

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

In re:

One Fat Frog, Incorporated,  
  
Debtor.

Case No.: 6:24-bk-02620-LVV  
Chapter 11, Subchapter V

**SIXTH STATUS REPORT OF SPECIAL COUNSEL TO TRUSTEE-IN-POSSESSION**

I am Andrew J. Wit of law firm Millennial Law and I am the attorney that has been employed to serve as special counsel to L. Todd Budgen, the Trustee-in-Possession (the “Trustee”) of One Fat Frog, Incorporated (“**One Fat Frog**”). This document is intended to share the status of the investigation and pursuit of claims that would recover funds and provide a distribution to creditors of One Fat Frog.

This is the sixth status report I have filed in this case. For a description of my role in the case and my investigation, please review my previous status reports which can be viewed at <https://www.flmb.uscourts.gov/trustees/notice.htm>. My first status report was filed on November 20, 2024, and was attached to the Trustee in Possession’s Status Report (Doc. 235). The subsequent status reports were filed on May 7, 2025 (Doc. 319), July 20, 2025 (Doc. 331), and November 12, 2025 (Doc. 342), and January 27, 2026 (Doc. 347).

**CURRENT STATUS OF THE RECOVERY OF ASSETS**

This section is intended to provide a summary of the recovery of assets on behalf of One Fat Frog’s bankruptcy estate.

***Recovery of the Debtor’s Employee Retention Credit***

In my last report, I indicated that I initiated an adversary proceeding against the company that handled the submission of the One Fat Frog’s Employee Retention Credit claim

(“**ERC Claim**”). In my last report, I indicated that this litigation was commenced to determine the status of the ERC Claim, including whether any payments have been issued or whether the IRS has indicated that there are any issues with the amount expected to be received as part of the ERC Claim. Since the litigation was commenced, I was contacted by the attorney representing the company that submitted the ERC Claim and he has informed me that the IRS has not paid any funds out on account of the ERC Claim. That attorney is working to gather additional information to provide to the Trustee so that we can assess the timing of payment on the ERC Claim.

#### *Status of Ongoing Litigation*

Since my last status report, the Trustee has commenced an adversary proceeding against 6 entities and 8 individuals who were involved in providing financing to One Fat Frog. This litigation asserts various claims for relief against these parties with the goal of recovering funds to allow for payment to unsecured creditors of One Fat Frog. This litigation asserts claims to avoid and recover transfers totaling \$2,573,366.55 paid to the financing companies. There are additional claims asserted relating to the nature of the transactions and the conduct of the individuals who facilitated those transactions. A copy of the Complaint filed in this adversary proceeding is attached to this status report.

Additional litigation will be filed in over the next few weeks and will primarily be focused on the avoidance and recovery of transfers made by One Fat Frog. There are approximately \$3 million in additional transfers (beyond those sought in the attached Complaint) that the Trustee will seek to recover for the benefit of One Fat Frog’s creditors. There will also be some subpoenas sent to various parties to investigate additional claims that the Trustee could bring to maximize the recovery to One Fat Frog’s creditors.

***What to Expect Going Forward***

As indicated in my previous reports, the litigation is primarily targeting two main groups. First, there will be several adversary proceedings commenced against third parties whose conduct contributed to One Fat Frog's demise. Second, the Trustee plans to commence adversary proceedings to recover amounts paid to insiders of the One Fat Frog.

While litigation can take time, I will make every effort to expeditiously resolve claims to bring funds into the bankruptcy estate. Nevertheless, my job is to maximize the funds that are recovered by the bankruptcy estate so that creditors of the Debtor receive as much as possible. Accordingly, I want to ensure that every dollar that could possibly be recovered is obtained and will only compromise when the expenses to recover additional funds exceed the amount of recovery that is available.

I will continue to diligently assess all available avenues for recovery to maximize the funds available to distribute to creditors of One Fat Frog.

Respectfully submitted,

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By: /s/ Andrew J. Wit

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***Special Counsel to L. Todd Budgen as Trustee  
in Possession of One Fat Frog, Incorporated***

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 24, 2026, a true copy of the foregoing has been filed with the Court's CM/ECF system which provides notice of electronic filing to all parties receiving electronic service in the ordinary course.

*/s/ Andrew J. Wit* \_\_\_\_\_  
Andrew J. Wit

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re:

One Fat Frog, Incorporated,  
  
Debtor.

Case No. 6:25-bk-2620-LVV  
Chapter 11, Subchapter V

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L. Todd Budgen, as Trustee in Possession of  
One Fat Frog, Incorporated,  
  
Plaintiff,

v.

Adv. Case No. 6:26-ap-\_\_\_\_-LVV

Fox Capital Group, Inc.,  
Bizfund LLC,  
Union Funding Source, Inc.,  
EN OD Capital LLC,  
Parkside Funding Group LLC  
Yosef Rapoport, Farouz Koshanfar,  
Shaul Dahan, Yakov Mokai, Simcha Katz,  
Biz Advance Now, LLC, Sami Flaster,  
James Clark, and William Stevenson,

Defendants.

\_\_\_\_\_ /

**COMPLAINT FOR AVOIDANCE AND RECOVERY OF  
FRAUDULENT TRANSFERS AND ADDITIONAL RELIEF**

L. Todd Budgen as Trustee-in-Possession of One Fat Frog, Incorporated (“**Trustee**” or “**Plaintiff**”), files this Complaint against Fox Capital Group, Inc (“**Fox**”), Bizfund, LLC (“**Bizfund**”), Union Funding Source, LLC (“**Union**”), EN OD Capital LLC (“**EN OD**”), Parkside Funding Group LLC (“**Parkside**”), Biz Advance Now, LLC (“**BAN**”), Yosef Rapoport, Farouz Koshanfar, Shaul Dahan, Yakov Mokai, Simcha Katz, Sami Flaster, James Clark, and William Stevenson, and states as follows:

**NATURE OF ADVERSARY PROCEEDING**

1. The Trustee brings this adversary proceeding to avoid and recovery fraudulent transfers made to Fox, Bizfund, Union, EN OD, and Parkside (together, the “**MCA Lenders**”). The Trustee also asserts various claims against the MCA Lenders, the principals of the MCA Lenders, BAN, James Clark, and William Stevenson. A summary of the Trustee’s claims and which claim is applicable to which party is below:

<b><u>Count</u></b>	<b><u>Claim</u></b>	<b><u>Defendants</u></b>
1	Avoidance of Fraudulent Transfers	MCA Lenders
2	Avoidance of Constructively Fraudulent Transfers	MCA Lenders
3	Recovery of Avoidable Transfers Under § 550	MCA Lenders
4	Disallowance of Claim	Fox, Bizfund, and Union
5	Equitable Subordination	Fox, Bizfund, and Union
6	Usury/Loan Sharking (Fla. Stat. § 687.071)	MCA Lenders
7	Aiding and Abetting Usury/Loan Sharking	Yosef Rapoport, Farouz Koshanfar, Shaul Dahal, Yakov Mokai, Simcha Katz, BAN, Sami Flaster, James Clark, and William Stevenson
8	Declaratory Judgment that Transactions are Loans	MCA Lenders
9	Declaratory Judgment as to the Scope of the Choice of Law Provisions in the MCA Agreements	Against Fox (as to the First Fox Agreement), Bizfund, EN OD, and Parkside
10	Declaratory Judgment that the MCA Agreements are Contracts of Adhesion	MCA Lenders

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 because this proceeding arises in and relates to the chapter 11 case

pending before this Court captioned *In re One Fat Frog, Incorporated*, Case No. 6:24-bk-2620-LVV.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

4. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2). Plaintiff consents to entry of final orders and judgment by the Court.

