the Auction shall confirm that it has not engaged in any collusion with respect to the bidding; and
- all parties-in-interest in the Debtors' cases and Qualified Bidders may attend the Auction as long as such parties provide Debtors' counsel with written notice at least three (3) business days before Auction. The notice must include the name of the individuals who will represent such party's interest at the Auction. The Debtors reserve the right in their reasonable discretion to exclude a party-in-interest from the Auction.

15. The Debtors, after consultation with Moore Colson, may employ and announce at the Auction additional procedural rules reasonable under the circumstances for conducting the Auction, provided that such rules are not inconsistent with these Bid Procedures, the Bankruptcy Code or any Bankruptcy Court order entered in connection herewith.

**I. Sale Hearing**

16. The Prevailing Bid (or the Purchase and Sale Agreement if no Qualified Bid other than that of the Proposed Purchaser is received) will be subject to approval by the Bankruptcy Court. After the conclusion of the Auction, the Bankruptcy Court shall conduct a hearing (the "**Sale Hearing**") to approve the Sale. At the Sale Hearing, the Debtors will seek entry of an order substantially in the form attached as **Exhibit B** to the Motion (the "**Sale Order**") authorizing and approving the Sale to the Prevailing Purchaser(s), as determined by the Debtors and Moore Colson in accordance with the Bid Procedures, pursuant to the terms and conditions set forth in the Purchase and Sale Agreement or in any Modified Purchase and Sale Agreement submitted by the Prevailing Purchaser. The Sale Hearing may be adjourned or rescheduled without notice other than by an announcement of the adjourned date in open court. The Debtors' presentation of the Prevailing Bid to the Bankruptcy Court for approval does not constitute Debtors' acceptance of such Prevailing Bid. The Debtors will be deemed to have accepted the Prevailing Bid upon the Bankruptcy Court's approval of the Prevailing Bid at the Sale Hearing.

**J. Backup Bidder**

17. Following the approval of the Sale at the Sale Hearing, if the Debtors fail to consummate such approved Sale with the Prevailing Purchaser, the Debtors shall, subject to the approval of Moore Colson, deem the next highest or otherwise best Qualified Bid (the "**Back-Up Bid**") and the party submitting the Back-Up Bid, the "**Back-Up Bidder**", as disclosed at the Sale Hearing, the Prevailing Bid, and the Debtors shall be authorized to consummate the Sale with the Back-Up Bidder without further order of the Bankruptcy Court. The Back-Up Bid shall remain open until the first business day following the consummation of a Sale of the Property to the Prevailing Purchaser. Notwithstanding the foregoing, Proposed Purchaser has the right in its sole and absolute discretion to withdraw as Back-Up Bidder any time after the earlier of (i) the Closing Date or (ii) fourteen (14) days following entry of the Sale Order.



**K. Consent to Jurisdiction and Judicial Authority of the Bankruptcy Court To Finally Determine Disputes**

18. The Proposed Purchaser, the Prevailing Purchaser, and all Qualified Bidders shall be deemed to the fullest extent possible to have expressly consented to the authority of the Bankruptcy Court to enter final orders and to exercise its core jurisdiction, and to have waived any right to a jury trial, in connection with any disputes relating to or arising with respect to the Sale, the Auction or concerning the Purchase and Sale Agreement or any Modified Purchase and Sale Agreement, if any, the Sale Order, the Bid Procedures Order or the construction and enforcement of any such document.

