

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division

CASE NO. 04-60573-CIV-MORENO

SECURITIES AND EXCHANGE  
COMMISSIONS,

Plaintiff,

v.

MUTUAL BENEFITS CORP., *et al*,

Defendants.

---

**TRUSTEE'S AMENDED MOTION TO AUTHORIZE THE  
INITIATION OF TRUST WIND DOWN AND TERMINATION**

Pursuant to the *Omnibus Order* [D.E. 2639] ("Omnibus Order") entered by the Court, Barry Mukamal, as Trustee ("Trustee") of the Mutual Benefits Keep Policy Trust (the "Trust"), files this amended motion to authorize an initiation of a process leading to the orderly wind down and eventual termination of the Trust in a manner that will benefit the victims of the Mutual Benefits Fraud ("Victims") that have retained their viaticated policy interests in the Trust. In support, the Trustee states:

**Facts**

1. This case originates out of a massive fraud by which more than 30,000 investors were induced into investing in viatical insurance policies owned by Mutual Benefits Corporation ("MBC"). In May 2004, the Securities and Exchange Commission commenced an action against MBC, and Roberto Martinez was appointed as Receiver ("Receiver"). During the administration of the receivership, the Court gave investors the choice of maintaining their interests in the MBC

policies and paying their share of the premiums and administrative fees associated with such interests and retaining their investment.

2. In September 2009, the Receiver, as part of the wind-down of the receivership, created the Trust to serve as a vehicle to continue to administer the “Keep Policies” for the benefit of the Victims of the fraud whom had elected to retain, rather than sell, their interests in the MBC policies, for the purpose of receiving, maintaining, and administering 2,403 life insurance policies from the Receivership that the investors had elected to retain. The Trust Agreement that created the Trust identifies the beneficiaries of the Trust as the “Keep Policy Investors,” i.e., “persons who have invested in an entire interest or a fractional interest in a Keep Policy owned of record by the Receivership Entities, and whose interest in such Keep Policy has not been forfeited as of the Closing Date.” The purpose of the Trust is to hold and administer the Keep Policies for the benefit of the Keep Policy Investors, and to distribute the pro rata share of the death benefits to the investors in those policies when they mature (i.e., when the insured dies).

3. The Trust Agreement provides that the purpose of the Trust is to “to take custody of the Trust Assets and maintain and administer the Trust Assets for the benefit of the Keep Policy Investors, consistent with the terms and procedures set forth in this Trust Agreement.” Trust Agreement at § 2.2 (a copy of the Trust Agreement is attached as Exhibit A). A “Keep Policy Investor” is defined as “Persons who have invested in an entire interest or a fractional interest in a Keep Policy owned of record by the Receivership Entities, and whose interest in such Keep Policy has not been forfeited as of the Closing Date.” *Id.* at § 1.1.

4. At the time of its formation in 2009, it was anticipated that the Trust would only last the few years necessary for the policies to mature as the insureds passed away. The Trust has

now been in existence for over 10 years, and due to advances in medical science and HIV treatment, many insureds have lived longer, resulting in the Trust continuing longer than expected.

5. Due to the nature of the Trust, it cannot have an indefinite existence because all life insurance policies will necessarily mature. Recognizing that the uncontrolled deterioration of the Trust could have negative consequences, the Trustee has determined that an orderly and structured wind down of the Trust would best protect the interests of the Victims. This conclusion is the result of months of careful consideration, the idea of which has been shared with Acheron for over a year.

6. Currently, the Trust has approximately 1,340 active policies with a combined \$273.5 million in face value, which are held by approximately 1,730 investors via 3,955 fractional interests.<sup>1</sup> The Trustee anticipates that the maturation of the policies will accelerate and lead to a point that the cost of administering and servicing the Trust is no longer economically desirable for the remaining Victims and Keep Policy Investors.

7. There is a certain cost associated with administering and servicing the Trust, its policies, and its assets. Costs include everything from trust tax returns, to book keeping, to website services, to third party policy servicing, to professional fees and costs incurred in connection with supervising and monitoring the performance of the servicer and managing the operations of the Trust, and lately, litigation expenses as a result of a lawsuit filed by a purchaser of policy interests from the Trust. Some of these costs will remain relatively constant as the number policies and investors declines. At some point, the number of policies – over which these costs are spread – will decline and the costs become prohibitive to the Victims that continue to pay premiums and fees.

---

<sup>1</sup> The Trustee has updated these figures to reflect changes since the filing of the *Motion to Correct Scrivener's Error* [D.E. 2625].

8. Neither the Trustee nor the Trust have a profit motive, so an operating deficit is not the motive for raising Trust termination with the Court. Instead, the Trustee's fiduciary duty requires him to advise the Court, and seek its approval, to take steps now to ensure that the Victims can continue to maximize the benefit of their investment in the viaticated life insurance policies. Currently, the Victims hold the minority of policy face value in the Trust, with post-fraud, institutional investors holding the majority of policy face value. In the Trustee's view, this allocation of policy interest ownership heightens his fiduciary interests as he seeks to protect the original Victims against the "majority rule" mentality of these commercial investors.

#### **Authority for Trust Termination**

9. The Trust Agreement that created the Trust contemplates its termination:

This Trust Agreement shall terminate upon the final disposition of all Keep Policies, whether by maturity, sale, surrender, or lapse, and the distribution of *all other Trust Assets* in accordance with the terms of the Servicing Agreement.

Trust Agreement at § 8 (emphasis added).

10. The Trust Agreement further authorizes the Trustee to terminate the Trust on certain conditions:

[T]he Trustee shall have the following powers and duties: ... In the event that the Servicing Agreement is terminated or expires and the continued servicing of the Keep Policies becomes unfeasible, to authorize and direct the sale, surrender, or lapse of the Keep Policies, and to distribute the proceeds, if any, of the Keep Policies upon such sale, surrender or lapse, to the Keep Policy Investors in such manner as the Trustee determines to be appropriate.