5. The statutory and legal predicates for the relief sought herein are §§ 502, 510, 544, 547, 548, and 550 of the Bankruptcy Code,<sup>1</sup> 28 U.S.C. § 1334, and Rules 3007 and 7001 of the Bankruptcy Rules.<sup>2</sup>

#### **THE PARTIES**

6. Plaintiff is the Trustee-in-Possession of One Fat Frog, Incorporated (“**OFF**” or “**Debtor**” in the above-captioned bankruptcy case.

#### ***The MCA Lenders***

7. Fox is a Florida corporation with a principal place of business at 803 South 21<sup>st</sup> Street, Hollywood, Florida 33020.

8. Bizfund is a Delaware limited liability company with a principal place of business at 2371 McDonald Avenue, Brooklyn, New York 11223.

9. Union is a Florida corporation with a principal place of business at 1835 East Hallandale Beach Boulevard, Hallandale Beach, Florida 33009.

10. EN OD is a New York corporation with a principal place of business at 1202 Avenue U, Suite 1115, Brooklyn NY 11229.

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<sup>1</sup> All references to the “Bankruptcy Code” are to the applicable section of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*

<sup>2</sup> All references to the “Bankruptcy Rules” are to the applicable rule of the Federal Rules of Bankruptcy Procedure.

11. Parkside is a New Jersey limited liability company with a principal place of business in New York.

*The Principals of the MCA Lenders*

12. Yosef Rapoport is the President of Fox and is a resident of Florida.
13. Farouz Koshanfar is the principal of Bizfund and is a resident of Florida.
14. Shaul Dahan is the President of Union and is a resident of Florida.
15. Yakov Mokai is a principal of EN OD and is a resident of New York.
16. Simcha Katz is the principal of Parkside and is a resident of New Jersey.

*The Broker*

17. BAN is a New York limited liability company.
18. Sami Flaster is the principal of BAN and may also be a principal of Bizfund.
19. James Clark is an agent of BAN and may also be the Director of Funding for Bizfund.
20. William Stevenson is the Director of Operations for BAN.

**FACTUAL BACKGROUND**

**I. The Debtor's Business and the Chapter 11 Filing**

21. The Debtor is a Florida corporation that manufactured food trucks.
22. On May 24, 2025 (the "**Petition Date**"), the Debtor filed its Voluntary Petition for Non-Individuals Filing for Bankruptcy and initiated a case chapter 11 Bankruptcy Code. The Debtor made the election to proceed under subchapter V of the Bankruptcy Code pursuant to the Small Business Reorganization Act of 2019, as amended.
23. The Debtor was previously one of the largest food truck manufacturers in the Country.

24. However, at the same time, those in control of the Debtor were failing adequately balance marketing efforts with production capacity. Around 2023, although the Debtor's marketing efforts generated new orders and the attendant cash flow from customer deposits, the Debtor's production capacity was unable to accommodate the influx of orders.

25. This created a constant need for the Debtor to have cash flow, and as a result the Debtor had a significant need for capital.

26. Due to these cash flow constraints and entered into transactions with numerous merchant cash advance ("**MCA**") lenders to obtain capital to sustain its business operations.

27. The Debtor was introduced to MCA lenders through independent sales organizations that act as a broker and connect businesses like the Debtor to MCA lenders.

28. While the Debtor was experiencing the need for operating capital, the Debtor's principals received solicitations from independent sales organizations like Biz Advance Now.

29. The Debtor made substantial payments to these MCA lenders to the point where a majority of the Debtor's operating capital was utilized to service the Debtor's obligations to MCA lenders.

30. The MCA Lenders and their representatives were all intimately aware of the Debtor's lack of internal controls and used the infusion of capital to allow the Debtor to continue to operate, avoid rectifying its shortfalls and continue to deliver products.

31. The Defendants all chose to take advantage of the Debtor and to continue to advance it money so that they could charge outrageous fees, while using the Debtor's need for capital to prevent it from challenging the excessive amounts of money that were being taken from it.

32. This caused the Debtor to continue to take deposits from new clients despite its production capabilities remaining the same.

33. Ultimately, after more and more MCA agreements were stacked onto the Debtor's books, the Debtor was unable to service all of its debt or maintain the bare minimum operations needed to complete existing projects.

## **II. The Debtor's Creditors**

34. At the time of the transfers to the MCA Lenders described below, the Debtor had various secured and unsecured creditors.

35. At all relevant times, the Debtor had at least one secured creditor with a first-priority lien on the Debtor's equipment, fixtures, inventory, accounts, instruments, chattel paper and general intangibles.

36. At all relevant times, the Debtor also had unsecured creditors.

## **III. The MCA Industry**

### ***A. The MCA Industry in General***

37. MCAs are financing arrangements where the financing company provides a merchant cash in exchange for the purchase of a percentage of the merchant's "future receivables."

38. The MCA Lenders' agreements with the Debtor are similar in substance to other agreements that have made recent national headlines. For example, the New York Attorney General, Letitia James, recently announced a \$1 billion settlement with Yellowstone Capital for predatory lending, as reflected by the Press Release, dated January 22, 2025, a true and correct copy of which is attached hereto as **Exhibit A**. According to the Press Release, companies like Defendant "pretended to offer a helping hand, but instead provided illegal, ultra-high-interest loans."

***B. The Defendants' Roles in the MCA Industry***

39. The MCA Lenders prey on small businesses in financial despair by marketing fast approvals and quick access to cash.

40. However, in exchange for the fast cash, the MCA Lenders provide predatory interest rates, aggressive collections tactics, and fail to treat the transaction as if it were actually a purchase of a percentage of the Debtor's receivables.

41. BAN is a broker who connects merchants to MCA Lenders.

42. Small businesses often come to the MCA Lenders or brokers like BAN with the intention of finding a conventional loan.

43. Sometimes, the small businesses are told that if they take out an MCA, that later on they will be approved for a conventional loan.

44. BAN and its principals and agents were incentivized to get new deals approved because they typically made 10-11% of the amount delivered to the Debtor.

45. James Clark, who was the Debtor's primary contact with BAN, is also apparently an employee or agent of Bizfund.

***C. The Structure of MCA Transactions***

46. The structure of MCA transactions are generally the same and involve an amount specified as the proceeds to the merchant, an amount the merchant is required to pay back to the MCA company, and a percentage of future receivables that are being purchased by the MCA company.

47. While not typically clear on the face of an MCA agreement, the term is fixed based on the daily or weekly payment amounts and the total amount the merchant is required to pay back.