**L. Disposition of Bid Deposits**

19. Bid Deposits shall be held by the Debtors in a segregated account. The Bid Deposit of the Prevailing Purchaser shall be applied to the Purchase Price. The Bid Deposit of the Back-up Bidder, if any, shall be held by the Debtors until the later of: (i) two (2) business days after the Closing of the Sale contemplated by the Prevailing Bid, or (ii) seven (7) business days after the Auction and thereafter returned to the Back-up Bidder. In the event a Sale to the Prevailing Purchaser shall fail to close, then the Bid Deposit of the Back-up Bidder, if any, shall be applied to the Purchase Price. Bid Deposits of all other Qualified Bidders shall be held by the Debtors until no later than two (2) business days after the Sale Hearing, and thereafter returned to the respective Qualified Bidders. Notwithstanding anything to the contrary herein, the Proposed Purchaser's Performance Deposit shall be paid, held, applied or refunded as applicable pursuant to the terms and conditions of the Purchase and Sale Agreement and the Escrow Agreement as defined therein.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

LIFE SETTLEMENTS ABSOLUTE  
RETURN I, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 17-13030 (MFW)  
(Jointly Administered)

**Related D.I.:** \_\_\_\_\_

**NOTICE OF AUCTION AND SALE HEARING**

1. Debtors Life Settlements Absolute Return I, LLC and Senior LS Holdings, LLC (collectively, the “**Debtors**”) have entered into an agreement (the “**Purchase And Sale Agreement**”) with BPCP Life Settlement LLC (the “**Proposed Purchaser**”) to sell substantially all of their assets (the “**Property**”) to the Proposed Purchaser. The Debtors’ ability to close the transactions contemplated by the Purchase and Sale Agreement is subject to higher or better offers and the approval of the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

2. The Debtors are soliciting offers for the Property, and the Bankruptcy Court has entered the *Order Pursuant to 11 U.S.C. §§ 105, 363, 365, 503 and 507 and Fed. R. Bankr. P. 2002, 6004, And 6006 (A) Establishing Bid and Auction Procedures for the Proposed Sale of Substantially All of the Debtors’ Assets; (B) Approving the Purchase and Sale Agreement; (C) Approving Related Bid Protections; (D) Scheduling an Auction and a Sale Hearing and Approving Notice Thereof; (E) Approving Procedures for Determining Cure Amounts for*

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: Life Settlements Absolute Return I, LLC (7992) and Senior LS Holdings, LLC (5731). The mailing address for the Debtors, solely for purposes of notices and communications, is: 6650 Rivers Avenue, Suite 105 #81921, North Charleston, SC 29406-4829, with copies to Nelson Mullins Riley & Scarborough LLP, c/o Shane G. Ramsey, 150 Fourth Avenue North, Suite 1100, Nashville, TN 37219 and Bayard, P.A., c/o Evan T. Miller, 600 N. King Street, Suite 400, Wilmington, DE 19801.

*Executory Contracts and Unexpired Leases to be Assumed and Assigned and Notice Thereof; and (F) Granting Related Relief (the “**Bid Procedures Order**”) approving auction and sale procedures (the “**Bid Procedures**”) for the Property.<sup>2</sup>*

3. On January 29, 2019 the Debtors filed the *Motion Pursuant to 11 U.S.C. §§ 105, 363, 365, 503 and 507 and Bankruptcy Rules 2002, 6004 and 6006 for (I) Entry of an Order (A) Establishing Bid and Auction Procedures Related to the Sale of Substantially All of the Debtors’ Assets; (B) Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Certain Notice Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases to be Assumed and Assigned; and (E) Granting Related Relief; and (II) Entry of an Order (A) Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (the “**Sale Motion**”).<sup>3</sup>*

4. Pursuant to the Sale Motion, the Debtors propose to: (a) sell the Property to the Proposed Purchaser (or such other party that submits the highest or otherwise best bid at an auction (the “**Auction**”), free and clear of all liens, claims, or encumbrances thereon, except for certain assumed liabilities and permitted encumbrances specifically described in the Purchase and Sale Agreement; and (b) assume and assign certain executory contracts and unexpired leases of the Debtors to the Proposed Purchaser (or such other party that submits the highest or otherwise best bid at the Auction).

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<sup>2</sup> Copies of the Bid Procedures Order, the Bid Procedures, and the Purchase and Sale Agreement can be obtained from Debtors’ counsel.