*Id.* at Section 3.1(b)(xvii).

11. While the Court-approved Trust Agreement unequivocally empowers the Trustee to terminate the Trust, the Trustee nonetheless seeks the Court's approval and confirmation of

authority to initiate the process that could serve as the basis for wind-down and eventual Trust Termination.

**Request to Initiate Process for Trust Termination**

12. The Trustee does not request that this Court now authorize the termination of the Trust or the specific date of terminating the Trust. As set forth below, the orderly wind-down of the Trust will require certain steps that will maximize the value to the Victims and protect their interests. Some of those steps require a long period to implement, so it is important to organize them well in advance of any contemplated termination. At this point, the Trustee only asks the Court to confirm the Trustee's authority and approve the implementation of steps necessary to have in place for Trust termination, subject to the Court's oversight.

13. The Trustee cannot predict the specific date upon which the Trust should be terminated, but he anticipates that the wind-down and eventual termination of the Trust is anticipated to take from 18 to 36 months. Once the elements are in place, the date for termination will be driven by the point at which the cost of servicing the remaining policies becomes significantly more expensive than the current servicing costs per policy.<sup>2</sup>

14. While motions previously filed by the Trust and approved by the Court,<sup>3</sup> as well as one of the Trustee's motions currently pending before the Court,<sup>4</sup> were designed to address only

---

<sup>2</sup> All proposals provided by servicers bidding for servicing rights after the current servicing term expires reflect that servicing fees will increase on a per policy basis. This increase will not be passed on to investors because the Trustee will subsidize the price increase from the Trust Assets, which, in turn, is designed to avoid an artificial acceleration of investor defaults caused by an increase in their servicing fees.

<sup>3</sup> Trustee's Motion to Authorize Retention of Broker and to Obtain Updated Life Expectancy Reports [D.E. No. 2539] and Court approval [D.E. No. 2576] and the Trustee's Motion for Clarification [D.E. No. 2540] and Court approval [D.E. No. 2577].

<sup>4</sup> Trustee's Motion for Authority to Selectively Preserve or Lapse Unpaid Keep Policies [D.E. No. 2579].

current Trust needs, those motions nonetheless lay some of the groundwork necessary to effect an orderly wind-down of the Trust.

15. The first step to prepare for a wind-down is to obtain updated life expectancy reports for the insureds.<sup>5</sup> Life expectancy reports are an industry standard report utilized by purchasers of life insurance policies as a significant data point in arriving at their estimate of market value, and hence the offered purchase price. As life expectancy reports are received by the Trustee, which information will be provided to the fractional owners of those policies – both Victims and institutional investors. At that point, the second stage can be performed: the actuarial evaluation of the portfolio of policies. The remaining stages relate to the marketing and sale of policies.

16. The proposed mechanics of Trust termination have not been determined at this stage; however, the Trustee does anticipate that the actual termination process will have some characteristics. The most likely scenario for termination involves the sale of all policies (rather than fractional policy interests) remaining in the Trust at the time of termination. This may include a provision that allows Victims and institutional investors (collectively, the “Policy Investors”) to elect to retain their interests in the policy, if possible. This may take the form of “tag-along” rights that permit a purchaser to acquire the policy while permitting the Policy Investors to continue to hold their beneficial interests in the insurance policy proceeds.

17. The Trustee owns and holds title to the policies and the Policy Investors own beneficial ownership in the fractional interests of the policy. Therefore, the sale of the entire policy is consistent with the Trustee transferring the policies out of the Trust as a precursor to Trust

---

<sup>5</sup> For other reasons, the collection of life expectancy reports has already commenced for selected policies in the Trust’s portfolio.

termination. Unless the policy is sold, the Trust will retain ownership of some aspect of the policy that will make it impossible to wind-down and terminate the Trust. As contemplated since its inception, the Trust cannot terminate until all policies and Trust Assets are removed from the Trust. Trust Agreement at Section 8, *supra*.

18. The Trustee also believes that the sale of the policies as a whole will create the highest prices for the Policy Investors that elect to sell. The Trust has historically sold fractional interests to avoid a policy cancellation occasioned by a defaulting owner of a fractional interest. The Trust will continue to do so until the Trust termination in the best interest of the Trust, in addition to other alternatives to the extent authorized by the Court. However, the Trustee's market research, as well as advice from his industry consultants, indicates that fractional interest sales are not anticipated to achieve the best and highest price. The market is very limited for the sale of fractional interests on an individual basis, and consequently, the prices are deflated and the marketing costs are disproportionate to the value realized by a sale.

19. Closely related, the Trustee has also concluded that the policies must be exposed to the open market in order to realize the best and highest possible price for Policy Investors. Unless the policy prices are set by the market, it will be very difficult for the Trustee, the Court, and the Victims to evaluate the proposed purchase price.

20. Consistent with these considerations, the Trustee, in consultation with his industry advisors, will have to examine and determine the most effective manner in which to package, market, and solicit market-based offers.

21. The Trustee will also have to evaluate the date for Trust termination, including factors that might accelerate the need to terminate the Trust, such as servicing costs.

22. Ultimately, the Trustee will have to recommend, and seek approval from, the Court as to the form of the sale of policies and, very importantly, whether Policy Investors can retain their interests and how those interests could be protected upon sale as well as the way in which the sale proceeds are allocated among the individual investors selling their interests.

