

# DRAFT

## STOCK PURCHASE AGREEMENT

DATED AS OF XXXX \_\_\_\_, 200X

BY AND BETWEEN

AND

## STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT ("Agreement") dated as of the \_\_\_\_ day of \_\_\_\_\_, 200X ("Effective Date") is made and entered into by and between \_\_\_\_\_, a insert state corporation or insert name(s) individual (s) ("Purchaser"), and the shareholder(s) of [Company in receivership], a Florida domestic insurance company ("Seller"). Capitalized terms not otherwise defined herein have the meanings set forth in [Section 7.01.]

WHEREAS, Seller owns all issued and outstanding shares of the common stock ("Shares") of [Company in receivership]; and

WHEREAS, Seller desires to sell, and Purchaser desires to purchase, the Shares on the terms and subject to the conditions set forth in this Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I PURCHASE AND SALE OF ASSETS AND CLOSING

1.01. **Purchase and Sale.** At the Closing, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, all of the Shares on the terms and subject to the conditions set forth in this Agreement.

1.02. **Deposit.** The Purchaser shall place on deposit with the Receiver an amount of XXX, as approved by the Receivership Court, within three (3) days of the execution of this Agreement or this Agreement will become null and void. The deposit is only refundable if the Court rejects the offer, or the Receiver is unable to complete the sale for any reason.

1.03. **Purchase Price.** The Purchase Price for the Shares is \$\_\_\_\_\_ (the "Purchase Price"). Upon satisfaction of the requirements of Section 1.04, the Purchaser shall wire transfer the Purchase Price, minus the initial deposit referenced in Section 1.02, to an account of Seller designated by Seller or shall deliver to Seller certified funds for the aforementioned amount. In the event that the Purchaser has not satisfied the requirements of Section 1.04 (c) on or before **[insert date 210 days from notification by Receiver that Purchaser's offer will be recommended to the Court]**, this Agreement shall be null and void and the purchaser shall forfeit the funds placed on deposit pursuant to Section 1.02.

1.04. **Closing; and Closing Deliveries by Seller and Purchaser.**

(a) **Closing.** Subject to the terms and conditions hereof, the Closing will take place at the offices of Seller's attorney, or at such other place as Purchaser and Seller mutually agree, at **[Time]**, Eastern Standard Time on \_\_\_\_\_, 200X, (the "Closing Date").

(b) **Seller's Closing Deliveries.** At the Closing, Seller shall deliver to Purchaser:

(i) the certificates representing all of the Shares, together with accompanying stock powers or instruments of assignment, duly endorsed for transfer;

(ii) the order of the Court authorizing the sale of the insurer;

(iii) the letters of resignation of the directors and officers of **[Company in receivership]** effective as of the Closing;

(iv) all minute books, corporate seals and corporate records of **[Company in receivership]**;

(v) a true, accurate and complete list of investments owned by **[Company in receivership]** on the Closing Date, including a description of any investment instructions relating to such investments, duly certified as of the Closing Date by a Deputy Receiver of **[Company in Receivership]**;

(vi) such other documents and certificates, the delivery of which by Seller to Purchaser is required by this Agreement; and

(c) **Purchaser's Closing Deliveries.** At the Closing, Purchaser shall deliver to Seller:

(i) the resolutions of the Board of Directors of Purchaser authorizing the transactions contemplated by this Agreement, if applicable, duly certified as of the Closing Date by a duly authorized officer;

(ii) such other documents and certificates, the delivery of which by Purchaser to Seller is required by this Agreement or that Seller deems reasonably necessary to consummate the transactions contemplated hereby.

(iii) the Purchase Price less the Deposit as provided in Section 1.02 of this Agreement.

**1.05. Governmental Approvals.** The parties hereto recognize and acknowledge that the transactions as set forth in this Agreement are subject to the review, consent and approval of the State of Florida Office of Insurance Regulation ("OIR") and the State of Florida Department of Financial Services ("DFS"), (together, the "Governmental Approvals"). Purchaser shall make all necessary filings and provide all information and documentations that may reasonably be required by the regulatory authorities to approve this transaction. The cost of any such filings shall be the responsibility of the Purchaser. The obtaining of such Governmental Approvals is a condition precedent to the Closing of the transactions as set forth in this Agreement.

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

Seller hereby represents and warrants to Purchaser as follows and warrants that such representations and warranties will be true and correct at the Closing:

**2.01. Status of Seller.** Seller is the owner of a licensed Florida domiciled insurance company currently in receivership. Seller is the owner of all of the Shares free and clear of all Liens. Seller has full power and authority to execute and deliver this Agreement, to perform all obligations hereunder, and to consummate the transactions contemplated hereby, including without limitation to own, hold, sell, assign and transfer (pursuant to this Agreement) the Shares.

