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*Attorneys for Jeramiah Foster
Chapter 11 Trustee*

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re SHOOT THE MOON, LLC, Debtor.	Case No. 15-60979-11
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**MOTION OF CHAPTER 11 TRUSTEE PURSUANT TO 11 U.S.C. §§ 363(b)
AND BANKRUPTCY RULE 6004 AND 9014
FOR AN ORDER APPROVING SALE OF PROPERTY
LIFE INSURANCE POLICY #48 646 088**

COMES NOW Trustee, Jeremiah Foster, by and through counsel, and respectfully moves the Court to enter an order relating to the proposed sale of personal property of the Debtor, Shoot the Moon, LLC. This Motion is made pursuant to 11 U.S.C. 363(b) and (f) and Rules 6004 and 9014 of the Federal Rules

of Bankruptcy Procedure. In support of this Motion, Trustee states and represents as follows:

Introduction

1. The Debtor filed a petition herein on October 21, 2015, under Chapter 11 of Title 11, United States Code.

2. The Court conditionally approved the appointment of Jeremiah Foster as Trustee on October 28, 2015, and thereafter appointed Jeremiah Foster as Trustee without condition on November 5, 2015.

3. After Trustee's appointment and based upon Trustee's investigation, Trustee determined that Debtor owned was the beneficiary of a convertible term life insurance policy ensuring Kenneth Hatzenbeller.

4. The policy was an "Increasing Premium Term Insurance" through New York Life Insurance Company, policy # 48 646 008, with a death benefit of \$2,000,000 for an annual policy premium of \$24,616.62.

5. The Trustee was initially contacted by a broker who advised that because the subject policy is convertible to universal life, it has limited value to speculators willing to exercise the conversion option and make future premium payments in anticipation of profiting from the payment of the death benefit.

6. In early October, Trustee received an offer to purchase the Policy for \$10,000 plus reimbursement for the 1st quarterly premium upon conversion to

universal life, as memorialized in the Letter of Intent (hereinafter the “Agreement”) attached hereto as Exhibit A.

7. In an effort to identify the highest and best offer, Trustee investigated further and authorized the broker to shop the policy to other entities that purchase such policies.

8. In the meantime, Trustee had to exercise the conversion option in order to meet the October 24, 2016 deadline and preserve the value of the policy for the estate.

9. After marketing the policy over a two-month period, the offer of the proposed purchaser in this motion remained the only offer received. The broker indicated that the value of the policy is impaired by the relatively young age of the insured and the resulting high number of premiums to be paid and long length of time until payment of the death benefit.

10. The current policy, a copy of which is attached hereto as Exhibit B, is through New York Life Insurance Company, policy # 61 291 457, and provides death benefit of \$2,000,000 for a quarterly policy premium of \$13,390.

11. Because the policy was only recently converted from term to universal life insurance, it currently has no cash value or surrender value from the insurance company.

12. Trustee wishes to move forward with the sale of the Policy consistent with the Agreement.

Jurisdiction

13. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The statutory basis for the requested relief is 11 U.S.C. § 363(b).

Basis for Relief Sought

A. The Court Should Approve the Proposed Sale of the Policy.

14. The proposed sale of the Policy for net proceeds of \$10,000 is in the best interest of the estate and should be authorized by the Court. Section 363(b)(1) of the Bankruptcy Code provides that a trustee, after notice and a hearing, may sell, other than in the ordinary course of business, property of the estate, when a sound business purpose justifies such action. 11 U.S.C. § 363(b)(1); Comm. of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070–71 (2d Cir. 1983). A trustee’s business decision to sell its assets other than in the ordinary course of business “should be approved by the court unless it is shown to be so manifestly unreasonable that it could not be based on sound business judgment, but only bad faith, or whim or caprice.” In re Cadkey Corp., 317 B.R. 19, 22–23 (D. Mass. 2004). Generally, where it appears from a review of all the facts and circumstances that a sale is in the best interest of the estate, a court will not disturb

the trustee's business judgment regarding the terms of the proposed sale absent some compelling reason to do so. *See generally*, 2 Collier on Bankruptcy at ¶ 363.03 (15th ed. rev. 2008); In re Canyon Partnership, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985).

15. Here, the Trustee's decision to sell the Policy is supported by sound business judgment. The proposed sales price of \$11,771 reflected in Exhibit "A" is the highest offer that the Trustee has received for such the Policy during the course of Trustee's efforts to sell the Policy.