48. The percentage identified in the MCA Agreement as a “purchased percentage” is supposed to be the amount of the merchant’s future receipts that are being purchased. However, as explained below, the amount the merchant is required to pay back does not always accurately reflect the “purchased percentage” reflected in the MCA agreement.

#### **IV. The Debtor’s Dealings with Fox and Bizfund**

49. As early as January of 2020, the Debtor began entering into agreements with MCA lenders.

50. The Debtor believed it was obtaining a conventional loan, but was instead provided MCA transactions.

##### ***A. The First Fox Agreement***

51. On or about January 31, 2020, the Debtor and Fox executed a *Future Receivables Sale and Purchase Agreement* (the “**First Fox Agreement**”). A copy of the First Fox Agreement is attached as **Exhibit B**.

52. Under the First Fox Agreement, the Debtor received \$220,505 and agreed to pay \$305,900 to Fox.

53. The Debtor in fact paid \$305,900 in consideration to Fox Between January 31, 2020, through September 28, 2020.

54. Under the First Fox Agreement, the effective interest rate of the funds received by the Debtor was over 57%.

##### ***B. The Second Fox Agreement and the First Bizfund Agreement***

55. In February 2023, the Debtor sought a loan to refinance previous obligations to other MCA lenders and to obtain additional operating capital.

56. To that end, the Debtor contacted Biz Advance Now to obtain financing.

57. Biz Advance Now worked with Fox and Bizfund, who each agreed to provide financing in the total amount of \$600,000, with \$234,000 in interest, for a total amount of \$834,000 to be paid back within 42 weeks (or 294 days).

58. On March 13, 2023, the Debtor and Fox executed a second *Future Receivables Sale and Purchase Agreement* (the “**Second Fox Agreement**”). A copy of the Second Fox Agreement is attached as **Exhibit C**.

59. Under the Second Fox Agreement, the Debtor received \$300,000 and agreed to pay \$417,000 within 42 weeks (or 294 days).

60. That same day, the Debtor and Bizfund executed a *Merchant Cash Advance Agreement* (the “**First Bizfund Agreement**”). A copy of the First Bizfund Agreement is attached as **Exhibit D**.

61. Under the First Bizfund Agreement, the received \$300,000 and agreed to pay \$417,000 over the course of 42 weeks or 294 days.

62. As with most MCA Agreements, the Second Fox Agreement and the First Bizfund Agreement identified a percentage of the Debtor’s future receivables that were purportedly being “purchased” by Fox and Bizfund.

63. Although the Second Fox Agreement and the First Bizfund Agreement indicated they were purchasing the same amount of future receivables, the First Bizfund Agreement indicated it was for 15% while the Second Fox Agreement indicated the percentage was for 5%.

64. Before, the Debtor could repay Fox and Bizfund, the Debtor was convinced to take out another advance from Fox and Bizfund.

65. This resulted in the Debtor paying off the Second Fox Agreement and the First Bizfund Agreement in 90 days.

66. Because of the shortened term of the Second Fox Agreement and the First Bizfund Agreement, the effective interest rate of these transactions was approximately 158%.

*C. The Third Fox Agreement and the Second Bizfund Agreement*

67. On June 15, 2023, the Debtor and Fox executed a third *Future Receivables Sale and Purchase Agreement* (the “**Third Fox Agreement**”). A copy of the Third Fox Agreement is attached as **Exhibit E**.

68. Under the Third Fox Agreement, the Debtor received \$500,000 in funds and agreed to pay back \$695,000.

69. Of the \$500,000 provided to the Debtor under the Third Fox Agreement, the Debtor only directly received \$200,156.89, with the remaining \$299,843.11 going to Fox to pay off the balance owed under the Second Fox Agreement.

70. Also on June 15, 2023, the Debtor and Bizfund executed *Merchant Cash Advance Agreement* (the “**Second Bizfund Agreement**”). A copy of the Second Bizfund Agreement is attached as **Exhibit F**.

71. Under the Second Bizfund Agreement, the Debtor received \$500,000 in funds and agreed to pay back \$695,000.

72. Of the \$500,000 provided to the Debtor under the Second Bizfund Agreement, the Debtor only directly received \$212,707.

73. Under the Third Fox Agreement and the Bizfund Agreement, the effective rate of interest was 44.21% if the Debtor made all payments as contemplated under those agreements.

## V. BAN Finds New MCA Agreements for the Debtor

74. When the Debtor began to experience trouble performing under the Third Fox Agreement and the Second Bizfund Agreement, BAN convinced the Debtor to enter into additional MCA transactions.

75. From August through November 2023, BAN facilitated the Debtor entering into three new MCA transactions.

76. Through these transactions, the Debtor would receive approximately \$690,000 but would pay \$34,795 in “origination fees” and be responsible for paying back \$1,010,250 within 24 to 28 weeks, in addition to the preexisting obligations to Fox and Bizfund.

77. The effect of BAN’s conduct resulted in the Debtor becoming obligated to pay over \$68,000 per week to the MCA Lenders by the end of November 2023.

### A. *The Union Agreement*

78. On August 23, 2023, the Debtor and Union entered into a *Future Receivables Sale and Purchase Agreement* (the “**Union Agreement**”). A copy of the Union Agreement is attached as **Exhibit G**.

79. Under the Union Agreement, the Debtor received \$167,705 and agreed to pay back \$254,250 within 27 weeks.

80. Under the Union Agreement, the effective interest rate of the funds received by the Debtor was over 83% if the Debtor made all payments as contemplated under the Union Agreement.

### B. *The Debtor Struggles to Meet its Obligations and Enters Into the EN OD Agreement*

81. In late September 2023, BAN began to look for additional MCA financing when the Debtor was struggling to pay its existing obligations to the Fox, Bizfund, and Union.

82. James Clark sent an email to William Stevenson inquiring what Biz Advance Now could find for the Debtor.

83. In response, William Stevenson responded that there was nothing Fox or Bizfund could do, but provided additional MCA companies to inquire with, including EN OD and Parkside Funding Group, LLC.

84. On October 24, 2023, the Debtor and EN OD entered into a *Standard Merchant Cash Advance Agreement* (the “**EN OD Agreement**”). A copy of the EN OD Agreement is attached as **Exhibit H**.

85. Under the EN OD Agreement, the Debtor received \$237,500 and agreed to pay \$350,000 within 28 weeks.

86. Under the EN OD Agreement, the effective interest rate of the funds received by the Debtor was over 83% if the Debtor made all payments as contemplated under the EN OD Agreement,

***C. The Final MCA Transaction with Parkside***

87. In November 2023, the Debtor started to miss payments to EN OD.

88. On information and belief, BAN then induced the Debtor into entering into an MCA agreement with Parkside.

89. On November 20, 2023, the Debtor and Parkside entered into an *Agreement for the Purchase and Sale of Future Receivables* (the “**Parkside Agreement**”). A copy of the Parkside Agreement is attached as **Exhibit I**.