<sup>3</sup> All capitalized terms not herein defined shall have the meanings ascribed to them in the Sale Motion.

5. The Bid Procedures approved by the Bid Procedures Order describe, *inter alia*, the terms of the bidding process, the requirements and deadlines for participation therein, required terms of any bids, and the time, location and conduct of the Auction.

6. The Bankruptcy Court has scheduled the Auction of the Property for \_\_\_:\_\_\_ \_\_.m. (prevailing Eastern Time) on \_\_\_\_\_, 2019 at the offices of at the offices of Nelson Mullins Riley & Scarborough LLP, 104 South Main Street, Suite 900, Greenville, SC 29601. All interested parties are invited to submit a qualifying bid to purchase the Property.

7. The Bankruptcy Court has scheduled a hearing for \_\_\_:\_\_\_ \_\_.m. (prevailing Eastern Time) on \_\_\_\_\_, 2019 (the “**Sale Hearing**”) to consider approval of the winning bid and confirm the results of the Auction. The Sale Hearing will be held before the Honorable Mary F. Walrath, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom No. 4, Wilmington, Delaware 19801.

8. Any objection to any of the relief to be requested at the Sale Hearing must be in writing, state the basis of such objection with specificity, and shall be filed with the Bankruptcy Court by \_\_\_\_\_, 2019 at 4:00 p.m. (prevailing Eastern Time) (the “**Sale Objection Deadline**”). At the same time, any objector must also serve a copy of the objection, so as to be received by the Sale Objection Deadline, on: (a) The Debtors’ counsel, (i) Nelson Mullins Riley & Scarborough LLP, 1320 Main Street, Columbia, SC 29201 (Attn: B. Keith Poston) and (ii) Bayard P.A., 600 N. King Street, Suite 400, Wilmington, DE 19801 (Attn: Evan T. Miller); and (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801.

9. All requests for information concerning the Property should be directed toward the Debtors' counsel, which can be contacted at:

Nelson Mullins Riley & Scarborough LLP  
Attn: B. Keith Poston  
1320 Main Street  
Columbia, SC 29201  
Telephone: 803-255-9518  
Email: keith.poston@nelsonmullins.com

10. The Auction or Sale Hearing or both may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court or on the agenda filed by the Debtors with the Bankruptcy Court.

**11. IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

*[Remainder of page intentionally left blank]*

Dated: January 29, 2019  
Wilmington, Delaware

BAYARD, P.A.

/s/ Evan T. Miller

Evan T. Miller (No. 5364)  
Sophie Macon (No. 6562)  
600 N. King Street, Suite 400  
Wilmington, DE 19801  
Telephone: (302) 655-5000  
Facsimile: (302) 658-6395  
E-mail: emiller@bayardlaw.com  
smacon@bayardlaw.com

- and -

B. Keith Poston (*admitted pro hac vice*)  
NELSON, MULLINS, RILEY &  
SCARBOROUGH LLP  
1320 Main Street  
Columbia, SC 29201  
Phone: (803) 255-9518  
Facsimile: (803) 255-9038  
E-Mail: keith.poston@nelsonmullins.com

Shane G. Ramsey (*admitted pro hac vice*)  
John T. Baxter (*admitted pro hac vice*)  
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SCARBOROUGH LLP  
150 Fourth Avenue, North, Suite 1100  
Nashville, TN 37219  
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Facsimile: (615) 664-5399  
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shane.ramsey@nelsonmullins.com  
john.baxter@nelsonmullins.com

*Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

LIFE SETTLEMENTS ABSOLUTE  
RETURN I, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 17-13030 (MFW)  
(Jointly Administered)

**Related D.I.:** \_\_\_\_\_

**NOTICE OF EXECUTORY CONTRACTS AND UNEXPIRED  
LEASES WHICH MAY BE ASSUMED AND ASSIGNED, PURSUANT  
TO SECTION 365 OF THE BANKRUPTCY CODE, IN CONNECTION  
WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS  
AND THE PROPOSED CURE AMOUNTS WITH RESPECT THERETO**