**2.02. Existence and Qualification of Seller.** Seller is duly organized, validly existing and having active status under the laws of the State of Florida. Seller has full corporate power and authority to conduct its business as and to the extent now conducted, and to own, use and lease its Assets and Properties. Seller has furnished to Purchaser true and complete copies of the Articles of Incorporation and the Bylaws of [Company in Receivership] as amended.

**2.03. Capital Stock.** The authorized capital stock of [Company in receivership] consists of \_\_\_\_\_ shares of Common Stock, \$ \_\_\_\_\_ par value, of which \_\_\_\_\_ shares have been issued to Seller. The Shares are duly authorized, validly issued, outstanding, fully paid and non-assessable. Seller owns all of the Shares, beneficially and of record, free and clear of all Liens and Options. The delivery of certificates at the

Closing will transfer to Purchaser good and valid title to the Shares, free and clear of all Liens. There are no Options outstanding with respect to shares of capital stock of **[Company in receivership]** or any security of any kind convertible into or exchangeable or exercisable for any shares of capital stock of **[Company in receivership]**.

2.04 **Subsidiaries.** There are no subsidiaries of **[Company in receivership]** or The subsidiaries of **[Company in receivership]** are...

2.05. **No Conflicts.** Subject to the Governmental Approvals as set forth in Section 1.05, the execution and delivery by Seller of this Agreement do not, and the performance by Seller of its obligations under this Agreement, and the consummation of the transactions contemplated hereby will not:

(a) conflict with or result in a violation or breach of any provision of the Articles of Incorporation or Bylaws of Seller ; or

(b) result in a violation or breach of any Law or Order applicable to Seller or any of Seller's respective Assets and Properties; or

(c) (i) conflict with or result in a violation or breach of, (ii) constitute (with or without notice or lapse of time or both) a default under, (iii) with the exception of the Governmental Approvals, require Seller to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result of or under the terms of, or (iv) result in the creation or imposition of any Lien upon Seller or any of its respective Assets and Properties under, any Contract or License to which Seller is a party or by which any of Seller's respective Assets and Properties are bound.

2.06 **Governmental Approvals and Filings.** Except for the Governmental Approvals, no consent, approval or action of, filing with or notice to any other Governmental or Regulatory Authority on the part of Seller is required in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

2.07. **Books and Records.** The minute books and similar books and records of **[Company in receivership]** contain a true and complete record, in all material respects, of all action taken at all meetings and by all written consents in lieu of meetings of the stockholders, the boards of directors and committees of the boards of directors of **[Company in receivership]**, to the best of the seller's knowledge. The books of account, minute books, stock record books, and other records of **[Company in receivership]**, all of which have been made available to Purchaser, are complete, accurate and correct in all material respects and have been maintained in accordance with sound business practices and the requirements of law, to the best of Seller's knowledge. At the Closing, all of the books and records of **[Company in receivership]** will be in its possession.

## 2.08. Financial Condition.

(a) Seller has previously delivered to Purchaser true, complete and correct copies of the statutory financial statements of **[Company in receivership]** for the year ended **[insert date]**, in each case as filed with OIR, and will deliver to Purchaser true, complete and correct copies of each quarterly and/or annual statement for all calendar quarters ending thereafter and prior to the Closing (all such statements, collectively, the "Statutory Statements" and individually, a "Statutory Statement"). The Statutory Statements (including the provisions made therein for investments and the valuation thereof, reserves, policy and contract claims and statutory liabilities) that have been delivered to Purchaser prior to the date of this Agreement have been prepared, and each of the Statutory Statements that will be delivered to Purchaser, will have been prepared, in accordance with Statutory Accounting Principles (except as may be reflected in the notes thereto and subject, with respect to the Statutory Statements that end on a date other than December 31, to the absence of notes required by Statutory Accounting Principles and to normal year-end adjustments), were in compliance with applicable Law when filed and present fairly the financial condition of **[Company in receivership]** covered thereby as of the respective dates thereof and the results of operations, changes in surplus and cash flow of **[Company in receivership]** covered thereby for the respective periods then ended.

(b) Seller has previously delivered to Purchaser true, complete and correct copies of the audited financial statements of **[Company in receivership]**, for the year ended **[insert date]**.