90. Under the Parkside Agreement, the Debtor received \$285,000 and agreed to pay \$417,000 to Parkside within 24 weeks.

91. Under the Parkside Agreement, the effective interest rate of the funds received by the Debtor was over 95% if the Debtor made all payments as contemplated under the Parkside Agreement.

## **VI. The Realities of the MCA Agreements**

### ***A. The Terms of the Debtor's Agreements with the MCA Lenders***

92. The agreements with the MCA Lenders all have similar terms.

93. Under the MCA Agreements, the funds paid to the Debtor were reflected as a “purchase price” that was paid in exchange for a percentage of the Debtor’s future receivables or income.

94. In reality, as set forth below, Fox collected, via ACH withdrawals, fixed amounts daily from the Debtor’s bank account during an accelerated repayment period.

95. In substance the Debtor’s transaction with the MCA Lenders were short-term loans at outrageous interest rates.

96. The effective annual interest rates under the terms of the agreements between the Debtor and the MCA Lenders ranged from 44% to 158% if the Debtor made all timely payments required under the applicable agreement until the total amount due was paid.

97. At all times material hereto, the Debtor was conducting business in Florida, the MCA Lenders sought to enter into the subject transactions in Florida, and the MCA lenders delivered and received funds from the Debtor in Florida.

98. Under the subject MCA agreements there was a defined repayment term because the MCA Lenders intended to receive the full amount due under the within the time contemplated under the applicable MCA agreement.

99. Moreover, the transactions contemplated by the MCA agreements were, in economic reality, loans that are absolutely repayable. Among other hallmarks of a loan:

- a. The daily payments required by the Loan Documents were fixed and the so-called reconciliation provision was mere subterfuge to avoid state usury laws. Rather, just like any other loan, the purchased amount was to be repaid within a specified time;
- b. The default and remedy provisions purported to hold the Debtor absolutely liable for repayment of the purchased amount. The loans sought to obligate the Debtor to ensure sufficient funds were maintained in a designated account to make the daily payments and, after insufficient funds being maintained in the account a single time, the Debtor was in default and, upon default, the outstanding balance of the purchased amount became immediately due and owing;
- c. While the Loan Documents purported to “assign” all of the merchant’s future account receivables to the MCA Lenders until the purchased amount was paid, the merchants retained all the *indicia* and benefits of ownership of the account receivables including the right to collect, possess and use the proceeds thereof. Indeed, rather than purchasing receivables, the MCA lenders merely acquired a security interest in the merchant’s accounts to secure payment of the purchased amount;
- d. Unlike true receivable purchase transactions, the Loan Documents were underwritten based upon an assessment of the merchant’s credit worthiness; not the creditworthiness of any account debtor. They were not even permitted to contact any account debtor until there was an alleged default under the MCA agreements;
- e. The purchased amount was not calculated based upon the fair market value of the merchant’s future receivables but rather was unilaterally dictated by the MCA Lenders or BAN based upon the interest rate it wanted to be paid. Indeed, as part of the underwriting process, the MCA Lenders and BAN did not request any information concerning the merchant’s account debtors upon which to make a fair market determination of their value;
- f. The amount of the daily payments was determined based upon when the MCA Lenders wanted to be paid (or to allow BAN to keep its commission), and not

based upon any good-faith estimate of the merchant's future account receivables;

- g. The MCA Lenders assumed no risk of loss due to the merchant's failure to generate sufficient receivables because the failure to maintain sufficient funds in the Debtor's account constituted a default under the agreements;
- h. The MCA Lenders required the Debtor to undertake certain affirmative obligations and make certain representations and warranties that were aimed at ensuring the company would continue to operate and generate receivables and a breach of such obligations, representations and warranties constituted a default, which fully protected the MCA Lenders from any risk of loss resulting from the Debtor's failure to generate and collect receivables.
- i. The MCA Lenders required that the Debtor grant it a security interest in its receivables and other intangibles and, further that the individual owners personally guarantee the performance of the representations, warranties and covenants, which the MCA Lenders knew or should have known were breached from day one.

100. The intent of the MCA Lenders is also important. Here, the MCA Lenders' intent to treat the transactions with the MCA transactions as a loan can be discerned from the internal negotiations, practices, and underwriting practices of the MCA Lenders, which determine the payback based on the number of days in which the MCA Lenders wanted to be paid back. The number of days for payback has no relation to the timing of the percentage of receivables that the MCA Lenders were purportedly purchasing from the Debtor.

101. The MCA Lenders also show in their underwriting practices that their agreements are loans. Typically, banks and other institutions that purchase account receivables, perform extensive due diligence into the credit worthiness of the account debtors of the Debtor whose receivables they are purchasing. When underwriting new transactions, the MCA Lender does not evaluate the merchants' receivables, which are the assets they are

purportedly buying, but instead focus on other factors such as a merchant's credit ratings and bank balances, if they perform any due diligence at all—yet they still charge hundreds of thousands for their so-called underwriting.

***B. The Illusory Reconciliation Provisions and the MCA Lenders Failure to Comply with the Reconciliation Provisions***

102. The agreements each contain provision under which the MCA Lenders were required to adjust the percentage of receivables purchased from the Debtor.

103. However, these provisions were illusory under the terms of the applicable MCA agreements and were not followed by the MCA Lenders.

104. The MCA Lenders failed to honor the reconciliation provisions of the MCA agreements and instead only reduced the payments owed to the maximum amount they believed would clear the Debtor's bank account.

105. Each of the MCA Lenders did not base their payment amount on the Debtor's actual revenue or income.

106. In early 2024 MCA Lenders acknowledged that the Debtor's revenue dropped at least 70%, but did not reduce their payment amounts in an amount equivalent to the drop in revenue.

107. Further, despite the fact that Fox and Bizfund purchased different percentages of the Debtor's future receipts, they both required the same payment amount and frequency. Both Fox and Bizfund also reduced their payment amounts equally when the Debtor was unable to make its payments in the beginning of 2024.

108. During this time, EN OD briefly decreased its payment amount, but soon began its regular payment amount despite the fact that the Debtor's revenues continued to drop.

## **VII. The Debtor's Financial Condition When it Entered Into and Made Payments Under the MCA Agreements**

109. The Debtor was deeply insolvent and starved for cash at the time of entry into the MCA Agreements.

110. In a dire financial position, and with the promise of fast access to cash, the Debtor lacked bargaining power when entering into the MCA Agreements, which makes them contracts of adhesion.

111. Underscoring its poor financial condition, at or around the time of entry into the MCA Agreements, the Debtor had already entered into or would subsequently enter into other MCA agreements, including agreements with Libertas, Navitas, Parkside Funding, and Vox Funding.

112. Beginning in June 2023, the Debtor was struggling to make payments to Fox, Bizfund, and the Debtor's other lenders.

113. Instead of assisting the Debtor in repaying its existing obligations or restructuring the amounts owed in accordance with the subject agreements, the MCA Lenders and BAN used their position of power and control to force the Debtor to take out additional indebtedness and pay as much as possible to the MCA Lenders, regardless of whether the Debtor's revenues were declining.

114. Consistent with the efforts to extract more fees and money from the Debtor and ensure its control, the MCA Lenders and BAN obtained additional records and materials.