### **Proposed Timeline<sup>6</sup>**

23. Consistent with the Court's Omnibus Order, the Trustee proposes the following timeline for effecting the steps sought in this motion:

- a. Within 120 to 150 days of an order approving this motion, notify Victims and other investors of:
  - i. the intent to wind down and terminate the Trust; and
  - ii. their right to offer their policy interests for sale to any interim buyer (as set forth below at ¶ 26).
- b. Continue obtaining life expectancy reports for policies selected by the Trustee.<sup>7</sup> It is anticipated to take up to 365 days to complete this process.
- c. Once sufficient life expectancy reports have been received, engage an actuarial firm with expertise in the life settlement industry to perform a portfolio valuation to provide the Trustee with a baseline pricing expectation.<sup>8</sup> The valuation is anticipated to take up to an additional 60 days.<sup>9</sup>

---

<sup>6</sup> Consistent with the Court's Omnibus Order, the unexpected and fast-moving COVID-19 pandemic has caused the Trustee to scrutinize the timeline proposed in his initial *Motion to Authorize the Initiation of Trust Wind Down and Termination* [D.E. 2609] (the "First Wind Down Motion"), and the Trustee appreciates the Court's opportunity to undertake this careful evaluation. Accordingly, the Trustee has modified the timeline originally proposed in his First Wind Down Motion in a manner that the Trustee believes strikes a meaningful balance between (i) remaining sensitive and attentive to COVID-related exigencies, and (ii) ensuring the orderly implementation of a wind down and eventual termination of the Trust in a manner that will benefit the Victims of the Mutual Benefits Fraud.

<sup>7</sup> Pursuant to advice from his industry consultants, the Trustee has selected a grouping of policies in the portfolio for which life expectancy reports will be obtained. As a practical matter, the cost of obtaining such reports does not outweigh the benefit to be derived for *all* of the policies in the portfolio. For example, the Trustee does not plan to obtain life expectancy reports for most policies for HIV+ insureds with policy face values of less than \$250,000.

<sup>8</sup> The baseline pricing expectation is advisable to ensure the sale pricing and process is fair to the Victims.

<sup>9</sup> During this time, the Trust will confirm that carriers have processed ownership changes and distribute funds to investors. Once these tasks and other ministerial functions (e.g. – closing bank accounts, final accounting, final tax return) relating to winding up the Trust are completed, the Trust will be terminated.



d. Once the portfolio valuation has been completed, the Trustee can commence soliciting offers for the policies from interested purchasers. The portfolio marketing period is anticipated to take up to 60 days and will be followed by a sale and wind-down of Trust operations, which is anticipated to take up to 90 days.

e. The Trustee will consider scenarios in which the policies may be packaged for sale depending upon the underlying characteristics of the policies. For example, policies on insureds at least 90 years old are more valuable than policies on insureds that are 60 years old. The Trust's portfolio generally consists of term, whole life and universal life policies on insureds ranging in age from 42 to 105. The portfolio is further stratified into various classifications including: policy face value, HIV+ insureds and non-HIV positive insureds, gender, age, and health status, to name the most salient categories.

24. This timeline is subject to change, primarily based on both the timing of obtaining life expectancy reports, as well as feedback from Victims and other investors regarding their interest in terminating the policy interests at the time the Trust portfolio is sold or if they want to retain their fractional interests in the policy after policy sale beyond the Trust termination, and potential delays occasioned by the COVID-19 pandemic. If such "tag-along" rights are offered, the number of Policy Investors wishing to retain their fractional interests will influence the consideration of a need for a post-termination oversight function to continue to protect those investors that elect to tag-along.

### **Costs**

25. The Trustee anticipates that the cost associated with wind-down and termination will be borne by the Trust, with zero cost to the Victims and other investors. Under the Trustee's management, the Trust has accumulated assets that should be sufficient to fund the expense associated with steps set forth in this Motion. In order to ensure that the Trust can absorb this cost,

---

the funds needed to implement the processes proposed in the Trustee's Motion to Preserve Policies [D.E. No. 2579], the potential expense of transitioning to a new servicer if a new servicer is necessary, and defending against litigation brought by a non-Victim investor, the Trustee will allocate the Trust funds necessary to absorb such costs as well as provide a reserve. Such a reserve would, in part, be used to ensure that policies do not lapse due to defaulting interests that are not purchased by a third-party.<sup>10</sup>

### **Interim Sales for Victims**

26. It is anticipated that some Victims may be interested in selling their policy interests before Trust termination. Currently, defaulted investors have their interests sold by the Trust with the proceeds retained by the Trust. In order to assist such Victims in the period between the present and the Trust termination, the Trustee seeks to provide an alternative. The Trustee seeks approval to allow each Victim to authorize the sale of his or her policy interest before defaulting and realize the net proceeds from the sale. In such a scenario, applicable policy interest sales will be conducted via the Trust's retained broker/dealer.<sup>11</sup> The Trustee believes that it is in the best interest of the Victims, all of whom who have held their policy interests for at least 16 years, to have the option to sell their respective policy interests and realize the proceeds of such sale.

27. This proposal mirrors the original choice provided to the Victims during the Receivership: keep a policy interest or sell it. It also provides the additional choice of selling an interest, instead of just paying premium or forfeiting the interest. While Victims selling fractional

---

<sup>10</sup> Acheron has been the historical purchaser of policy interests but has become increasingly belligerent in its course of conduct with the Trust.

<sup>11</sup> Acheron will be provided an opportunity to participate in any such sales in accordance with the Trustee's March 19, 2015 Agreement with Acheron.

interests may not realize the same net proceeds than by waiting for Trust termination,<sup>12</sup> the Trustee nevertheless believes that investors should have more choices.<sup>13</sup>

### **Conclusion**

28. Although the Court-approved Trust Agreement provides the Trustee with the authority to wind-down and terminate the Trust, he nonetheless requests that this Court authorize and confirm such authority to initiate the process to facilitate the wind down and eventual termination of the Trust.