(c) Except as described in Schedule 2.08(c), **[Company in receivership]** has no other Liabilities known to Seller except as set forth in the Statutory Statements that have been delivered to Purchaser.

(d) For the period ended **[insert date]**, Seller will prepare all requisite statutory filings, annual reports and audits on behalf of **[Company in receivership]** and will file such documents with DFS and OIR as may be required. Effective as of the Closing Date, Purchaser will be responsible for preparing all further requisite statutory filings, annual reports and audits on behalf of **[Company in receivership]** and will file such documents with DFS and OIR as may be required.

## 2.09. Taxes.

(a) Seller has timely filed all federal, state and local, and foreign tax returns, declarations, statements, and reports required to be filed by it (including schedules and attachments thereto) (collectively, the "Returns"). All such Returns were correct and complete and have been prepared in compliance with all applicable Laws and regulations. Seller has delivered to Purchaser correct and complete copies of all Returns, examination reports, and statements of deficiencies assessed against or agreed to by **[Company in receivership]** filed or received since **[insert date of receivership]**. **[Company in receivership]** (A) has not been a member of an affiliated group filing a consolidated

federal income Tax Return (other than a group the common parent of which was the Seller and the only other members of which are the Affiliated Group Members) or (B) has any Liability for the Taxes of any Person (other than **[Company in receivership]**) under Treasury Regulations ss. 1.1502-6 (or any similar provision of Tax law), as a transferee or successor, by contract, or otherwise.

(b) All Taxes due and owing by **[Company in receivership]** have been paid. **[Company in receivership]** has adequately provided for, in their books of account and related records, liability for all unpaid Taxes.

(c) Except as disclosed on Schedule 2.09 to this Agreement, there is no audit or examination pending of the Tax liability of **[Company in receivership]**.

(d) **[Company in receivership]** has not received from any Governmental or Regulatory Authority (including jurisdictions where such **[Company in receivership]** has not filed Returns relating to Taxes) any (i) written notice indicating an intent to open an audit or other review with respect to Taxes for which **[Company in receivership]** could be liable, (ii) request for information related to Tax matters, (iii) correspondence claiming or asserting that such Affiliated Group Member is or may be subject to taxation by that Governmental or Regulatory Authority, or (iv) notice of deficiency or proposed adjustment for any Tax for which **[Company in receivership]** could be liable.

(e) Except as disclosed on Schedule 2.09, there is no unresolved claim by any Governmental or Regulatory Authority concerning the Tax liability of **[Company in receivership]** for any period for which Returns relating to Taxes have been or were required to have been filed, including Liens for Taxes (other than Taxes not yet due and payable) upon any of the assets of **[Company in receivership]**.

(f) Except as disclosed on Schedule 2.09, **[Company in receivership]** has not waived or extended or has been requested to waive or extend the statute of limitations relating to the payment of any Taxes.

(g) **[Company in receivership]** has withheld and paid all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee or independent contractor and has properly characterized employees and independent contractors as such for Tax purposes. **[Company in receivership]** has not filed a consent under Code ss. 341(f). **[Company in receivership]** has not entered into or is bound by any agreement or arrangement that has resulted or could result in the payment of any "excess parachute payment" under Code ss. 280G or in the payment of any amount that will not be fully deductible under Code ss. 162(m). **[Company in receivership]** will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any change in accounting method or intercompany transactions or excess loss account described in Treasury Regulations under Code ss. 1502.

(h) **[Company in receivership]** has not been a United States real property holding corporation within the meaning of Code ss. 897(c)(2) during the applicable period specified in Code ss. 897(c)(1)(A)(ii).

(i) **[Company in receivership]** has disclosed on its Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of Code ss. 6662.

(j) Except as provided in Schedule 2.09, **[Company in receivership]** has not engaged in any "reportable transactions" within the definition of Treasury Regulation ss. 1.6011-4.

**2.10. Legal Proceedings.** Except as described in Schedule 2.10 to this Agreement,

(a) there are no Actions or Proceedings pending or, to the knowledge of Seller, threatened against, relating to or affecting Seller or any of its respective Assets and Properties; and

(b) there are no Orders outstanding against the Seller.

**2.11. Compliance With Laws and Orders.** Except as described in Schedule 2.11 to this Agreement, to the best knowledge of Seller, it is not in violation of or in default under any Law or Order applicable to such Company or any of its Assets or Properties.