115. These records and materials confirmed that the Debtor's financial condition had worsened and that any additional capital would cause the Debtor to go into deepening insolvency.

116. Nonetheless, and because BAN and the MCA Lenders knew that they could extract additional funds from the Debtor, BAN and the MCA Lenders continued to enter into MCA Agreements and starve the Debtor of sufficient cash to deliver products to its customers.

117. In 2023, the time between the Debtor entering into a new MCA transaction decreased dramatically as the year progressed.

118. The MCA Lenders knew that its use of extraneous amounts of the Debtors' capital would otherwise prevent the Debtor from continuing to construct food trucks to fulfill orders or effectuate a recovery.

119. Yet the MCA Lenders persisted and continue to extract significant funds from the Debtor even when it was clear the Debtor's only source of funds was either (i) entering into a new MCA Agreement or (ii) taking deposits for orders the Debtor would be unable to fill because it was unable to fund its operations.

**COUNT 1**  
**Avoidance of Fraudulent Transfers**  
**Under §§ 544 & 548(a)(1)(A) and Florida Statute § 726.105(1)(a)**  
**(Against the MCA Lenders)**

120. The allegations of paragraphs 1 through 119 are incorporated herein by reference.

121. This is an action pursuant to §§ 544 and 548(a)(1)(A) of the Bankruptcy Code and section 726.105(1)(a), Florida Statutes to avoid fraudulent transfers made by the Debtor to (i) Fox, (ii) Bizfund, (iii) Union, (iv) EN OD, and (v) Parkside within two (or four) years of the Petition Date.

122. The payments made to the MCA Lenders under the First Fox Agreement, the Second Fox Agreement, Third Fox Agreement, the First Bizfund Agreement, the Second

Bizfund Agreement, the Union Agreement, the EN OD Agreement, and the Parkside Agreement as set forth on Exhibit J (together, the “**ACH Transfers**”) are avoidable pursuant to the Bankruptcy Code.

123. The ACH Transfers were transfers of the Debtor’s interest in property to or for the benefit of the MCA Lenders.

124. Further, to the extent the Court finds that the agreements between the Debtor and the MCA Lenders which purported to sell a percentage “future receivables” constitutes the transfer of an interest of the Debtor in property (the “**Future Receivables Transfers**”), each of the MCA Agreements constitutes a transfer of the Debtor’s interest in property to the MCA Lenders.

125. Moreover, to the extent the agreements with the MCA Lenders are enforceable and conveyed any other property rights of the Debtor, the transfers of such interests constitutes a transfer of an interest of the Debtor in property to the MCA Lenders.

126. The Debtor made the transfers to the MCA Lenders with actual intent to hinder, delay, or defraud one or more present and/or future creditors of the Debtor.

127. There are numerous badges of fraud present with respect to the transfers to the MCA Lenders, including:

- a. The transfers consisted of substantially all of the Debtor’s assets;
- b. The value of the consideration received by the Debtor was not reasonably equivalent to the value of the asset transferred;
- c. The Debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred; and
- d. The transfer occurred shortly before or shortly after a substantial debt was incurred.

128. At the time of the transfers made to the MCA Lenders, there were numerous preexisting and future unsecured creditors of the Debtor that would have standing to assert a claim for relief under Florida Statutes § 726.105(1)(a).

WHEREFORE, the Trustee respectfully requests the Court enter judgment in his favor as follows: (i) finding that the transfers made to the MCA Lenders constitute fraudulent transfers under §§ 544 and 548(a)(1)(A) of the Bankruptcy Code and section 726.105(1)(a), Florida Statutes; (ii) avoiding the Avoidable Transfers for the benefit of the Debtor's estate; and (iii) for any such other relief that this Court deems just and proper.

## COUNT II

### **Avoidance of Constructively Fraudulent Transfers Under §§ 544 & 548(a)(1)(B) of the Bankruptcy Code and Sections 726.105(1)(b) & 726.106(1) (Against the MCA Lenders)**

129. The allegations of paragraphs 1 through 119 are incorporated herein by reference.

130. This is an action pursuant to §§ 544 and 548(a)(1)(B) of the Bankruptcy Code and sections 726.105(1)(b) and 726.106(1), Florida Statutes, to avoid the ACH Transfers and, if applicable, the Future Receivables Transfers.

131. The Debtor made the ACH Transfers to the MCA Lenders without receiving reasonably equivalent value.

132. The Debtor made the transfers while it was engaged or was about to engage in business or a transaction for which the remaining assets of the Debtor were unreasonably small in relation to the transaction and/or while the Debtor intended to incur, or believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

133. The Debtor remained unable to pay its debts as they became due as a result of the transfers to the MCA Lenders through the Petition Date.

134. The Debtor was insolvent at the time it entered into the agreements with the MCA Lenders and when it made the ACH Transfers.

135. The Debtor's insolvency at the time of the transfers is evidenced by the fact that the Debtor's assets far-exceeded its liabilities and the Debtor's inability to pay its liabilities as they became due.

136. Alternatively, to the extent the Debtor was not insolvent on the date of the transfers, it was certainly rendered insolvent by the transfers because they depleted any operating capital the Debtor held in its accounts.

137. The transfers to the MCA Lenders deepened the Debtor's already insolvent condition, leaving it unable to pay its liabilities.

138. Moreover, the transfers were of property the Debtor had already pledged as collateral to preexisting creditors.

139. Any future receipts contemplated under the MCA agreements were really deposits from the Debtor's customers and were to be used to fund the construction of food trucks for various customers.

140. The Debtor was engaged, or about to engage, in business or a transaction for which any property remaining with Plaintiff or for whose benefit the Transfer(s) was made was an unreasonably small capital.

141. The Debtor intended to incur, or believed it would incur, debts beyond its ability to pay upon maturity.

142. The Debtor remained unable to pay its debts as they matured and/or became due as a result of the Transfers thereafter until the Petition Date.

143. The Debtor remained inadequately capitalized as a result of the Transfers until the Petition Date.

144. The Debtor did not receive reasonably equivalent value in exchange for the Transfers.

145. Plaintiff was insolvent as of the date of each of the Transfers or became insolvent as a result of the Transfers.

146. The Debtor's insolvency at the time of the Transfers is evidenced by the fact that the Debtor's assets far-exceeded its liabilities and the Debtor's inability to pay its liabilities as they became due.

147. Alternatively, to the extent the Debtor was not insolvent on the date of the Transfers, it was certainly rendered insolvent by the Transfers because they depleted any operating capital the Debtor held in its accounts.

148. Moreover, the Transfers deepened the Debtor's already insolvent condition, leaving it unable to pay its liabilities.

149. The Debtor was engaged, or about to engage, in business or a transaction for which any property remaining with Plaintiff or for whose benefit the Transfer(s) was made was an unreasonably small capital.

150. The Debtor intended to incur, or believed it would incur, debts beyond its ability to pay upon maturity.

151. There is at least one holder of a claim that is allowable against the Debtor which would have standing to assert a claim for relief under section 726.105(1)(b), Florida Statutes.