BASED UPON THE FOREGOING, Barry Mukamal, solely in his capacity as Trustee of the Mutual Benefits Keep Policy Trust, moves this Court for entry of an Order authorizing the initiation of a process leading to the orderly wind-down and eventual termination of the Trust as set forth in this Motion using Trust assets, including permitting investors to participate in brokered sales of their policy interests, and such other relief that this Court deems just and equitable.

### **GENOVESE JOBLOVE & BATTISTA, P.A.**

s/ John Arrastia  
John Arrastia  
Fla. Bar No. 0072461  
[Jarrastia@gjb-law.com](mailto:Jarrastia@gjb-law.com)  
100 S.E. Second Street, 44<sup>th</sup> Floor  
Miami, FL 33131  
Tel: (305) 349-2300  
Fax: (305) 428-8832

KOZYAK TROPIN & THROCKMORTON, LLP  
2525 Ponce de Leon, 9th Floor  
Coral Gables, FL 33134  
Tel: (305) 372-1800

---

<sup>12</sup> As previously discussed above relative to exposing the policies to the open market.

<sup>13</sup> The Trustee recognizes that offering Victims the opportunity to sell their fractional interests may alter the composition of the Trust and accelerate the point at which a termination is desirable. Nonetheless, the Trustee believes it is in the best interest of the Victims to provide such an option.

Fax: (305) 372-3508

By: /s/ David L. Rosendorf  
David L. Rosendorf  
FL Bar No. 996823  
[dlr@kttlaw.com](mailto:dlr@kttlaw.com)

*Attorneys for Trustee*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on April 10, 2020 on counsel for all the parties by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ John Arrastia  
John Arrastia

EXHIBIT "A"

**MUTUAL BENEFITS "KEEP POLICY" TRUST AGREEMENT**

This Trust Agreement (the "Trust Agreement") dated as of September 25, 2009, and effective as of approval by the Court and delivery to the Trustee, is among Roberto Martinez ("Receiver"), as the Receiver for Mutual Benefits Corp. ("MBC"), a Florida corporation, Viatical Services, Inc., a Florida corporation ("VSI"), and Viatical Benefactors, LLC, a Delaware limited liability company ("VBLLC") (collectively, MBC, VSI and VBLLC being the "Receivership Entities"), as settlor, and the Trustee identified on the signature page hereof (the "Trustee").

WHEREAS, Receiver is the receiver for the Receivership Entities under Case No.: 04-60573 CIV-MORENO (the "Receivership Proceeding") in the United States District Court for the Southern District of Florida (the "Court");

WHEREAS, Receiver was appointed receiver for the Receivership Entities pursuant to the Order Appointing Receiver entered by the Court on May 4, 2004 (the "Receivership Order");

WHEREAS, pursuant to the Receivership Order, Receiver was authorized to take possession of all of the assets of the Receivership Entities, including the Purchased Assets (as defined below), and was vested with all power and authority to, among other things, administer and manage the assets and business affairs of the Receivership Entities;

WHEREAS, Receiver desires to, on behalf of each Receivership Entity, sell and assign to Buyer (as defined below), all of each such Receivership Entity's right, title and interest in, to and under the assets and business of VSI identified herein and other assets and properties related thereto;

WHEREAS, subsequent to the closing of the sale of assets to Buyer, and certain other transactions, it is contemplated that the Receivership Proceeding will be concluded and the Receivership terminated; and

WHEREAS, simultaneously with the closing of the sale of assets to Buyer, the Receiver intends to assign and transfer to the Trustee the Trust Assets (as defined below) and to assign to the Trustee certain rights and responsibilities with respect to the management of the Trust Assets; and

WHEREAS, in connection with the foregoing transactions, Buyer shall enter into a servicing agreement with the Trustee, with respect to the services currently being performed by VSI on behalf of the Receivership Entities;

NOW, THEREFORE, it is agreed as follows:

**ARTICLE I**  
**DEFINITIONS; CERTAIN RULES OF CONSTRUCTION**

Section 1.1 Defined Terms As used herein, the terms below have the following respective meanings:

**"Action"** means any claim, action, suit, proceeding, arbitral action, governmental inquiry, criminal prosecution or other investigation, whether or not filed or commenced in any court or tribunal.

**"Asset Purchase Agreement"** means the Asset Purchase Agreement dated March 31, 2009 between Receiver and Buyer (together with all schedules and exhibits attached thereto), as may be amended, modified, supplemented and/or restated from time to time in accordance with its terms.

**"Buyer"** means Litai Assets LLC, a Delaware limited liability company.

**"Closing"** has the meaning given to such term in Section 3.1 of the Asset Purchase Agreement.

**"Closing Date"** means the date on which the Closing occurs.

**"Court"** has the meaning given to such term in the recitals to this Agreement.

**"Governmental Authority"** means any local, state, federal or foreign government or any agency, bureau, board, commission, court, department, political subdivision, tribunal or other instrumentality of any local, state, federal or foreign government.

**"Keep Policies"** means those policies which were designated to be retained by investors pursuant to the procedures set forth in the *Order on Disposition of Policies and Proceeds* entered September 14, 2005 and *Order Clarifying Disposition order and Approving Form of Notice* entered by the Court on November 22, 2005 and which, as of the Closing Date, have not been sold or lapsed.

**"Keep Policy Investors"** means persons who have invested in an entire interest or a fractional interest in a Keep Policy owned of record by the Receivership Entities, and whose interest in such Keep Policy has not been forfeited as of the Closing Date.

**"Law"** means any law, statute, rule, regulation, ordinance, treaty or other pronouncement having the effect of law of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision or of any Governmental Authority.

**"Liabilities"** means any and all debts, indebtedness, losses, claims, damages, costs, expenses, demands, fines, judgments, penalties, liabilities, commitments, sales commissions, contracts, responsibilities and obligations of any kind or nature whatsoever, direct or indirect, absolute or contingent, known or unknown, fixed or unfixed, due or to become due, of a Person.