**2.12. Benefit Plans - ERISA: Employees.**

(a) Except as described in Schedule 2.12 to this Agreement, **[Company in receivership]** does not maintain, contribute to, sponsor or participate in, has ever maintained, contributed to, sponsored or participated in, and no past or present employee of **[Company in receivership]** participates in or is benefited by, or has participated in or benefited by, any Benefit Plan covering any employee or former employee of the Company, and **[Company in receivership]** has not taken any action to institute any such Benefit Plan. Except to the extent described in Schedule 2.12, **[Company in receivership]** has no Liability with respect to any Benefit Plan. **[Company in receivership]** is and has at all times been in compliance with all applicable laws, agreements, policies and obligations relating to employment, wages, hours and terms and conditions of employment.

(b) There are no written or oral employment contracts between **[Company in receivership]** and any of its employees.

**2.13. Real Property.** **[Company in receivership]** **[verify this]** does not own any interest in any real property nor does it hold any leasehold interest, as a tenant, in any real property.

**2.14. Intellectual Property Rights.** Except for rights to the name of **[Company in receivership]**, which name the Seller shall retain, the Seller possesses no rights of any nature whatsoever to any Intellectual Property used in or useful to the business of

**[Company in receivership]**. The Intellectual Property used in the business of **[Company in receivership]** is described in Schedule 2.14 to this Agreement, which shall be provided to Purchaser upon written request. None of such Intellectual Property infringes the rights of any third party and, to the knowledge of Seller, no other party is infringing the Intellectual Property of **[Company in receivership]**. **[Company in receivership]** has and has always had valid and fully paid licenses to use all software used by such Company and in the manner used by such Company. Purchaser agrees to discontinue the use of the name **[Company in receivership]** for purposes of marketing, advertising or soliciting business immediately upon the Closing Date **[To be discussed]**.

2.15. **Contracts.** Except as described on Schedule 2.15 to this Agreement, there are no Contracts currently in force between Seller and any other Person. All of the Contracts described in Schedule 2.15 are in full force and effect and enforceable by the applicable Company or Seller, as the case may be. Except as described on Schedule 2.15, Seller is not in breach of any such Contracts and there is no circumstance existing that with notice or the lapse of time is reasonably likely to result in a breach of any of such Contracts by Seller, and, to the knowledge of Seller, no other Person is in breach of any of such Contracts and there is no circumstance existing that with notice or the lapse of time is reasonably likely to result in a breach of any of such Contracts by such other Person. Any and all agent contracts, licenses or appointments with **[Company in receivership]** will be terminated by **[Company in receivership]** prior to the Closing Date, or no later than **[insert date]**.

2.16. **Licenses.** Prior to the execution of this Agreement, Seller has delivered to Purchaser true and complete copies of all existing Licenses held by **[Company in receivership]**. The Seller makes no warranty with respect to any of the licenses held by **[Company in Receivership]**.

2.17. **Insurance.** There are no insurance policies currently in effect other than the insurance policies, reinsurance policies or treaties and other policies described on Schedule 2.17 to this Agreement, that insure the business, operations or employees of **[Company in receivership]** or affects or relates to the ownership, use or operation of any of the Assets and Properties of **[Company in receivership]** and that (i) have been issued to **[Company in receivership]** or (ii) have been issued to any Person (other than **[Company in receivership]**) for the benefit of **[Company in receivership]**. All insurance policies are in full force and effect.

2.18. **Brokers.** Seller has not engaged the services of any brokers. The fees to any brokers utilized in this transaction are the responsibility of the Purchaser.

2.19. **Absence of Changes.** Except to the extent provided in Schedule 2.19 to this Agreement, since **[insert date]**, there has not been any:

(a) change in **[Company in receivership]** 's authorized or issued capital stock; grant of any Option or right to purchase shares of capital stock of any Company; issuance of any security convertible into such capital stock; grant of any registration rights; purchase,



redemption, retirement, or other acquisition by any Company of any shares of any such capital stock; or declaration or payment of any dividend or other distribution or payment in respect of shares of capital stock;

(b) amendment to the articles of incorporation or bylaws of **[Company in receivership]**; or

(c) agreement, whether oral or written, by **[Company in receivership]** to do any of the foregoing.

2.20. **Insurance Examinations.** All financial examinations of **[Company in Receivership]** have been completed and filed as public documents. Copies of the examinations are available from OIR. There are no pending or, to the knowledge of Seller in its capacity as Receiver of **[Company in receivership]**, threatened examinations of **[Company in receivership]** by any Governmental or Regulatory Authority.

2.21. **Independent Contractors.** All Persons that have been classified or treated by **[Company in receivership]** as independent contractors have been correctly treated as independent contractors under all Tax, employment and other Laws.