152. Accordingly, the Transfers are avoidable pursuant to §§ 544 and 548(a)(1)(B) of the Bankruptcy Code and sections 726.105(1)(b) and 726.106(1), Florida Statutes.

WHEREFORE, the Trustee respectfully requests the Court enter judgment in its favor and against the MCA Lenders as follows: (i) finding that the transfers to the MCA Lenders are avoidable transfers under §§ 544 and 548(a)(1)(B) of the Bankruptcy Code and sections 726.105(1)(b) and 726.106(1); (ii) avoiding the transfers to the MCA Lenders for the benefit of the Debtor's estate; and (iii) for any such other relief that this Court deems just and proper.

**COUNT 3**  
**RECOVERY OF AVOIDED TRANSFERS**  
**UNDER § 550(a)(1) OF THE BANKRUPTCY CODE**

153. The allegations in paragraphs 1 through 119 of this Complaint are incorporated herein by reference.

154. The Trustee specifically incorporates the allegations contained in Counts 1 and 2, which establish that the ACH Transfers or other transfers of the Debtor's interest in property made under the First Fox Agreement, the Second Fox Agreement, the First Bizfund Agreement, the Second Bizfund Agreement, the Union Agreement, the EN OD Agreement, and the Parkside Agreement (together, the "**Avoidable Transfers**") are avoidable pursuant to the Bankruptcy Code.

155. This is an action to recover any of the Avoidable Transfers avoided under Counts 1 and 2 pursuant to § 550(a) of the Bankruptcy Code.

156. To the extent that the Avoidable Transfers are avoided as requested in Counts 1 and 2, § 550(a) of the Bankruptcy Code entitles the Trustee to recover the transferred property, or its value, from the immediate transferee or the entity for whose benefit such transfer was made, or from any immediate or mediate transferee.

157. The Avoidable Transfers are avoidable transfers that may be recovered for the benefit of the Debtor's estate.

158. As alleged in Counts 1 and 2, the MCA Lenders are the entities for whose benefit the Avoidable Transfers were made, and the transfers made to them are avoidable pursuant to §§ 544 and 548 of the Bankruptcy Code.

159. The MCA Lenders are an initial or subsequent transferee of the Avoidable Transfers.

160. Accordingly, § 550(a)(1) allows the Debtor to recover the Avoidable Transfers avoided under any of Counts 1 and 2, or their value, plus interest thereon through the date of payment, for the benefit of the Debtor's estate.

WHEREFORE, the Trustee respectfully requests the Court enter a judgment in its favor and against the MCA Lenders as follows:

- a. To the extent any of the Avoidable Transfers are avoided under Counts 1 or 2, ordering that the Avoidable Transfers or the value of such transfers be recovered from the MCA Lenders, together with interest from the date of the transfers;
- b. Awarding the Trustee all costs incurred in this action; and
- c. For any additional relief the Court deems just and proper

**COUNT 4**  
**Disallowance of Claims Under § 502(d)**  
**(Against Fox, Bizfund, and Union)**

161. The allegations of paragraphs 1 through 119 are incorporated herein by reference.

162. This is an action under §502(d) of the Bankruptcy Code seeking disallowance of: Claim 35 filed by Bizfund, Claim 259 filed by Fox, and Claim 260 filed by Union.

163. Fox, Bizfund, and Union are each a transferee of transfers avoidable under §§ 544 or 548 of the Bankruptcy Code, which property is recoverable under § 550 of the Bankruptcy Code.

164. To date, Fox, Bizfund, and Union have not paid the amount of the transfers, or turned over such property, for which Fox, Bizfund, and Union are liable under § 550 of the Bankruptcy Code.

165. Fox, Bizfund, and Union were each the initial transferee of the transfers identified in this Complaint, or were the immediate or mediate transferee of such initial transferee, or they are the party for whose benefit the transfers were made.

166. Pursuant to § 502(d) of the Bankruptcy Code, any claim of Fox, Bizfund, and Union must be disallowed until such time as Fox, Bizfund, and Union pays to Plaintiff an amount equal to the total amount of all transfers received by Fox, Bizfund, and Union, together with any interest, costs, and any other amount owed to the Debtor and its bankruptcy estate.

WHEREFORE, the Trustee respectfully requests that this Court grant judgment as follows: (i) for the Trustee and against Bizfund disallowing Claim No. 35 in its entirety; (ii) for the Trustee and against Fox disallowing Claim No. 259 in its entirety; (iii) for the Trustee and against Union disallowing Claim No. 260 in its entirety; and (iv) granting any additional relief the Court deems just and proper.

**COUNT 5**  
**Equitable Subordination**  
**(Against Fox, Bizfund, and Union)**

167. The allegations of paragraphs 1 through 119 are incorporated herein by reference.

168. This is a cause of action against Fox to equitably subordinate any and all claims of Fox, Bizfund, and Union pursuant to § 510(c) of the Bankruptcy Code.

169. Fox, Bizfund, and Union have engaged in inequitable conduct, in that the fraudulently induced Plaintiff to enter into the MCA agreements, engaged in predatory lending practices, and imposed usurious and unconscionable interest rates and fees.

170. Fox, Bizfund, and Union did not negotiate the MCA agreements with the Debtor. As a result, the MCA agreements are not ethical or fair to the Debtor.

171. The MCA Agreements are unconscionable within the meaning of UCC § 2-302.

172. The conduct of Fox, Bizfund, and Union has injured the creditors of the Debtor.

173. The conduct of Fox, Bizfund, and Union provided them with an unfair advantage over other creditors of the Debtor.

174. The Debtor received insufficient consideration for incurring the obligations set forth in the MCA agreements with Fox, Bizfund, and Union.

175. Based on the foregoing, the Trustee requests that the Court equitably subordinate the Debtor's obligations to Fox, Bizfund, and Union to all other unsecured creditors.

176. The subordination of any and all claims of Fox, Bizfund, and Union is not inconsistent with the Bankruptcy Code.

Wherefore, the Trustee demands judgment in its favor and against Fox, Bizfund, and Union equitably subordinating any and all claims of Fox, Bizfund, and Union pursuant to § 510(c) of the Bankruptcy Code and providing any additional relief that the Court deems just and equitable.

**COUNT 6**  
**Damages for Usury/Loan Sharking**  
**(Against the MCA Lenders)**

177. The allegations of paragraphs 1 through 119 are incorporated herein by reference.

178. This is an action for damages against the MCA Lenders for usury and loansharking, pursuant to Chapter 687, Florida Statutes.

179. Section 687.071, Florida Statutes, in its pertinent part, provides:

“(3) Unless otherwise specifically allowed by law, any person making an extension of credit to any person, who shall willfully and knowingly charge, take, or receive interest thereon at a rate exceeding 45 percent per annum or the equivalent rate for a longer or shorter period of time, whether directly or indirectly or conspire so to do, commits a felony of the third degree, ...”

180. Fox charged an effective annual interest rate of no less than 44% up to 158% under the First Fox Agreement, the Second Fox Agreement, and the Third Fox Agreement.

181. Bizfund charged an effective annual interest rate of no less than 44% and up to 158% under the First Bizfund Agreement and the Second Bizfund Agreement.

