

## LIEN PURCHASE AGREEMENT

**THIS LIEN PURCHASE AGREEMENT (“Agreement”)** made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ by and between **ADVANCE CASH & SETTLEMENT FUNDING CORP.** (formerly ADVANCE COST & SETTLEMENT FUNDING CORP.) (**ACSF**) (“**Purchaser / Transferee**”), and \_\_\_\_\_ (“**Seller / Transferor**”).

### RECITALS:

**WHEREAS**, Seller / Transferor has a claim against and/or is a plaintiff in an action or suit now pending against \_\_\_\_\_ et al (the “Defendant”) (Whether a claim or an action or suit, the “Litigation”), and whose address is \_\_\_\_\_ and who is and/or whose insurance carrier is defending such Litigation, arising out of an act of negligence, accident or other incident occurring on or about \_\_\_\_\_ in which the Defendant caused the Seller / Transferor to suffer serious damages. A brief description of the case details, which led Seller / Transferor to seek funds from Purchaser / Transferee, is attached and identified as Schedule A.

**WHEREAS**, Seller /Transferor does not have sufficient funds to adequately pay for the necessities of life during the pendency of the Litigation, has no assets against which to borrow and has tried to obtain funds from other sources and has been unable to do so.

**WHEREAS**, an undetermined amount of time will be required for Seller / Transferor to secure compensation from the Defendant through continued legal action and/or negotiations to otherwise persuade or prevail upon the Defendant to pay the Seller / Transferor an amount appropriate and necessary to compensate Seller / Transferor for the injuries incurred and/or damages suffered.

**WHEREAS**, in order to afford Seller / Transferor sufficient funds to adequately pay for the necessities of life during the pendency of the Litigation, Purchaser / Transferee has agreed to accept certain proceeds which may arise from a settlement or verdict resulting from the Litigation, as consideration for the purchase of a lien against the Litigation.

**WHEREAS**, Seller / Transferor desires to pursue the Litigation to such time that a fair and favorable settlement/judgment can be obtained.

**WHEREAS**, Seller / Transferor warrants and affirms that any funds advanced pursuant to this Lien Purchase Agree will not be used to defray and/or pay any costs or expenses associated with the prosecution of the Litigation.

**WHEREAS, Purchaser/Transferee has made it's own determination to purchase a lien, the consideration for which purchase is set forth in Paragraph 1 below, against the Litigation, and has not relied on the advice of Seller's / Transferor's counsel regarding the merits, value, risk, or legitimacy of the Litigation.**

**NOW THEREFORE, for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser / Transferee and Seller / Transferor do hereby agree as follows:**

**1. Seller / Transferor unconditionally and irrevocably transfers and conveys to Purchaser / Transferee all of Seller's / Transferor's control, right, title and interest in the first \$ \_\_\_\_\_.00 paid to Seller / Transferor from the Proceeds, as hereinafter defined, or other recovery derived from the Litigation, in order to secure this Agreement. Said amount shall, by agreement, increase by:**

- a. an administrative charge of \$ \_\_\_\_\_.00 to cover the cost of document preparation, filing fees and monitoring, plus an additional charge of \$25.00 per quarter for monitoring for every quarter the litigation remains open in excess of one year from the date of execution of this Agreement; and**
- b. by \_\_\_\_\_ percent per month, compounded monthly, beginning on the first day of the first month following the month of execution of this Agreement and continuing on the first day of each subsequent month until the amount then due and owing shall have been paid in full, with a minimum of three (3) monthly increases being due and payable, pursuant to the schedule attached hereto as Schedule C. For purposes of this Agreement, "Proceeds" shall be defined as the gross amount of the recovery from the Litigation, less Transferor's attorney's fees, the actual costs of the Litigation advanced by Seller's / Transferor's legal counsel on Seller's / Transferor's behalf, and any other prior superior assignments (to include Letters of Protection by counsel to medical providers), liens, encumbrances or security interests of any kind or nature in or relating to the Proceeds as set forth in Schedule D hereto, if any.**