PLEASE TAKE NOTICE THAT:

1. On January 29, 2019, Life Settlements Absolute Return I, LLC and Senior LS Holdings, LLC, as debtors and debtors-in-possession (collectively, the "**Debtors**") filed their *Motion Pursuant to 11 U.S.C. §§ 105, 363, 365, 503 And 507 and Bankruptcy Rules 2002, 6004 and 6006 for (I) Entry of an Order (A) Establishing Bid and Auction Procedures Related to the Sale of Substantially All of the Debtors' Assets; (B) Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Certain Notice Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases to be Assumed and Assigned; and (E) Granting Related Relief; and (II) Entry of an Order (A) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts*

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Life Settlements Absolute Return I, LLC (7992) and Senior LS Holdings, LLC (5731). The mailing address for the Debtors, solely for purposes of notices and communications, is: 6650 Rivers Avenue, Suite 105 #81921, North Charleston, SC 29406-4829, with copies to Nelson Mullins Riley & Scarborough LLP, c/o Shane G. Ramsey, 150 Fourth Avenue North, Suite 1100, Nashville, TN 37219 and Bayard, P.A., c/o Evan T. Miller, 600 N. King Street, Suite 400, Wilmington, DE 19801.

and Unexpired Leases (the “**Sale Motion**”)<sup>2</sup> with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801 (the “**Court**”).

2. Pursuant to the Sale Motion, the Debtors seek the entry of an order (a) establishing bidding procedures for the sale of Debtor’s assets (the “**Property**”); (b) approving proposed bid protections, including a break-up fee and expense reimbursement to BPCP Life Settlement LLC (the “**Proposed Purchaser**”), in accordance with that certain Asset Purchase Agreement, dated January 29, 2019 (the “**Purchase and Sale Agreement**”) for the purchase of the Purchased Property; (c) scheduling an auction (the “**Auction**”) and setting a date and time for a sale hearing (the “**Sale Hearing**”) for the sale of the Property (the “**Sale**”), and approving the form and manner of notice thereof; (d) establishing procedures (the “**Cure Procedures**”) for the assumption and assignment of contracts (“**Contracts**”) and leases (“**Leases**”), including notice of proposed cure amounts (the “**Cure Amounts**”); and (e) granting certain related relief. By the Motion, the Debtors further request that, at the Sale Hearing, subject to the results of the Auction, the Court enter a sale order (a) approving and authorizing the Sale; and (b) authorizing the assumption and assignment of the Contracts and Leases.

3. In accordance with the Cure Procedures, the Debtors are delivering this notice (the “**Cure Notice**”) identifying (a) those Contracts and Leases which may be assumed and assigned to the Purchaser, its designee(s) or such other Winning Bidder, on the Closing Date in connection with the Sale of the Purchased Property and in accordance with the procedures proposed in the Motion and (b) the proposed cure amount (the “**Cure Amount**”) for each Contract and Lease identified on the Cure Notice.

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<sup>2</sup> All capitalized terms not herein defined shall have the meanings ascribed to them in the Sale Motion.



4. Adequate assurance information for the Purchaser (the “**Proposed Purchaser Adequate Assurance Information**”) is available by contacting counsel to the Purchaser at:

Thompson Hine LLP  
3560 Lenox Road, Suite 1600  
Atlanta, Georgia 30326  
(Attn: John F. Isbell)

5. You have been identified as a party to a Contract or Lease that the Debtors may seek to assume and/or assign. The Contract or Lease with respect to which you have been identified as a non-Debtor counterparty, and the corresponding proposed Cure Amount, if any, has been set forth on **Exhibit A** attached hereto. The Debtors’ records reflect that all post-petition amounts owing under your Contract or Lease have been paid and will continue to be paid until the assumption and assignment or rejection of the Contract or Lease, and that other than the Cure Amount, there are no other defaults under the Contract or Lease.