16. Courts have also required that the sale price be reasonable and that the sale result from arm's length, good faith negotiations with the buyer. *See, e.g., In re Abbotts Dairies of Pa.*, 788 F.2d 143, 147-50 (3d Cir. 1986). A purchaser's good faith "is shown by the integrity of his conduct during the course of the sale proceedings." In re Gucci, 126 F.3d 380, 390 (2d Cir.1997) (quoting In re Rock Industries Machinery Corp., 572 F.2d 1195, 1198 (7th Cir.1978)).

17. In this case, the Agreement to sell the Policy for \$10,000 plus reimbursement of the quarterly premium has been negotiated in good faith, in a fair manner and at arms' length.

18. The proposed Buyer, Eldo Investments, LLC, is a third party unrelated to the Trustee.

19. After researching the value and contacting various professionals in the area, Trustee does not believe that any higher offers are likely to emerge for this Policy.

B. The sale should occur free and clear of all interests in the Policy and any such interests should attach to the proceeds of the sale

20. The Code authorizes a trustee to sell property free and clear of any interest in such property of an entity other than the estate only if such entity consents. 11 U.S.C. 363(f)(2). An entity's failure to object constitutes to the proposed sale constitutes "consent" within the meaning of 363(f)(2). *In re Colarusso* 295 B.R. 166, 175 (B.A.P. 1st Cir. 2003), citing *In re Windmill Farms Mgmt. Co.*, 116 B.R. 755, 762 (Bankr. S.D. Cal. 1990).

21. In order to effectuate a sale of the Policy, Trustee seeks to sell the Policy to Eldo Investments, LLC,, the proposed purchaser, in accordance with 11 U.S.C. 363(f)(2), free and clear of any and all interests in the Policy.

22. The Trustee believes the Policy is currently unencumbered.

23. Trustee asserts that allowing this sale to go forward in this manner in the best interests of the estate.

WHEREFORE, Trustee respectfully requests that this Court enter an order authorizing Trustee to sell the Policy free and clear of all liens consistent with the terms and provisions of the Agreement attached hereto as Exhibit "A", and for such other and further relief as this Court deems just and proper.

DATED this 2nd day of December, 2016.

Datsopoulos MacDonald & Lind, P.C.

By: /s/ Trent N. Baker
Trent N. Baker

*Attorneys for Jeremiah Foster
Chapter 11 Trustee*

**NOTICE OF OPPORTUNITY TO RESPOND
AND REQUEST A HEARING**

If you object to the motion, you must file a written responsive pleading and request a hearing within fourteen (14) days of the date of the motion. The responding party shall schedule the hearing on the motion at least twenty-one (21) days after the date of the response and request for hearing and shall include in the caption of the responsive pleading in bold and conspicuous print the date, time and location of the hearing by inserting in the caption the following:

NOTICE OF HEARING

Date: _____

Time: _____

Location: _____

If no objections are timely filed, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted.

DATED this 2nd day of December, 2016.

Datsopoulos MacDonald & Lind, P.C.

By: /s/ Trent N. Baker
Trent N. Baker

*Attorneys for Jeremiah Foster
Chapter 11 Trustee*

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 2nd day of December, 2016 a copy of the foregoing Motion of Chapter 11 Trustee Pursuant to 11 U.S.C. §§ 363(B), Bankruptcy Rule 6004 and 9014 for an Order Approving Sale of Property Life Insurance Policy #48 646 088 was served electronically by the Court's ECF notice to parties requesting special notice or otherwise entitled to the same and that in addition service by mailing a true and correct copy via First Class Mail, postage prepaid, at Missoula, Montana and via electronic mail, to the following persons or entities who are not ECF registered users:

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By: /s/ Trent N. Baker
Trent N. Baker



ELDO INVESTMENTS LLC
INVESTMENTS IN ALL ASSET CLASSES

LETTER OF INTENT FOR PURCHASE/TRANSFER OF OWNERSHIP-BENEFICIARY

Shoot the Moon LLC (the "Seller"), of, does hereby sell, assign and transfer to ELDO Investments, LLC, A(N) Texas Limited Liability Company (the "Buyer"), of 500 N Capital of Texas Hwy Bldg. 4-100, Austin, Texas 78746, the following property.

PROPERTY: \$2,000,000.00 New York Life Insurance Company on the life of Kenneth Hatzenbeller, In-Force on 10-24-2006 with Standard Class, Non-Tobacco.

POLICY NUMBER: 48646008

Term conversion must happen prior to policy term conversion deadline. Agent of record must be Sydney Neil Leer.

AMOUNT: \$10,000 plus 1st quarterly premium after conversion (Approx \$11,771.00)

This transfer is effective immediately after court approval or once New York Life Insurance Company approves change of ownership and Beneficiary. Certified Check or Wire transfer to be made payable to Shoot the Moon LLC.