**2. Seller / Transferor hereby grants to Purchaser / Transferee a security interest in the Proceeds of the Litigation in the amount of \$ \_\_\_\_\_.00, plus any and all increases pursuant to Schedule C, subject to the terms and conditions of this Agreement, in order to secure the said Agreement.**

**3. This Agreement constitutes a non-recourse sale, and not a loan, and is expressly intended only to transfer, convey and relinquish control over a specified portion of the Proceeds, which may flow from, and as a result of the Litigation referred to above by**

the mechanism of the purchase of a lien against the Litigation. This agreement constitutes only the purchase of the said lien against the litigation and is not an assignment, nor a purchase of any right, chose in action, cause of action, or claim which Seller / Transferor may have or possess as against any responsible party, respondent or Defendant referred to herein. **This is a non-recourse sale and not a loan, and as such is not subject to legislative provisions regulating consumer finance companies,** but if a court of competent jurisdiction, including, but not limited, to an arbitrator appointed pursuant to the Commercial Arbitration Rules of the American Arbitration, determines this transaction to be a loan, subject to the applicable usury laws, then A C S F agrees that the charges incurred shall accrue at the maximum rate allowed by law.

**4. No transfer of control, input, influence, right or involvement of any kind to the Purchaser/Transferee, as concerns any claim, right, or interest of Seller/Transferor in the Litigation, is contemplated by any party to this Agreement. Recognizing that champerty may be held to be illegal in certain jurisdictions, Seller/Transferor and Purchaser/Transferee each acknowledge that Purchaser/Transferee is in no way acquiring Seller/Transferor's right to sue; that Seller/Transferor has already initiated the Litigation (to which end Seller/Transferor has retained the attorney identified in this Agreement) that Purchaser/Transferee is funding; that the Litigation absolutely belongs to Seller/Transferor and no one else; and that Purchaser/Transferee will in no way be involved in any of the decisions that Seller/Transferor and Seller/Transferor's attorney makes in connection with any aspect of the litigation.**

5. This Agreement, and the obligation to pay over the Proceeds specified herein is totally contingent, speculative and without recourse on the part of Purchaser / Transferee, except for the security interest in the Litigation, and any successor claim and/or litigation arising out of the same facts, or arising out of the conduct of the Litigation. **If there is no recovery of Proceeds by Seller / Transferor as specified herein, then Purchaser / Transferee shall receive NOTHING. If the Seller/Transferor's recovery from the litigation is insufficient to pay the full amount due the Purchaser/Transferee, after the payment of attorney's fees and costs and any prior superior liens, then the Purchaser/Transferee's recovery shall be limited to the available proceeds after the payment of attorney's fees and costs and any prior superior liens.**

**6. Seller / Transferor shall, and does hereby require and direct his current attorney/law firm of record, as well as any successor attorney/law firm of record, to honor this Agreement, including but not limited to, the obligation to pay the Purchaser / Transferee those amounts from the proceeds, to which it may be entitled, directly from his trust/escrow account, as soon as may be practicable, following the conclusion of the Litigation. Such direction shall be, and is hereby**

**deemed, irrevocable. By execution of the Attorney Acknowledgement, attached hereto and made a part hereof, Seller's / Transferor's attorney acknowledges receipt of an actual copy of this Agreement and agrees to honor his client's direction as contained herein.**

**7. All parties to this Agreement acknowledge that by execution hereof, Seller's / Transferor's attorney is solely and merely following Seller's / Transferor's instructions. Seller's / Transferor's attorney is making neither a representation nor guarantee, inferred, expressed or implied, concerning either the merits or value of the claim or litigation matter referred to herein to any party. Further, all parties to this Agreement acknowledge that Seller's / Transferor's attorney assumes no affirmative duties herein other than the ministerial obligations of disbursement, and of conveying requested information.**