6. Objections, if any, to the proposed Cure Amount or the Proposed Purchaser Adequate Assurance Information must be made in writing, filed with the Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, and served so as to be received by the parties listed below on or before **4:00 p.m. (prevailing Eastern Time) on \_\_\_\_\_, 2019** (the “**Cure Objection Deadline**”). Service should be made by mail to: (a) Debtors’ counsel (i) Nelson Mullins Riley & Scarborough LLP, 1320 Main Street, Columbia, SC 29201 (Attn: B. Keith Poston) and (ii) Bayard P.A., 600 N. King Street, Suite 400, Wilmington, DE 19801 (Attn: Evan T. Miller); (b) Debtors, Life Settlements Absolute Return I, LLC and Senior LS Holdings, LLC, 6650 Rivers Avenue, Suite 105 #81921, North Charleston, SC 29406-4829 (Attn: Robert J. Davey, III); (c) Counsel to the Proposed Purchaser, Thompson Hine LLP, 3560 Lenox Road, Suite 1600, Atlanta, Georgia 30326 (Attn: John F. Isbell); and (d) The Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35,

Wilmington, Delaware 19801. The objection must set forth (a) the basis for the objection, (b) the exact amount the party asserts as the Cure Amount and (c) sufficient documentation to support the Cure Amount alleged.

7. If an objection is timely filed, a hearing with respect to the objection will be held before The Honorable Mary F. Walrath, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801, on \_\_\_\_\_, 2019, at \_\_\_\_\_ .m. (**prevailing Eastern Time**) or at a later hearing, as determined by the Debtors in consultation with the Court. A hearing regarding the Cure Amount, if any, may be continued at the sole discretion of the Debtors.

8. UNLESS YOU FILE AN OBJECTION TO THE PROPOSED CURE AMOUNT SET FORTH ON **EXHIBIT A** HERETO AND SERVE SUCH OBJECTION IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE FOREVER BARRED FROM OBJECTING TO THE CURE AMOUNT SET FORTH ON **EXHIBIT A** AND FOREVER BARRED AND ESTOPPED FROM ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTORS, THE WINNING BIDDER OR ANY OTHER ASSIGNEE OF THE RELEVANT CONTRACT OR LEASE.

9. The presence of a contract or agreement listed on **Exhibit A** attached hereto does not constitute an admission that such contract or agreement is an executory contract or unexpired lease or that such contract will be assumed by the Debtors and assigned to the Winning Bidder. The Debtors reserve all of their rights, claims and causes of action with respect to the contracts and agreements listed on **Exhibit A** attached hereto.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

BAYARD, P.A.

/s/ Evan T. Miller

Evan T. Miller (No. 5364)  
Sophie E. Macon (No. 6562)  
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E-Mail: keith.poston@nelsonmullins.com

Shane G. Ramsey (*admitted pro hac vice*)  
John T. Baxter (*admitted pro hac vice*)  
NELSON, MULLINS, RILEY &  
SCARBOROUGH LLP  
150 Fourth Avenue, North, Suite 1100  
Nashville, TN 37219  
Phone: (615) 664-5355  
Facsimile: (615) 664-5399  
E-Mail: shane.ramsey@nelsonmullins.com  
john.baxter@nelsonmullins.com

*Counsel to the Debtors and Debtors in  
Possession*

**CERTIFICATE OF SERVICE**

I, Evan T. Miller, hereby certify that on this 29th day of January, 2019 I caused copies of the **Motion Pursuant to 11 U.S.C. §§ 105, 363, 365, 503 And 507 and Bankruptcy Rules 2002, 6004 and 6006 for (I) Entry of an Order (A) Establishing Bid and Auction Procedures Related to the Sale of Substantially All of the Debtors' Assets; (B) Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Certain Notice Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases to be Assumed and Assigned; and (E) Granting Related Relief; and (II) Entry of an Order (A) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases** to be served on the parties listed on Exhibit A attached hereto in the manner indicated.