182. Union charged an effective annual interest rate of approximately 83% under the Union Agreement.

183. EN OD charged an effective annual interest rate of approximately 83% under the EN OD Agreement.

184. Parkside charged an effective annual interest rate of approximately 95% under the Parkside Agreement.

185. The Debtor provided consideration of \$1,140,799.55 to Fox, \$849,340.00 to Bizfund, \$194,977.00 to Union, \$246,000.00 to EN OD, and \$142,250.00 to Parkside under the criminally usurious agreements.

186. The Trustee is entitled to damages in the amount of \$1,140,799.55 from Fox, \$849,340.00 from Bizfund, \$194,977.00 from Union, \$246,000.00 from EN OD, and \$142,250.000 from Parkside, plus punitive damages, and an award of attorneys' fees and costs pursuant to section 687.147, Florida Statutes.

187. The Trustee is entitled to recovery of a penalty in the amount of double the amount of interest reserved, taken, or exacted pursuant to section 687.04, Florida Statutes.

188. The Trustee is entitled to recover attorneys' fees pursuant to section 687.147(1), Florida Statutes.

189. Given the egregious rate of interest, the harm to the public, and predatory nature of the subject transactions, punitive damages are warranted.

WHEREFORE, the Trustee respectfully requests entry of a judgment for damages as follows:

- a. Against Fox in the amount of \$1,140,799.55, plus an award of a penalty in the amount of double the amount of interest reserved, taken, or exacted by Fox, an award of punitive damages, and an award of attorneys' fees and costs;
- b. Against Bizfund in the amount of \$849,340.00, plus an award of a penalty in the amount of double the amount of interest reserved, taken, or exacted by Bizfund, an award of punitive damages, and an award of attorneys' fees and costs;

- c. Against Union in the amount of \$194,977, plus an award of a penalty in the amount of double the amount of interest reserved, taken, or exacted by Union, an award of punitive damages, and an award of attorneys' fees and costs;
- d. Against EN OD in the amount of \$246,000.00, plus an award of a penalty in the amount of double the amount of interest reserved, taken, or exacted by EN OD, an award of punitive damages, and an award of attorneys' fees and costs;
- e. Against Parkside in the amount of \$142,250.00, plus an award of a penalty in the amount of double the amount of interest reserved, taken, or exacted by Parkside, an award of punitive damages, and an award of attorneys' fees and costs; and
- f. providing any other relief that this Court deems appropriate.

#### COUNT 7

##### **Damages for Aiding and Abetting Loan Sharking**

**(Against BAN, Yosef Rapoport, Farouz Koshanfar, Shaul Dahal, Yakov Mokai, Simcha Katz, BAN, Sami Flaster, James Clark, and William Stevenson)**

190. The allegations of paragraphs 1 through 119 are incorporated herein by reference.

191. This is an action for damages under Florida law against BAN, Yosef Rapoport, Farouz Koshanfar, Shaul Dahal, Yakov Mokai, Simcha Katz, BAN, Sami Flaster, James Clark, and William Stevenson for aiding and abetting usury and loansharking.

192. Fox charged an effective annual interest rate of no less than 44% up to 158% under the First Fox Agreement, the Second Fox Agreement, and the Third Fox Agreement.

193. Bizfund charged an effective annual interest rate of no less than 44% and up to 158% under the First Bizfund Agreement and the Second Bizfund Agreement.

194. Union charged an effective annual interest rate of approximately 83% under the Union Agreement.

195. EN OD charged an effective annual interest rate of approximately 83% under the EN OD Agreement.

196. Parkside charged an effective annual interest rate of approximately 95% under the Parkside Agreement.

197. The Debtor provided consideration of \$1,140,799.55 to Fox, \$849,340.00 to Bizfund, \$194,977.00 to Union, \$246,000.00 to EN OD, and \$142,250.00 to Parkside under the criminally usurious agreements.

198. The Trustee is entitled to damages in the amount of \$1,140,799.55 from Fox, \$849,340.00 from Bizfund, \$194,977.00 from Union, \$246,000.00 from EN OD, and \$142,250.000 from Parkside, plus punitive damages, and an award of attorneys' fees and costs pursuant to section 687.147, Florida Statutes.

199. The Trustee is entitled to recovery of a penalty in the amount of double the amount of interest reserved, taken, or exacted pursuant to section 687.04, Florida Statutes.

200. Given the egregious rate of interest, the harm to the public, and predatory nature of the transaction, punitive damages are warranted.

201. As the individuals in control of the MCA Lenders, Yosef Rapoport, Farouz Koshanfar, Shaul Dahal, Yakov Mokai, Simcha Katz aided and abetted the MCA Lenders in committing loan sharking.

202. Yosef Rapoport, Farouz Koshanfar, Shaul Dahal, Yakov Mokai, Simcha Katz were involved in the decision making behind the terms of the agreements entered into between the Debtor and the MCA Lenders.

203. Further, BAN, through Sami Flaster, James Clark, and William Stevenson provided substantial assistance to the MCA Lenders in committing loan sharking and facilitating the transactions at issue.

204. Yosef Rapoport, Farouz Koshanfar, Shaul Dahal, Yakov Mokai, Simcha Katz, BAN, Sami Flaster, James Clark, and William Stevenson all played an instrumental role in burdening the Debtor with unsustainable MCA obligations and serving as the catalyst for the Debtor's demise.

WHEREFORE, Trustee respectfully requests entry of a judgment for damages as follows:

- a. Against Yosef Rapoport in the amount of \$1,140,799.55, plus an award of a penalty in the amount of double the amount of interest reserved, taken, or exacted by Fox, an award of punitive damages, and an award of attorneys' fees and costs;
- b. Against Farouz Koshanfar in the amount of \$849,340.00, plus an award of a penalty in the amount of double the amount of interest reserved, taken, or exacted by Bizfund, an award of punitive damages, and an award of attorneys' fees and costs;
- c. Against Shaul Dahal in the amount of \$194,977, plus an award of a penalty in the amount of double the amount of interest reserved, taken, or exacted by Union, an award of punitive damages, and an award of attorneys' fees and costs;
- d. Against Yakov Mokai in the amount of \$246,000.00, plus an award of a penalty in the amount of double the amount of interest reserved, taken, or exacted by EN OD, an award of punitive damages, and an award of attorneys' fees and costs;
- e. Against Simcha Katz in the amount of \$142,250.00, plus an award of a penalty in the amount of double the amount of interest reserved, taken,

- or exacted by Parkside, an award of punitive damages, and an award of attorneys' fees and costs;
- f. Against BAN, Sami Flaster, James Clark, and William Stevenson in the amount of \$2,573,366.55, plus an award of a penalty in the amount of double the amount of interest reserved, taken, or exacted by Fox, Bizfund, Union, EN OD, and Parkside, an award of punitive damages, and an award of attorneys' fees and costs; and
  - g. providing any other relief that this Court deems appropriate.