**"MBC"** has the meaning given to such term in the preamble to this Agreement.

**"Order"** means any judgment, order, injunction, writ, ruling, decree (including any consent decree), stipulation, award or similar order of any Governmental Authority or private arbitration tribunal (in each case whether preliminary or final).

**"Overpayment Balance"** has the meaning given to such term in Section 1 of the Servicing Agreement, as such amount is periodically supplemented and disbursed in accordance with the terms of the Servicing Agreement.

**"Person"** means any individual, partnership, joint venture, association, corporation, business trust, limited liability company, trust, proprietorship, unincorporated organization, instrumentality, business organization, enterprise, joint stock company, estate, Governmental Authority or other entity.

**"Policies"** has the meaning given to such term in Section 4.8 of the Asset Purchase Agreement.

**"Policy Administration Orders"** means the *Order Granting Receiver's Motion to Authorize Procedures for Re-Designation of Beneficial Interests in Insurance Policies* entered by the Court on January 30, 2007 (D.E. 1837), the *Order Regarding Future Administration of Certain Insurance Policies Subject to this Proceeding* entered by the Court on April 30, 2007 (D.E. 1887), the *Order Granting Motion for Clarification and Amendment* entered by the Court on January 3, 2008 (D.E. 2010), and the *Order Granting Motion for Amendment of Beneficial Interests Order* entered by the Court on August 18, 2008 (D.E. 2142).

**"Policy Files"** has the meaning given to such term in Section 3.2(b) of the Asset Purchase Agreement.

**"Proceeding"** means any claim, action, arbitration, audit, hearing, investigation, litigation, complaint, counterclaim, joinder, suit, order, notice of violation or other proceeding (whether civil, criminal, administrative, investigative or informal and whether in law or in equity) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

**"Receivership Entities"** has the meaning given to such term in the preamble to this Agreement.

**"Receivership Order"** has the meaning given to such term in the recitals to this Agreement.

**"Receivership Proceeding"** has the meaning given to such term in the recitals to this Agreement.

**"Servicer"** means Buyer or such substitute Servicer as may be engaged by the Trustee in accordance with the terms of the Servicing Agreement and this Trust Agreement.

**"Servicing Agreement"** means the Servicing Agreement dated the date hereof by

and between the Trust and the Buyer, as may be amended, modified, supplemented and/or restated from time to time in accordance with its terms.

"Successor Trustee" shall have the meaning set forth in Article 6 hereof.

"Taxes" means (i) any federal, state, local or foreign net or gross income, minimum, alternative minimum, sales, value added, use, excise, franchise, real or personal property, transfer, conveyance, environmental, gross receipts, capital stock, production, business and occupation, disability, employment, payroll, severance, withholding or other tax, assessment, duty, fee, levy or charge of any nature whatever, whether disputed or not, imposed by any Governmental Authority, and any interest, penalties (civil or criminal), additions to tax or additional amounts related thereto or to the nonpayment thereof and (ii) any obligations under any agreement or other arrangement with respect to any item described in clause (i) above.

"Tax Return" means any return, report or similar statement required to be filed with respect to any Tax (including any attached schedules), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

"Trust" or "Trust Agreement" means this Trust Agreement.

"Trust Assets" means the Policies, the Policy Files and the Trust Cash.

"Trust Assignment and Assumption Agreement" means the Trust Assignment and Assumption Agreement to be dated as of the Closing Date by and between the Receiver and the Trustee.

"Trust Cash" has the meaning given to such term in Section 3.2(b)(iii) of the Asset Purchase Agreement.

"Trustee" means the Trustee of the Trust under this Trust Agreement.

"VBLLC" has the meaning given to such term in the preamble to this Trust Agreement.

"VSI" has the meaning given to such term in the preamble to this Trust Agreement.

Section 1.2 Certain Rules of Construction. For all purposes of this Trust Agreement, except as otherwise expressly provided for herein or unless the context of this Agreement otherwise requires:

(a) whenever the words "include," "includes" or "including" are used in this Agreement they shall be deemed to be followed by the words "without limitation";

(b) the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, schedule and exhibit references



refer to this Agreement unless otherwise specified;

(c) the meanings given to terms defined herein are equally applicable to both singular and plural forms of such terms;

(d) words herein of any gender are deemed to include each other gender;

(e) unless the context otherwise requires, a reference herein to any party to this Agreement or any other agreement or document includes such party's permitted successors and permitted assigns;

(f) a reference herein to any agreement or other document is to such agreement or other document (together with any schedules, exhibits and other attachments thereto) as it may have been or may hereafter be amended, modified, supplemented, waived and/or restated from time to time in accordance with its terms and the terms hereof (if applicable thereto);

(g) a reference herein to any legislation or to any provision of any legislation includes any modification or re-enactment thereof, any legislative provision substituted therefor and all regulations and rules issued thereunder or pursuant thereto; and

(h) all references herein to "\$", "funds" and "dollars" refer to United States currency.

## **ARTICLE 2**

### **AGREEMENT OF TRUST**

Section 2.1 **Creation and Name.** The Receiver hereby creates a trust known as the "Mutual Benefits Keep Policy Trust".

Section 2.2 **Purpose.** The purpose of the Trust is to take custody of the Trust Assets and maintain and administer the Trust Assets for the benefit of the Keep Policy Investors, consistent with the terms and procedures set forth in this Trust Agreement.

Section 2.3 **Transfer of Assets.** The Receiver hereby transfers to the Trust the Trust Assets and assigns to the Trustee all of the Receiver's rights, powers and privileges under the Policy Administration Orders. The Receiver shall execute and deliver such documents as the Trustee reasonably deems necessary to transfer and assign the Trust Assets.