8. If Seller / Transferor changes his attorney subsequent to the date of this Agreement, Seller / Transferor and Seller's / Transferor's attorney each shall give written notice, within twenty four hours, by United States mail, to Purchaser / Transferee at 4025 Cattlemen Rd., PMB 155, Sarasota, Fl 34233, of the identity, address and phone numbers Seller's / Transferor's new attorney. Seller / Transferor further agrees to require and to direct any new attorney to execute an Attorney Acknowledgement of Lien Purchase Agreement in the form of the Attorney Acknowledgement of Lien Purchase Agreement made a part hereof.

9. Seller / Transferor hereby authorizes his attorney to release to Purchaser / Transferee any information, files, records and/or documents regarding the Litigation requested by Purchaser / Transferee, who agrees to treat such information as privileged and who shall receive and review these materials solely in the limited capacity necessary for this Agreement.

10. This Agreement constitutes the entire agreement between the parties and there are no representations, warranties, covenant or obligations except as set forth herein. This Agreement supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, written or oral, of the parties hereto, relating to any transaction contemplated by this Agreement. This Agreement shall be binding on, and inure to the benefit of, the parties hereto and their successors and assigns. In the event any one or more of the covenants, terms and conditions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the validity, viability or enforceability of any other covenant, term or condition in this Agreement.

11. Seller / Transferor represents and warrants unto Purchaser / Transferee that as of the date of this Agreement that: (a) Seller / Transferor believes the Litigation to be meritorious and filed in good faith; (b) Seller / Transferor has complete right, title and

interest in and to the Litigation and full power and authority to make and execute this Agreement; (c) Seller / Transferor has not and will not assign or encumber the Proceeds from the Litigation, except as otherwise provided herein; and (d) there is no other assignment, lien, encumbrance or security interest of any kind or nature in or relating to the Proceeds other than as set forth in Schedule D hereto, if any.

12. Seller / Transferor intends this Agreement to be fully valid and binding as to and upon all heirs, trustees, executors, or any other successor-in-interest who may obtain or assert control over the Litigation by reason of Seller's / Transferor's death, disability or decline in health, such that someone other than Seller / Transferor is, or becomes entitled to make decisions concerning the disposition of the Litigation, or any of the proceeds thereof.

**13. By agreement of the parties, any dispute between or among the parties arising out of the transaction provided for in this Agreement, as well as the Schedules, attached to and made a part of this Agreement, to include the Attorney Acknowledgement and UCC-1, shall be submitted to final and binding arbitration, by a single arbitrator, in Sarasota, Florida, applying the substantive laws of the State of Florida; the said arbitrator to be appointed by, and the said arbitration to be administered in accordance with, the American Arbitration Association in accordance with its Commercial Arbitration Rules. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction.**

Either party may apply to the arbitrator seeking injunctive relief until the arbitrator's award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this Agreement, seek from any court having jurisdiction, any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitral tribunal or pending the arbitral tribunal's determination of the controversy.

Paragraph 28 of this agreement shall apply to any arbitration or court proceeding between the parties.

14. Seller / Transferor has been advised to have not only his counsel, but also outside counsel review this agreement prior to signing.

**15. Seller / Transferor has been advised that Purchaser / Transferee is a provider of funds of last resort and that other sources may have more favorable rates and payment schedules.**

16. Seller / Transferor acknowledges that all questions have been answered to Seller's / Transferor's satisfaction by Purchaser / Transferee.

17. Seller/Transferor acknowledges and recognizes that the lien purchase contemplated by this agreement is a high risk purchase, and not a loan, and that Purchaser / Transferee will, in the event Seller / Transferor should make a recovery, make a substantial profit from this purchase. When the Litigation referred to above is settled or concluded, and the Proceeds agreed upon paid to Purchaser / Transferee, Seller / Transferor will owe no further monies or have any further obligation to Purchaser / Transferee.