/s/ Evan T. Miller  
Evan T. Miller (No. 5364)

**Exhibit A**

**BY HAND DELIVERY:**

<p>Office of the United States Trustee                  Attn.: Benjamin A. Hackman                  Attn.: Brya M. Keilson                  844 King Street, Suite 2207                  Lockbox #35                  Wilmington, DE 19801</p>	<p>WSFS Christiana Trust                  501 Carr Road                  Wilmington, DE 19809</p>
<p>Duane Morris LLP                  Attn: Michael R. Lastowski                  Attn: Christopher M. Winter                  Attn: Jarret P. Hitchings                  222 Delaware Avenue, Suite 1600                  Wilmington, DE 19801-1659</p>	<p>Reed Smith LLP                  Attn: Kurt F. Gwynne                  1201 N. Market Street, Suite 1500                  Wilmington, DE 19801</p>
<p>Richards, Layton &amp; Finger, P.A.                  Attn: Daniel J. DeFranceschi                  Attn: Paul N. Heath                  Attn: Zachary I. Shapiro                  One Rodney Square                  920 North King Street                  Wilmington, DE 19801</p>	

**BY FIRST CLASS MAIL:**

<p>The Attilanus Fund I, LP                  2131 Woodruff Road                  Suite 2100-117                  Greenville, SC 29607</p>	<p>Beaver County Pension Plan                  Office of the Comptroller                  c/o David Rossi, Controller                  Beaver County Courthouse                  810 Third Street                  Beaver, PA 15009</p>
<p>The Berwyn Group                  2 Summit Park Drive, Suite 610                  Independence, OH 44131</p>	<p>CSI Corporate Security &amp; Investigations, Inc.                  3645 Brodhead Road                  Monaca, PA 15061</p>
<p>Eastman Retirement Assistance Plan Trust                  Eastman Retirement Assistance Plan Committee                  P.O. Box 1975                  Kingsport, TN 37662</p>	<p>Eastman Retirement Assistance Plan Trust                  c/o Elaine Stallworth Washington                  100 N. Eastman Road                  Kingsport, TN 37760</p>
<p>Employees' Retirement System of the                  Government of the Virgin Islands (USVI)</p>	<p>Ensign Peak Advisors, Inc.                  60 East South Temple, Suite 400</p>

3438 Kronprindsens Gade GERS Complex – Suite 1 St. Thomas, VI 00802	Salt Lake City, UT 84111
Ensign Peak Advisors, Inc. 50 East North Temple FL 15 Salt Lake City, UT 84150	IBEW Local 98 IBEW Local 98 Business Office 1701 Spring Garden Street Philadelphia, PA 19130
Vertical Capital Holdings, LLC 460 St. Michaels Drive, Suite 703 Santa Fe, NM 87505	Wells Fargo Bank, National Association c/o Corporate Trust Services MAC: U1228-120 299 South Main Street, 12th Floor Salt Lake City, UT 84111
Wells Fargo Bank, N.A. MAC: N9311-61 6th and Marquette Minneapolis, MN 55479	Reed Smith LLP Attn: Jared D. Roach Reed Smith Centre 225 Fifth Avenue Pittsburgh, PA 15222
Clear View Advisors Corporation 2131 Woodruff Road Greenville, SC 29607	Frank R. Burnette Morrison Fiduciary Advisors, Inc. Institutional Investment Solutions 1405 McFarland Road Pittsburgh, PA 15216
Austin Nibbs P.O. Box 7637 St. Thomas, VI 00801	Cathy Smith 3438 Kronprindsens Gade, Suite 1 St. Thomas, VI 00802
Glenville Henderson P.O. Box 305069 St. Thomas, VI 00803	Miles Plaskett 200 South Biscayne Boulevard Suite 3400 Miami, FL 33131
Adelaide Maudsley Kirton McConkie Building 50 East South Temple, Suite 400 Salt Lake City, UT 84111	