2.22. **Disclosure.** No representation and warranty of Seller in this Agreement and no statement in any of the Schedules to Sections in this Article II omits to state a material fact necessary to make the statements in this Article II or in such Schedule, in light of the circumstances under which they were made, not misleading. There is no fact known to Seller that has specific application to **[Company in receivership]** (other than general economic or industry conditions) and that materially adversely affects (or, as far as Seller can reasonably foresee, materially threatens), the assets, business, prospects, financial condition or results of operations of **[Company in receivership]** that has not been disclosed in this Article II or the Schedules to Sections of this Article II.

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

Purchaser hereby represents and warrants to Seller as follows:

3.01. **Existence.** Purchaser is a Florida **[insert other state if applicable]** corporation **[or insert name(s) individual (s)]** with full corporate power and authority to execute and deliver this Agreement, to perform all obligations hereunder and to consummate the transactions contemplated hereby.

3.02. **Authority.** This Agreement has been duly and validly executed and delivered by Purchaser and constitutes a legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms.

3.03. **No Conflicts.** The execution and delivery by Purchaser of this Agreement does not, and the performance by Purchaser of its obligations under this Agreement and the consummation of the transactions contemplated hereby will not:

(a) subject to obtaining the required consents, approvals and actions, conflict with or result in a violation or breach of any Law or Order applicable to Purchaser or any of its Assets and Properties; or

(b) (i) conflict with or result in a violation or breach of, (ii) constitute (with or without notice or lapse of time or both) a default under, (iii) subject to the required approvals, consents and actions, require Purchaser to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of, or (iv) result in the creation or imposition of any Lien upon Purchaser or any of its Assets or Properties under, any Contract or License to which Purchaser is a party or by which any of its Assets and Properties is bound.

3.04. **Governmental Approvals and Filings.** As provided in Section 1.04, Purchaser shall make filings with DFS and OIR or any other Governmental or Regulatory Authority to obtain approval of this transaction.

#### **ARTICLE IV COVENANTS OF SELLER**

Seller covenants and agrees with Purchaser that, at all times from and after the date hereof until the Closing, Seller will comply with all covenants and provisions of this Article IV, except to the extent Purchaser may otherwise consent in writing.

4.01. **Approvals.** Seller will, (a) provide such information and communications to such Governmental or Regulatory Authorities or other Persons as such Governmental or Regulatory Authorities or other Persons may reasonably request, and (b) provide reasonable cooperation to Purchaser in obtaining all consents, approvals or actions of, making all filings with and giving all notices to Governmental or Regulatory Authorities or other Persons required of Purchaser to consummate the transactions contemplated hereby, Seller will provide prompt notification to Purchaser when any such consent, approval, action, filing or notice referred to in clause (a) above is obtained, taken, made or given, as applicable, and will promptly advise Purchaser of any communications (and, unless precluded by Law, provide copies of any such communications that are in writing) with any Governmental or Regulatory Authority or other Person regarding any of the transactions contemplated by this Agreement.

4.02. **Investigation by Purchaser.** Seller, if requested by Purchaser, will: (a) provide Purchaser and its counsel, accountants, financial advisors, consultants and other representatives with access, upon reasonable prior notice and during normal business hours, to Books and Records, but only to the extent that such access does not unreasonably interfere with the business and operations of **[Company in receivership]**, and (b) furnish Purchaser and/or Purchaser's representatives with all such information and

data (including without limitation copies of Contracts, Benefit Plans and other Books and Records) concerning the business and operations of **[Company in receivership]** as Purchaser and/or Purchaser's representatives reasonably may request in connection with such investigation, except to the extent that furnishing any such information or data would violate any Law, Order, Contract or License applicable to Seller or the Company or by which **[Company in receivership]**'s Assets and Properties are bound.

**4.03. Conduct of Business.** Prior to Closing, Seller will use commercially reasonable efforts to (a) preserve intact the present business organization and reputation of **[Company in receivership]**; (b) maintain the Assets and Properties of **[Company in receivership]** in good working order and condition, ordinary wear and tear excepted; (c) maintain the good will of key customers and suppliers of **[Company in receivership]**, and (d) operate **[Company in receivership]** in accordance with applicable laws; (e) operate **[Company in receivership]** in its usual and customary manner; and (f) not take any of the actions described in any of the Subsections of Section 2.22.

## **ARTICLE V COVENANTS OF PURCHASER**

Purchaser covenants and agrees with Seller that, at all times from and after the date hereof until the Closing, Purchaser will comply with all covenants and provisions of this Article V, except to the extent Seller may otherwise consent in writing.