Section 2.4 **Acceptance of Assets and Assumption of Liabilities.** In furtherance of the purposes of the Trust, the Trustee, on behalf of the Trust, hereby expressly accepts the transfer and assignment to the Trust of the Trust Assets and assumes such responsibilities as are set forth in Section 3.1 hereof.

## **ARTICLE 3**

### **POWERS AND TRUST ADMINISTRATION**

Section 3.1 Powers & Duties.

(a) Subject to the limitations set forth in this Trust Agreement, the Trustee shall have the power to take any and all actions that, in the judgment of the Trustee, are necessary or proper to fulfill the purposes of the Trust, including, without limitation, each power expressly granted in this Section 3.1, any power reasonably incidental thereto, and any trust power now or hereafter permitted under the laws of the State of Florida.

(b) Without limiting the generality of the Section 3.1(a) above, the Trustee shall have the following powers and duties:

(i) To receive and hold the Trust Assets, subject to the terms of this Trust Agreement;

(ii) To hold the status of owner and "nominal beneficiary" with respect to all Keep Policies, as is presently held by the Receiver pursuant to the Policy Administration Orders, and to hold and execute, in his discretion, all of the rights, powers and privileges of the Receiver under the Policy Administration Orders;

(iii) To enter into and perform the obligations of the Trustee under the Servicing Agreement, subject to the terms of this Trust Agreement, consistent with the Policy Administration Orders, and to monitor the performance of the Servicer of the duties to be performed by Servicer pursuant to the Servicing Agreement;

(iv) To periodically review and release funds from the VSI Premium Payment Account (or such account as is established by the Trustee) to the Servicer in response to check requests for payment of premiums to insurance carriers;

(v) To periodically review premium budgets and reconciliations prepared by the Servicer pursuant to the Servicing Agreement;

(vi) to periodically review Maturity Reports provided by the Servicer pursuant to the Servicing Agreement;

(vii) to periodically review the books, records, bank statements and electronic data of the Servicer that pertain to the payment of premiums associated with the Keep Policies, and the payments in satisfaction of obligations to the Keep Policy Investors and to periodically review such reports with respect to such payments as requested of the Servicer under the Servicing Agreement from time to time;

(viii) To provide the Servicer with access to the Policy Files as is reasonably required pursuant to the Servicing Agreement;

(ix) To confer with the Servicer with regard to the provision of Disposition Services as contemplated by the Servicing Agreement and to approve the Servicer's proposed

methods of disposition of "Zero-subscribed Policies" or "Under-subscribed Policies" (as defined in the Servicing Agreement);

(x) To review the calculations of the annual adjustments to the Administrative Fee contemplated by Section 12.1.2 of the Servicing Agreement;

(xi) To direct the Servicer to collect such additional fees as are necessary, in the Trustee's business judgment, to fund the operations of the Trust, in the event that the amount of the Overpayment Balance otherwise available to pay the expenses of the Trust is deemed insufficient by the Trustee;

(xii) To review and approve, consistent with the parties' obligations under the Servicing Agreement, of any use of the Overpayment Balance as requested by the Servicer pursuant to Section 12.1.7 of the Servicing Agreement;

(xiii) To periodically, but not less than once a year, provide a written report to the Keep Policy Investors regarding the financial condition of the Trust and the performance by the Servicer of its responsibilities under the Servicing Agreement consistent with Section 5.1 of this Trust Agreement;

(xiv) To negotiate such extensions of the Servicing Agreement with Servicer as the Trustee deems appropriate;

(xv) To give notice to the Servicer, if necessary, of any default by the Servicer under the Servicing Agreement, and to take such steps as the Trustee deems are necessary to address any such defaults, including exercising rights of termination of the Servicing Agreement if the Trustee in his business judgment deems it appropriate;

(xvi) To negotiate and enter into a servicing agreement with a substitute servicer in the event of termination or expiration of the Servicing Agreement, or make such other arrangements as the Trustee deems appropriate in the circumstances to administer the Keep Policies;

(xvii) In the event that the Servicing Agreement is terminated or expires and the continued servicing of the Keep Policies becomes unfeasible, to authorize and direct the sale, surrender, or lapse of the Keep Policies, and to distribute the proceeds, if any, of the Keep Policies, upon such sale, surrender or lapse, to the Keep Policy Investors in such manner as the Trustee determines to be appropriate;

(xviii) To pay liabilities and expenses of the Trust including, without limitation, any amounts due to the Servicer from the Trust Assets pursuant to the Servicing Agreement;

(xix) To establish such funds, reserves and accounts as are deemed by the Trustee to be useful in carrying out the purposes of the Trust consistent with the rights and obligations of the Servicer under the Servicing Agreement;

(xx) To hire such counsel, accountants, appraisers, auditors and such other parties as are required by the business of the Trust (including, without limitation, professionals or professional firms with whom the Trustee may be associated or employed), and to delegate to such persons such powers and authorities as the duties of the Trustee permit and as the Trustee, in his discretion, deems advisable of necessary in order to carry out the terms of this Trust Agreement, including without limitation to execute and deliver such powers of attorney in favor of the Servicer as the Trustee deems appropriate to facilitate the Servicer's performance of its duties under the Servicing Agreement;

(xxi) To pay counsel, accountants, appraisers, auditors and such other parties reasonable compensation;

(xxii) To file such Tax Returns and pay such Taxes as are required of the Trust;

(xxiii) To execute and deliver such instruments as the Trustee deems proper in administering the Trust;

(xxiv) To enter into such other arrangements with third parties as are deemed by the Trustee to be useful in carrying out the purposes of the Trust;

(xxv) To indemnify the Trustee and the Servicer (to the extent required under the Servicing Agreement), to the fullest extent that a corporation or trust organized under the law of the state of Florida is from time to time entitled to indemnify its trustees, directors, officers, employees, agents, advisors and representatives;

Section 3.2 Principal Place of Administration. The office of the Trust shall be in care of the Trustee at MarcumRachlin, a division of Marcum, LLP, 1 Southeast Third Avenue, 10<sup>th</sup> Floor, Miami, FL 33131 or at such other address as the Trustee shall designate by notice to the Keep Policy Investors, the Servicer and Insurers.