18. Wherever used the singular shall include the plural and the masculine the feminine.

19. Seller / Transferor acknowledges that the attached Schedules A, B, C and D, as well as the "Attorney Acknowledgement" and UCC-1 are hereby made a part of this agreement.

20. In the event Seller / Transferor changes attorneys AND Seller's / Transferor's new attorneys for any reason do not execute an "ATTORNEY ACKNOWLEDGEMENT OF LIEN PURCHASE AGREEMENT" in the form included herewith, or in the event Seller/Transferor fails to notify Purchaser/Transferee of a new attorney, within twenty four hours, Seller / Transferor authorizes Purchaser / Transferee to send to the applicable defendant and/or defendant/insurance company a "NOTICE OF LIEN", so that Purchaser / Transferee may perfect its lien against the subject claim.

Further, Seller/Transferor hereby grants Purchaser/Transferee full and complete authority and permission to send a "NOTICE OF LIEN" to such persons and/or entities as Purchaser/Transferee, at such times and as it, within its sole discretion, deems necessary, including but not limited to attorneys, insurance companies and/or parties, in order to protect its lien.

**In any event, A C S F will file, in the appropriate governmental office (s) indexing such matters, a UCC Financing Statement (UCC-1), identifying the claim/case described in Schedule A as collateral for it's lien, to memorialize the said lien, as well as any documentation necessary to support and/or continue it's lien. A copy of the UCC-1 will be provided to Seller/Transferor and Seller/Transferor's attorney, for their records, after filing.**

**The involved insurance carrier(s) and the policy/claim number(s) is (are) as follows.**

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

POLICY NUMBER \_\_\_\_\_

CLAIM NUMBER \_\_\_\_\_

**Page 6 of 14 Transferor's Initials \_\_\_\_\_**

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

POLICY NUMBER \_\_\_\_\_

CLAIM NUMBER \_\_\_\_\_

**21. In the event Seller / Transferor terminates or otherwise breaches the covenants, conditions or terms of this Agreement, including, but not limited to, abandonment of his claim/case (other than on advice of counsel), or failure to communicate or respond to communication (s) from Purchaser/Transferee after discharging his attorney, Seller/Transferor shall pay liquidated damages to Purchaser / Transferee in the amount of TWO times the amount advanced pursuant to this Agreement, if the breach occurs within two years of the execution of this Agreement, and THREE times the amount advanced if the breach occurs thereafter; which amounts Seller/Transferee expressly agrees are reasonable and not imposed as a penalty.**

22. Seller/Transferor agrees not to accept a Structured Settlement as satisfaction of the Litigation, unless "Proceeds", as defined in this Agreement are equal to or greater than the amount owed to Purchaser/Transferee, and Purchaser/Transferee is paid all monies due it, from the initial disbursement by the defendant or defendant's insurance carrier, as provided herein.

23. In the event Seller commences, or has commenced against it, any case, or other proceeding, pursuant to any bankruptcy, insolvency, or similar law prior to Purchaser's/Transferee's receipt of the full amount due it pursuant to this Agreement, Seller/Transferor shall cause the said amount due Purchaser/Transferee to be described as an asset of Purchaser/Transferee in any oral or written communications, including but not limited to, any schedule or other document, made or filed in connection with any such case or proceeding. In no event shall Seller/Transferor permit the amount due Purchaser/Transferee to be described as a debt or obligation of Seller/Transferor to Purchaser/Transferee in any such communication, document or filing.

24. Seller/Transferor will not knowingly create additional liens, including but not limited, to additional advances, without the prior written consent of Purchaser/Transferee, except as may be necessary for the prosecution of the litigation and/or as may be necessary for medical treatment.

25. Seller/transferor has instructed his/her attorney to provide Purchaser/Transferee such periodic updates of the status of the litigation as it may request.