**5.01. Approvals.** Purchaser will: (a) take all commercially reasonable steps necessary or desirable, and proceed diligently and in good faith and use all commercially reasonable efforts, as promptly as practicable to obtain any and all required consents, approvals or actions of, to make all required filings with and to give all notices to Governmental or Regulatory Authorities, required of Purchaser to consummate the transactions contemplated hereby; (b) provide such other information and communications to such Governmental or Regulatory Authorities or other Persons as such Governmental or Regulatory Authorities or other Persons may reasonably request; and (c) provide reasonable cooperation to Seller in obtaining all consents, approvals or actions of, making all filings with and giving all notices to Governmental or Regulatory Authorities or other Persons required of Sellers or the Company to consummate the transactions contemplated hereby. Purchaser will provide prompt notification to Seller when any such consent, approval, action, filing or notice referred to in Section 5.01(a) has been obtained, taken, made or given, as applicable, and will advise Seller of any communications (and, unless precluded by Law, provide copies of any such communications that are in writing) with any Governmental or Regulatory Authority or other person regarding any of the transactions contemplated by this Agreement.

**5.02. Fulfillment of Conditions.** Purchaser will take all commercially reasonable steps necessary or desirable and proceed diligently and in good faith to satisfy each condition to the obligations of Seller contained in this Agreement and will not take or fail to take any action that could reasonably be expected to result in the non-fulfillment of any such condition.

## **ARTICLE VI TERMINATION**

6.01. **Termination.** This Agreement may be terminated and the transactions contemplated hereby may be abandoned:

(a) at any time before the Closing, by mutual written agreement of Seller and Purchaser; or

(b) at any time before the Closing, by Seller, upon a Purchaser Default. For the purposes of this Section, any of the following shall constitute a "Purchaser Default" hereunder: (i) any representation or warranty made by the Purchaser under this Agreement shall be or become untrue or incorrect in any material respect (without regard to any materiality qualifiers in the representation or warranty); or (ii) Purchaser shall fail to obtain the required Governmental and Regulatory approvals; or (iii) fail to perform or observe any covenant, term or agreement contained in this Agreement; or (iv) Purchaser shall fail to pay Purchase Price at closing;

(c) by Seller, if it is unable to complete the sale for any reason, in which case the Deposit shall be refunded.

6.02. **Effect of Termination.** If this Agreement is terminated pursuant to Section 6.01, this Agreement will forthwith become null and void

## **ARTICLE VII DEFINITIONS**

7.01. **Definitions.** As used in this Agreement, the following defined terms shall have the meanings indicated below:

"Actions or Proceedings" means any action, suit, proceeding, arbitration or Governmental or Regulatory Authority investigation.

"Affiliate" means any Person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by Contract or otherwise and, in any event and without limitation of the previous sentence, any Person owning twenty-five (25) % or more of the outstanding voting securities of a second Person shall be deemed to control that second Person.

"Agreement" means this Stock Purchase Agreement.

"Assets and Properties" of any Person means all assets and properties of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible, and wherever situated), operated, owned or leased by such Person.

"Benefit Plan" means any "employee benefit plan" within the meaning of Section 3(3) of ERISA, "welfare benefit plan" within the meaning of ERISA, and each other plan, arrangement or commitment, whether oral or written, formal or informal, relating to severance, sick pay, vacation, bonus, retirement, pension, profit sharing, option, deferred compensation, life, medical or dental insurance, to which Seller or any ERISA Affiliate of Seller has or may have any present or future obligation to contribute or other liability.

"Books and Records" means all files, documents, instruments, papers, books and records relating to the Business or Condition of **[Company in receivership]**, including without limitation financial statements, Tax Returns and related work papers and letters from accountants, budgets, pricing guidelines, ledgers, journals, deeds, title policies, minute books, stock certificates and books, stock transfer ledgers, Contracts, Licenses, customer lists, computer files and programs, retrieval programs, operating data and plans and environmental studies and plans.

"Business Day" means a day other than Saturday, Sunday or any day on which banks located in the State of Florida are authorized or obligated to close.

"Business or Condition of **[Company in receivership]**" means the business, financial condition or results of operations of **[Company in receivership]**.