Section 3.3 Employment of Professionals. The Trustee may, but shall not be required to, retain and/or consult with counsel, accountants, appraisers, auditors and such other parties as are deemed by the Trustee to be qualified as experts on the matters submitted to them (including, without limitation, professionals or professional firms with whom the Trustee may be associated or employed), and the opinion of any such parties on any matters submitted to them by the Trustee shall be full and complete authorization and protection in respect of any action taken or not taken by the Trustee hereunder in good faith and in accordance with the written opinion of any such party.

#### **ARTICLE 4**

#### **ACCOUNTS AND INVESTMENTS**

Section 4.1 Permitted Investments. All monies held by the Trust shall be invested in (i) short-term, direct obligations of, or obligations guaranteed by, the United States of America, such as Treasury bills; (ii) demand deposits or short-term certificates of deposit at any banking institution or trust company having combined capital stock and surplus in excess of

\$100,000,000 based upon its most recently available audited financial statements; or (iii) high grade short-term commercial paper which, in the Trustee's discretion, are appropriate and prudent in light of the purposes and functions of the Trust.

Section 4.2 Books, Records and Tax Returns. The Trustee shall maintain books and records and shall prepare and file all such tax forms, as are required to be maintained for the Trust under applicable law. All taxes imposed on the Trust shall be paid out of the Overpayment Balance.

Section 4.3 Source of Payments. All Trust expenses, payments and any other liabilities of the Trust shall be payable solely out of the Trust Assets. Neither the Receiver, the Receivership Entities, nor the Trustee, or any of their officers, agents, advisors or employees shall be liable for the payment of any Trust expense or any other liability of the Trust.

## **ARTICLE 5**

### **REPORTS AND NOTICES**

Section 5.1 Financial Reports. The Trustee shall, from time to time, but not less than once per year, deliver to all Keep Policy Investors a written report regarding the financial condition of the Trust and the performance by the Servicer of its responsibilities under the Servicing Agreement. Such report may, in the Trustee's discretion, be distributed by means of a website maintained by the Servicer or such other means as the Trustee deems appropriate.

## **ARTICLE 6**

### **THE TRUSTEE**

Section 6.1 Resignation. The Trustee may resign as such by submitting a notice of resignation to the Servicer which shall be served on all Keep Policy Investors. The Trustee may designate a Successor Trustee who is willing and able to serve in his stead, whose appointment as Successor Trustee shall be subject to the consent of the Servicer (which consent shall not unreasonably be withheld). In the event the Trustee does not designate a Successor Trustee, the Servicer may designate a Successor Trustee by filing a petition for appointment of Successor Trustee with the Court, which shall be served upon all Keep Policy Investors. The Trustee shall continue to serve as Trustee after his resignation until the time when appointment of a Successor Trustee shall become effective in accordance with Section 6.3 hereof.

Section 6.2 Removal. The Trustee may be removed for "cause" on the verified petition of a Keep Policy Investor, provided that the Trustee shall continue to serve as Trustee after his removal until the earlier of (i) the time when appointment of a successor Trustee shall become effective in accordance with Section 6.3 hereof; or (ii) upon such earlier date as the Court shall otherwise order. "Cause" shall be limited to fraud, embezzlement, conviction of a felony, gross negligence in performance of duties as Trustee, willful misconduct, or physical or mental disability which prevents the Trustee from properly discharging his duties as Trustee for a period of time which materially and adversely affects the Trust and its operations.

Section 6.3 Appointment of Successor Trustee. In the event of the death, resignation, disability or removal of the Trustee without designation of a Successor Trustee pursuant to

Section 6.1 of this Agreement, the Court shall have the exclusive authority to appoint a Successor Trustee. Such appointment may specify the date on which such appointment shall be effective. Every Successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Court and to the retiring Trustee an instrument accepting such appointment, and thereupon such successor Trustee, without any further act, deed, or conveyance, shall become vested with all the rights, powers, trusts, and duties of the retiring Trustee.

Section 6.4 Trust Continuance. The death, resignation, disability, or removal of the Trustee shall not operate to terminate the Trust or to revoke any existing agency created pursuant to the terms of this Trust Agreement or invalidate any action theretofore taken by the Trustee. In the event of the resignation or removal of the Trustee, such Trustee shall promptly: (i) execute and deliver such documents, instruments and other writings as may be reasonably requested by the successor Trustee, or as ordered by the Court, to effect the termination of the Trustee's capacity as such under this Agreement and the conveyance of the Trust Assets then held by the Trustee to his successor; (ii) deliver to the successor Trustee all documents, instruments, records and other writings related to the Trust as may be in the possession of the Trustee; (iii) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Trustee.

Section 6.5 Compensation. The Trustee shall receive compensation for services to be rendered and reimbursement of expenses from the Overpayment Balance. The Trustee's compensation shall be the greater of (i) \$1,500.00 per month; or (ii) \$395 per hour, which the Trustee represents is currently not more than the usual hourly rate customarily charged by the Trustee for similar services; provided, however, that general or overhead expenses of the Trustee shall not be separately compensated from the Trust Assets.