26. In order to expedite the funding process, a transmission of a faxed copy of this

Agreement, and the Schedules attached and made a part thereof, shall be honored by the parties hereto and their attorney (ies) with the same force and effect as if it were the original; **however the faxed Agreement MUST be accompanied by a faxed letter on the Seller/Transferor's attorney's letterhead stating that the original Agreement will follow by U . S. Mail.**

**27. I have been advised and understand that by authorizing the release of information about my claim/case to A C S F, I may be waiving the attorney/client privilege, thereby making such information, as well as other information about my claim, discoverable by those against whom I am making a claim. A C S F WARRANTS THAT ANY INFORMATION RELEASED TO IT WILL BE USED SOLELY AND EXCLUSIVELY FOR THE PURPOSE OF PROVIDING ADVANCE FUNDING AND WILL USE ITS BEST EFFORTS TO INSURE THE CONFIDIEDENTIAL NATURE OF THE SAID INFORMATION.**

**28. Seller/Transferor may rescind this Agreement within five (5) business days of the date you receive funding, provided, however, that he returns all the money given by Purchaser/Transferee simultaneously with the recession. Seller/Transferor may do this by making delivery to 4025 Cattlemen Rd., PMB 155, Sarasota, Fl 34233 of: (a) the undeposited check that Purchaser/Transferee gave to Seller/Transferor, or (b) a certified or bank check payable to A C S F in the exact amount of the advance. Purchaser/Transferee gave to Seller/Transferor; or a money order made payable to A C S F in the exact amount that Purchaser/Transferee gave to Seller/Transferor.**

**29. In the event any action or proceeding of whatsoever nature is brought to enforce or interpret any provision, covenant or condition of this Agreement, including the Schedules and Exhibit attached thereto and made a part thereof, on the part of the Seller/Transferor or the Purchaser/Transferee, the prevailing party (ies) in such action or proceeding shall be entitled to recover from the Party (ies) not prevailing, all its expenses, including, but not limited to, reasonable attorney's fees and costs, travel expenses, out of pocket expenses such as copying and telephone charges, witness and experts fees and administrative and/or arbitration fees.**

**DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT CAREFULLY OR IF IT CONTAINS ANY BLANK SPACES. YOU SHOULD OBTAIN THE ADVICE OF YOUR ATTORNEY AS WELL AS OUTSIDE COUNSEL (SEE PARAGRAPH 14 ABOVE). YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS AGREEMENT.**

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**SCHEDULE A**

**A description of the case details, which led Seller / Transferor to seek funds, is follows:**

**The Case Caption is as follows:**

**Defense Counsel is as follows:**

Name:

Address:

Street:

City, State and zip:

Name:

Address:

Street:

City, State and zip:

**SCHEDULE B**

**SELLER'S / TRANSFEROR'S INFORMATION**

**NAME**

**ADDRESS:**

**STREET**

**CITY, STATE AND ZIP**

**COUNTY OF RESIDENCE**

**TELEPHONE NUMBER**

**FAX NUMBER**

**DATE OF BIRTH**

**PLACE OF BIRTH**

**MOTHER'S MAIDEN NAME**

**SOCIAL SECURITY NUMBER**

**DRIVERS LICENSE NUMBER**

**STATE**

## SCHEDULE C

The amount owed of \$ \_\_\_\_\_.00 will increase by:

- a. \_\_\_\_ percent per month, compounded monthly, commencing on the first day of the first month following execution of this Agreement and on the first day of each subsequent month, until paid, with a minimum number of three (3) monthly increases being due and payable; and
- b. an administrative fee of \$ \_\_\_\_\_.00 to cover the cost of document preparation, filing fees and monitoring.

Examples of the monthly increases for the first thirty-six months are shown in Exhibit 1 attached to this Schedule C.