"Claims" means damages (including direct, indirect, consequential, special, punitive and/or exemplary damages), demands, claims, suits, actions, costs of investigation, causes of action, proceedings and assessments, losses, deficiencies, Liabilities, obligations, commitments, costs or expenses (including interest (including prejudgment interest in any litigated matter) penalties, court costs, and attorneys fees and expenses). Claims shall also include the liability to pay losses relating to any and all bad faith claim actions that may be pending against the **[Company in Receivership]** due to its failure to timely evaluate claims and pay benefits based on policies of insurance issued by **[Company in Receivership]**

"Closing" means the closing of the transactions contemplated by Section 1.03.

"Closing Date" has the meaning ascribed to it in Section 1.04.

"Code" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

"Common Stock" means the common stock of **[Company in Receivership]**.

"Contract" means any agreement, lease, evidence of Indebtedness, mortgage, indenture, security agreement or other contract.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means any Person who is in the same controlled group of corporations or who is under common control with Seller (within the meaning of Section 414 of the Code).

"Governmental Approvals" has the meaning ascribed to it in Section 1.05.

"Governmental or Regulatory Authority" means the OIR and DFS and any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States or other country, or any state, county, city or other political subdivision.

"Indebtedness" of any Person means all obligations of such Person (i) for borrowed money, (ii) evidenced by notes, bonds, debentures or similar instruments, (iii) for the deferred purchase price of goods or services (other than trade payables or accruals incurred in the ordinary course of business and consistent with past practices), (iv) under capital leases and (v) in the nature of guarantees of the obligations described in clauses (i) through (iv) above of any other Person.

"Intellectual Property" means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, inventions, copyrights and copyright rights, and all pending applications for and registrations of patents, trademarks, service marks and copyrights.

"IRS" means the United States Internal Revenue Service.

"Law" or "Laws" means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of the United States or other country, or any state, county, city or other political subdivision or of any Governmental or Regulatory Authority.

"Liabilities" means all Indebtedness, obligations and other liabilities of a Person (whether absolute, accrued, contingent, possible, fixed or otherwise, or whether due or to become due).

"Licenses" means all licenses, permits, certificates of authority, authorizations, approvals, registrations, franchises and similar consents granted or issued by any Governmental or Regulatory Authority.

"Liens" means any mortgage, pledge, assessment, security interest, lease, lien, adverse claim, restriction (as to ownership, possession, use, transfer or enjoyment), levy, charge or other encumbrance.

"Loss" means any and all damages, fines, penalties, deficiencies, losses and expenses (including without limitation, interest, court costs, reasonable fees of attorneys, accountants and other experts or other reasonable expenses of litigation or other proceedings or of any claim, default or assessment).

"Option" with respect to any Person means any security, right, subscription, warrant, option, or other Contract that gives the right to purchase or otherwise receive or be issued any shares of capital stock of such Person or any security of any kind convertible into or exchangeable or exercisable for any shares of capital stock of such Person.

"Order" means any writ, judgment, decree, injunction or similar order of any Governmental or Regulatory Authority (in each such case whether preliminary or final).

"Person" means any natural person, corporation, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental or Regulatory Authority.

"Purchase Price" has the meaning ascribed to it in Section 1.03.

"Purchaser" has the meaning ascribed to it in the forepart of this Agreement. "Purchaser Default" has the meaning ascribed to it in Section 6.01.

"Seller" has the meaning ascribed to it in the forepart of this Agreement.

"Seller Default" has the meaning ascribed to it in Section 6.01.

"Shares" means the Shares and certificates evidencing the shares of capital stock of **[Company in Receivership]**.

"Statutory Accounting Principles" means the statutory accounting principles, procedures and methods prescribed or permitted by the National Association of Insurance Commissioners as modified by the applicable statutes of the State of Florida and the regulations and rules of the Office, consistently applied.

"Subsidiary" means any Person in which any Company, directly or indirectly through subsidiaries, intermediaries or otherwise, beneficially owns more than ten percent (10%) of either the equity interests in, or the voting control of, such Person.

"Surplus" means the amount of **[Company in Receivership's]** surplus with respect to policyholders determined in accordance with Statutory Accounting Principles.

"Tax Returns" means a report, return or other information required to be filed with or furnished to a governmental entity with respect to Taxes.

"Taxes" means any federal, foreign, state, county, or local taxes, charges, fees, levies, or other assessments, including all net income, gross income, sales and use, ad valorem, transfer, gains, profits, excise, franchise, real and personal property, gross receipt, capital stock, production, business and occupation, disability, employment, payroll, license, estimated, stamp, custom duties, severance or withholding taxes or charges imposed by any governmental entity, and includes any interest and penalties (civil or criminal) on or

additions to any such taxes and any expenses incurred in connection with the determination, settlement or litigation of any tax liability.