Section 6.6. Standard of Care; Exculpation. The Trustee shall not be personally liable to the Trust or to Keep Policy investors except for such of his own acts as shall constitute bad faith, gross negligence, willful misconduct, or fraud. Except as aforesaid, the Trustee shall be entitled to be exonerated and indemnified from time to time from the Trust Assets against any and all losses, claims, costs, expenses and liabilities arising out of or in connection with the Trust Assets or the affairs of the Trust, including but not limited to, liability for taxes and expenses (including legal fees) incurred due to the defense of any such losses, claims, costs, expenses and liabilities. The foregoing provisions of this Section 6.6 shall also extend to the employees, representatives, professionals, and agents of the Trustee, as the case may be.

Section 6.7 Reliance by Trustee. The Trustee may conclusively rely, and shall be fully protected personally in acting, upon any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document which he has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties. The Trustee may also conclusively rely upon information provided to him by the Receiver, the Servicer, and their employees. The Trustee may consult with legal counsel and shall be fully protected from any liability except as set forth above in respect of any action taken or suffered by him in accordance with the opinion of legal counsel. The Trustee shall have the right (but not the duty) at any time to seek instructions from the Court concerning the management or disposition of the Trust Assets.



## **SECTION 7** **JURISDICTION**

Section 7.1 **Governing Law.** This Trust Agreement shall be governed by and construed and enforced in accordance with the Laws of the State of Florida, without regard to any choice-of-law rules thereof which might apply the Laws of any other jurisdiction.

Section 7.2 **Jurisdiction and Venue.** The Court shall have jurisdiction of all matters related to this Trust Agreement and all Actions with respect to this Trust Agreement, including without limitation the determination of all controversies and disputes arising under or in connection with this Trust Agreement, unless the Court shall not have subject matter jurisdiction in respect thereof, in which case such legal action, suit or proceeding, as the case may be, shall be brought in the courts of the State of Florida, sitting in Miami-Dade County.

## **SECTION 8** **TERMINATION**

This Trust Agreement shall terminate upon the final disposition of all Keep Policies, whether by maturity, sale, surrender, or lapse, and the distribution of all other Trust Assets in accordance with the terms of the Servicing Agreement.

## **SECTION 9** **MISCELLANEOUS**

Section 9.1 **Notices.**

(a) All notices, requests or other communications required or permitted to be made in accordance with this Trust Agreement shall be in writing and shall be mailed by first class mail, or delivered by such other means as may be reasonable and appropriate in the circumstances:

(i) if to the Trustee, at:

MarcumRachlin  
1 S.E. 3<sup>rd</sup> Avenue, 10<sup>th</sup> Floor  
Miami, FL 33131

(ii) if to the Keep Policy Investors, to their respective addresses as on file with the Servicer.

(b) The Trustee may change the address at which it is to receive notices under this Agreement by furnishing written notice in accordance with the provisions of this Section 9.1 to the entity to be charged with knowledge of such change. Any Keep Policy Investor shall change the address at which it is to receive notices pursuant to procedures to be implemented and managed by the Servicer.

Section 9.2 Headings. Sections, subheadings and other headings used in this Agreement are for ease in reference only and are not intended to affect the interpretation of this Trust Agreement in any way.

Section 9.3 Severability. If any provision of this Trust Agreement is determined by a court having jurisdiction to be illegal, invalid or unenforceable under any present or future law, the remainder of this Trust Agreement will not be affected thereby. It is the intention of the grantor that if any provision is so held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible that is legal, valid and enforceable.

Section 9.4 Amendments. This Agreement may be amended from time to time by the Trustee with the approval of the Court; provided, however, that such approval shall not be required in the case of amendments made for the purposes of correcting technical errors consistent with the purposes of the Trust, so long as such amendments do not materially affect the rights of any Keep Policy Investors.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement as of the day and year first above written.

**ROBERTO MARTINEZ,**  
not in his individual capacity, but solely as receiver  
for Mutual Benefits Corp., Viatical Services, Inc.  
and Viatical Benefactors, LLC

---

**ROBERTO MARTINEZ**

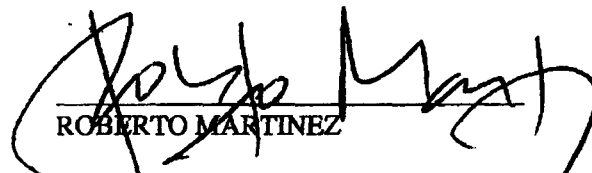
**BARRY MUKAMAL,**  
Not in his individual capacity, but solely as  
Trustee of the Mutual Benefits Keep Policy Trust

---

**BARRY MUKAMAL**  
As Trustee

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement as of the day and year first above written.

**ROBERTO MARTINEZ,**  
not in his individual capacity, but solely as receiver  
for Mutual Benefits Corp., Viatical Services, Inc.  
and Viatical Benefactors, LLC



ROBERTO MARTINEZ

**BARRY MUKAMAL,**  
Not in his individual capacity, but solely as  
Trustee of the Mutual Benefits Keep Policy Trust

---

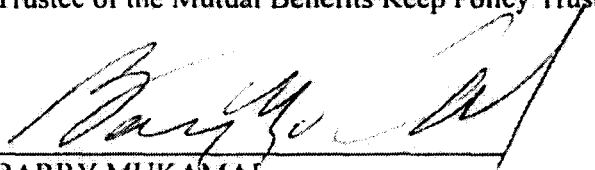
**BARRY MUKAMAL**  
As Trustee

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement as of the day and year first above written.

**ROBERTO MARTINEZ,**  
not in his individual capacity, but solely as receiver  
for Mutual Benefits Corp., Viatical Services, Inc.  
and Viatical Benefactors, LLC

\_\_\_\_\_  
ROBERTO MARTINEZ

**BARRY MUKAMAL,**  
Not in his individual capacity, but solely as  
Trustee of the Mutual Benefits Keep Policy Trust

  
\_\_\_\_\_  
BARRY MUKAMAL  
As Trustee