The Seller warrants that the property is being transferred to the Buyer free and clear of any liens and encumbrances.

The Seller warrants that the above property is in good standing, but makes no further warranties, express or implied (except as specifically state in this document). The Seller shall not be liable for any damages including without limitation, direct, special, or consequential damages.

The property (the "Policy Documents"), TBD and all such property is in the possession of Resolute located at 7201 East Camelback Road Ste 250 Scottsdale AZ 85251

X _____

Kenneth Hatzenbeller "Insured"

X _____

Dated:

X _____

Shoot the Moon LLC "Owner"

X _____

Dated:

X _____

"Witness" Print Name _____

X _____

Dated:

x *Tatanisha Leer*

Elido Investments LLC Tatanisha Leer, President

x *10/11/16*

Dated:



The Company You Keep®

992703259
NEW YORK LIFE
PO Box 130539
Dallas, TX 75313-0539
www.newyorklife.com

New York Life Insurance Company
Annual Policy Summary

13-60979-RBK Doc# 895-2 Filed: 12/02/16 Entered: 12/02/16 12:43:06 Page 1 of 2

Policyowner

Agent/Representative

THIS IS NOT A BILL
>015129 3639637 0001 092154 10Z

SHOOT THE MOON LLC
1400 MARKET PLACE DR
GREAT FALLS, MT 59404-3465

LES J MARSH CAP
(406) 761-4957

DATE PREPARED: OCT 26, 2015

This annual summary highlights the financial activity for your policy during the period from **Oct 25, 2014** to **Oct 26, 2015**. All values quoted in this statement are applicable on the date the statement was prepared. Your future values may be higher or lower based on a number of factors including premium payments. If you have any questions, please contact your New York Life agent listed above or one of our Customer Service Representatives at 1-800-695-1314.

Coverage	Insured:	KENNETH HATZENBELLER
	Policy Number:	48 646 008
	Policy Plan:	Increasing Premium Term Insurance
	Base Plan Death Benefit:	\$2,000,000
	Policy Date:	Oct 24, 2006
	Premiums are Paid To:	Nov 24, 2015
	Monthly Premium:	\$2,147.00
	Annual Policy Premium:	\$24,616.67

Life Insurance	Total Death Benefit on Oct 24, 2015:	\$2,002,147.00
Death Benefit	(See Page 2 for details.)	

The **NUMBER ONE** cause of problems in processing claims is inaccurate or invalid beneficiary designations - Call your Agent **TODAY** to review yours.

Congratulations on reaching your current policy anniversary. We value your business and are committed to providing you with the highest quality products and services possible.

For over 170 years, we have delivered on our promise to pay. Our ability to meet the needs of our customers is based on a tradition of sound management practices and a conservative investment strategy, which has enabled us to achieve a position of strength unsurpassed in the life insurance industry today.

Thank you for making us **The Company You Keep®**.

For policy information and online service, please visit us at -----> www.newyorklife.com/vsc

Please refer to the Definition of Terms and other information on the reverse side of page 2.

IMPORTANT POLICYOWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by contacting your agent at (406) 761-4957, sending a fax to your Service Center at 1-800-278-4117, writing to New York Life at PO Box 130539, Dallas, TX 75313-0539, or by calling your Service Center at 1-800-695-1314. If you do not receive a current illustration of your policy within 30 days from your request, you should contact your state insurance department.

700011000 147550 0406274 / 0406274 07101



The Company You Keep®

Insured: KENNETH HATZENBELLER

Date Prepared: Oct 26, 2015

Life Insurance Death Benefit

**As of
Oct 24, 2015**

Base Plan Death Benefit	\$2,000,000.00
Premiums paid beyond Oct 24, 2015	<u>2,147.00</u>
TOTAL DEATH BENEFIT	<u>\$2,002,147.00</u>

Policy Cash Value

**As of
Oct 24, 2015**

No activity during the period

Loan Summary

**Period from Oct 25, 2014
to Oct 26, 2015**

No activity during the period

Dividend Summary

**As of
Oct 24, 2015**

No activity during the period

**Summary of Our
Disbursements**

**Period from Oct 25, 2014
to Oct 26, 2015**

No activity during the period

**Summary of Your
Payments**

**Period from Oct 25, 2014
to Oct 26, 2015**

Check-O-Matic Policy Premium(s)	\$21,540.00
TOTAL PAYMENTS	<u>\$21,540.00</u>

15129 3639637 97 056393 00020002