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## **ARTICLE VIII GENERAL PROVISIONS**

8.01. **Notices.** All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally or by facsimile transmission or mailed by registered or certified mail, return receipt requested, to the parties at the following addresses or facsimile numbers:

**If to Purchaser, to:**

**[Insert Name and Address]**

with copies to:

**If to Seller, to:**

**[Insert Name and Address]**

with copies to:

All such notices, requests and other communications will (i) if delivered personally to the address as provided in this Section, be deemed given upon delivery, and (ii) if delivered by mail in the manner described above to the address as provided in this Section, be deemed given upon receipt (in each case regardless of whether such notice is received by any other Person to whom a copy of such notice, request or other communication is to be delivered pursuant to this Section). Any party from time to time may change its address, facsimile number or other information for the purpose of notices to that party by giving notice specifying such change to the other party hereto.

8.02. **Entire Agreement.** This Agreement supersedes all prior discussions and agreements between the parties with respect to the subject matter hereof, and contains the sole and entire agreement between the parties hereto with respect to the subject matter hereof. There are no oral agreements or understandings between the parties regarding this agreement.

8.03. **Expenses.** Except as otherwise expressly provided in this Agreement, whether or not the transactions contemplated hereby are consummated, each party will pay its own



costs and expenses, including legal fees, incurred in connection with the negotiation, execution and closing of this Agreement and the transactions contemplated hereby.

#### **8.04. Further Assurances Post-Closing Cooperation.**

(a) Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing, each of the parties hereto shall execute and deliver such other documents and instruments, provide such materials and information and take such other actions as may reasonably be necessary, proper or advisable, to the extent permitted by Law, to fulfill its obligations under this Agreement.

(b) Following the Closing, each party will afford the other party, its counsel and its accountants, during normal business hours, reasonable access to the books, records and other data relating to the Business or Condition of [Company in Receivership] in its possession with respect to periods prior to the Closing and the right to make copies and extracts therefrom, to the extent that such access may be reasonably required by the requesting party in connection with (i) the preparation of Tax Returns, (ii) the determination or enforcement of rights and obligations under this Agreement, (iii) compliance with the requirements of any Governmental or Regulatory Authority, (iv) the determination or enforcement of the rights and obligations of any Indemnified Party or (v) in connection with any actual or threatened Action or Proceeding. Further, each party agrees for a period of five (5) years after the Closing Date not to destroy or otherwise dispose of any such books, records and other data unless such party shall first offer in writing to surrender such books, records and other data to the other party and such other party shall not agree in writing to take possession thereof during the ten (10) day period after such offer is made.

(c) If, in order properly to prepare its Tax Returns, other documents or reports required to be filed with Governmental or Regulatory Authorities or its financial statements or to fulfill its obligations hereunder, it is necessary that a party be furnished with additional information, documents or records relating to the Business or Condition of the Company not referred to in paragraph (b) above, and such information, documents or records are in the possession or control of the other party, such other party agrees to use its best efforts to furnish or make available such information, documents or records (or copies thereof) at the recipient's request, cost and expense. Any information obtained by either party in accordance with this paragraph shall be held confidential by such party, and shall survive the termination of this Agreement.

**8.05. Waiver.** Any term, or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, provided, no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

8.06. **Amendment.** This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each party hereto. The Purchaser shall provide copies of copies of any Amendments to OIR for its review and approval.

8.07. **No Third Party Beneficiary.** The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other Person.

8.08. **No Assignment.** Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any party hereto and any attempt to do so will void this Agreement.

8.09. **Headings.** The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

8.10. **Invalid Provisions.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement and (d) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

8.11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida applicable to a contract executed and performed in such State without giving effect to the conflicts of laws principles that would result in the application of the laws of any other jurisdiction.

8.12. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

8.13. **Prevailing Party.** In the event of any litigation between the parties, the prevailing party shall be entitled to recover all of its reasonable attorney's fees and costs.

8.14. **Further Assurances.** Following the Closing, at the request of Purchaser, Seller shall take all reasonable actions, and execute all further documents and instruments in order to allow Purchaser to fully realize its rights under this Agreement.

This Agreement has been duly executed and delivered by the duly authorized officer of each party hereto as of the date first above written.

**[Shareholder of Company in Receivership]**

**As to Seller:**

**By:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**OR**

**Florida Department of Financial Services**

**on behalf of**

**[Shareholder of Company in Receivership]**

**As to Seller:**

**By:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** Deputy Receiver

**[Name of Purchaser]**

**As to Purchaser:**

**By:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_