**NOTE: TO CALCULATE A PAYOFF FIGURE, THE ADMINISTRATIVE FEE SET FORTH ABOVE MUST BE ADDED TO THE NUMBER APPEARING IN THE ATTACHED EXHIBIT 1, OPPOSITE THE MONTH IN WHICH THE PAYOFF IS TO BE MADE**

The attached Exhibit 1 shows the monthly increases for the first thirty-six (36) months of the advance. The payoff will continue to increase by the percent per month set forth above, compounded monthly, until paid, based on the terms of this Agreement, plus the administrative fee. Additionally, if the Litigation remains unresolved beyond 12 months from the date of funding, there will be an additional administrative fee of \$25.00 per quarter (3 month period) for each additional quarter the litigation remains open; which fee will be considered earned and incurred the 1<sup>st</sup> day of the first month of each additional quarter.

**SCHEDULE D**

**NAME AND ADDRESS OF SELLER'S / TRANSFEROR'S ATTORNEY**

**NAME**

**ADDRESS : Street  
City, State and Zip**

**Attorney's License: State \_\_\_\_\_**

**Number \_\_\_\_\_**

**CURRENT MEDICAL LIENS/LETTERS OF PROTECTION**

NAME \_\_\_\_\_ AMOUNT \_\_\_\_\_ \* if necessary use separate sheet  
of paper

NAME \_\_\_\_\_ AMOUNT \_\_\_\_\_

NAME \_\_\_\_\_ AMOUNT \_\_\_\_\_

**OTHER PRIOR ADVANCES, LIENS OR ENCUMBRANCES  
AS OF DATE OF AGREEMENT**

NAME \_\_\_\_\_ AMOUNT \_\_\_\_\_ \* if necessary use separate sheet  
of paper

NAME \_\_\_\_\_ AMOUNT \_\_\_\_\_

NAME \_\_\_\_\_ AMOUNT \_\_\_\_\_

NAME \_\_\_\_\_ AMOUNT \_\_\_\_\_

**I/WE CURRENTLY KNOW OF NO OTHER ADVANCES, LIENS, CLAIMS  
LETTERS OF PROTECTION OR ENCUMBRANCES UPON THE LITIGATION  
OTHER THAN THOSE LISTED ABOVE.**

\_\_\_\_\_  
Esq., & On Behalf Of

\_\_\_\_\_  
Date

Attorney For Transferor/Seller

**ATTORNEY ACKNOWLEDGEMENT OF LIEN PURCHASE AGREEMENT**

The undersigned attorney for \_\_\_\_\_, Seller /Transferor, \_\_\_\_\_, Esq, and on behalf of \_\_\_\_\_ acknowledges receipt of the foregoing Lien Purchase Agreement as Attorney for Seller / Transferor. In the event that Attorney ceases representation of Seller / Transferor at any time, Attorney shall immediately give written notice, by United States mail, to Purchaser / Transferee at 4025 Cattlemen Rd. PMB, Sarasota, Fl 34233

**By execution hereof, Attorney is solely and only following the instructions of Seller / Transferor. Attorney makes no statement, renders no opinion, and proffers no guarantee as pertains to the possibility of recovery of some or any Proceeds as a result of the Litigation.**

**By the execution hereof, Attorney assumes no duties or obligations to Purchaser / Transferee other than:**

**to follow the directions of his client as contained therein; and**

**furnishing requested information and quarterly status updates as requested by A C S F, as well as a copy of the Settlement Sheet, upon request, showing all receipts and disbursements upon conclusion of the Litigation.**

**Nothing contained in this Agreement and/or the Attorney Acknowledgement shall be construed:**

**as requiring any action that in any way impairs the attorney client relationship and/or any privileges arising there from;**

**in any manner that would in any way adversely effect such relationship and/or the privileges arising there from; and**

**to confer any rights whatsoever upon Purchaser/ Transferee to participate in any manner whatsoever in the preparation, trial and/or settlement of the litigation.**

\_\_\_\_\_, Esq.

, and on behalf of

\_\_\_\_\_

Date

Attorney for Seller/Transferor