**COUNT 8**  
**Declaratory Judgment that the Transactions**  
**Between the Debtor and the MCA Lenders are Loans**  
**(Against the MCA Lenders)**

205. The allegations of paragraphs 1 through 119 are incorporated herein by reference.

206. This is an action for declaratory judgment against the MCA Lenders.

207. There is a good faith dispute between the Trustee and the MCA Lenders as to the nature of the agreements between the MCA Lenders and the Debtor.

208. The Trustee has a justiciable question concerning the rights under the agreements between the MCA Lenders and the Debtor..

209. The Trustee has a bona fide need for a declaration that the agreements between the MCA Lenders and the Debtor are loans and not purchase agreements.

210. The Trustee maintains that the agreements between the MCA Lenders and the Debtor constitute loans because, among other things: (i) the MCA Lenders did not bear risk of non-payment of receivables; (ii) the MCA Lenders had recourse against the Debtor; (iii) Debtor received the receivables and commingled them with other funds; (iv) the MCA

Lenders did not have the right to alter the pricing terms of the receivables; and (v) the Debtor retained the right to alter or compromise unilaterally the terms of the receivables.

211. Moreover, because of numerous conditions of default that existed the MCA Lenders had immediate recourse against Debtor upon execution of the agreements between the MCA Lenders and the Debtor.

212. The terms of the agreements between the MCA Lenders and the Debtor resemble terms of a loan and are not indicative of a true purchase transaction. The MCA Lenders did not bear the risk associated with a true purchase agreement.

213. All parties necessary for the resolution of the dispute are present.

214. The Trustee is not merely seeking legal advice, but is rather seeking a resolution of his rights regarding the present controversy of whether the Agreement constitutes a loan or a true purchase agreement.

WHEREFORE, the Trustee respectfully requests that this Court enter an Order (i) declaring that the Agreement is a loan, (ii) awarding costs, and (iii) granting any other relief that this Court deems appropriate

#### COUNT 9

#### **Declaratory Judgment as to the Scope of the Choice-of-Law Provisions in the MCA Agreements (Against Fox, Bizfund, EN OD, and Parkside)**

215. The allegations of paragraphs 1 through 119 are incorporated herein by reference.

216. This is an action for declaratory judgment against the MCA Lenders.

217. There is a good faith dispute between the Trustee and the MCA Lenders as to the scope of the choice-of-law provisions in (i) the First Fox Agreement, (ii) the Second Fox

Agreement, (iii) the First Bizfund Agreement, (iv) the Second Bizfund Agreement, (v) the EN OD Agreement, and (vi) the Parkside Agreement.

218. The Second and Third Fox Capital Agreements had a choice-of-law provision designating Florida as the applicable jurisdiction.

219. The First Fox Capital Agreement contain a choice-of-law provision that provides:

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regards to any applicable principles of conflicts of law. Any suit, action, or proceeding arising out of or relating to this Agreement or the transaction contemplated herein or the interpretation, performance, or breach hereof, shall be instituted in any federal or state court sitting in the State of New York (the “Acceptable Forums”), provided that FCG may institute suit in another forum. Merchant, each Guarantor and each Owner agree that the Acceptable Forums are convenient to them, and submit to the personal jurisdiction of the Acceptable Forums and waive any and all objections to jurisdiction or venue in the Acceptable Forums. Should a proceeding be initiated by Merchant, any Guarantor or any Owner in any other forum, Merchant, each Guarantor and each Owner waives any right to oppose any motion or application made by FCG to dismiss such proceeding, to remove and/or transfer the proceeding to an Acceptable Forum, and for an anti-suit injunction against such proceeding (which FCG may make in the Acceptable Forums).

220. The First and Second Bizfund Agreements contain a choice-of-law provision that provides:

This Agreement and the Ancillary Documents shall be governed by, construed and enforced in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely in the State of New York, without reference to the principles of conflict of laws of such State. Any controversy or claim arising out of or relating to this Agreement or any Ancillary Document or the transactions contemplated hereby or thereby, or any breach hereof or thereof or default hereunder or thereunder, shall be submitted for resolution to a State or federal court sitting in the City, County and State of New

York, which courts shall have exclusive jurisdiction with respect to any such controversy or claim. Each of the Parties agrees not to assert in any forum that such courts are not a convenient forum, or that there is a more convenient forum, for the resolution of any such controversy or claim, and waives any and all objections to jurisdiction or venue.

221. The EN OD Agreement contains a choice-of-law provision that provides:

Each Merchant acknowledges and agrees that this Agreement was made in the State of New York, that the Purchase Price is being paid by EOD in the State of New York, that the Receivables Purchased Amount is being delivered to EOD in the State of New York, and that the State of New York has a reasonable relationship to the transactions encompassed by this Agreement. This Agreement, any dispute or claim relating hereto, whether sounding in contract, tort, law, equity, or otherwise, the relationship between EOD and each Merchant, and the relationship between EOD and each Guarantor will be governed by and construed in accordance with the laws of the State of New York, without regard to any applicable principles of conflict of laws.

222. The Parkside Agreement contain a choice-of-law provision that provides:

“[t]his Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of New York, without regard to choice or conflict of laws principles that would defer to the substantive laws of any other jurisdiction.”

223. The Trustee seeks a declaration that the choice-of-law provision in the First Fox Agreement, the Second and Third Bizfund Agreements, the EN OD Agreement, and the Parkside Agreement do not govern the Trustee’s claims for usury and loan sharking under section 687.071, Florida Statutes, or the tort claim for aiding and abetting loan sharking.

224. The Trustee has a justiciable question concerning the rights under the First Fox Agreement, the Second and Third Bizfund Agreements, the EN OD Agreement, and the Parkside Agreement.

225. The Trustee has a bona fide need for a declaration that the choice-of-law clause in the First Fox Agreement, the Second and Third Bizfund Agreements, the EN OD

Agreement, and the Parkside Agreement do not apply to the Trustee's claims for usury and loan sharking, or the Trustee's claim for aiding and abetting loan sharking.

226. The Trustee has a bona fide need for a declaration that Florida law governs the determination of the Trustee's usury and loan sharking claim and aiding and abetting loan sharking claim.

227. All parties necessary for the resolution of the dispute are present.

228. The Trustee is not merely seeking legal advice, but is rather seeking a resolution of his rights regarding the present controversy of whether the choice-of-law clause of the Agreement shall apply to his usury and loan sharking claim and aiding and abetting loan sharking claim.

229. WHEREFORE, the Trustee respectfully requests that this Court enter an Order (i) declaring that the choice-of-law clause in the First Fox Agreement, the Second and Third Bizfund Agreements, the EN OD Agreement, and the Parkside Agreement shall not govern the Trustee's statutory claim for usury and loan sharking under Florida law, (ii) declaring that the choice-of-law clause shall not govern the Trustee's tort claim for aiding and abetting loan sharking, and (iii) granting any other relief that this Court deems appropriate.

#### COUNT 10

#### **Declaratory Judgment that the MCA Agreements are Unenforceable Contracts of Adhesion (Against the MCA Lenders)**

230. The allegations of paragraphs 1 through 119 are incorporated herein by reference.

231. The Debtors seeks a declaratory judgment that the MCA agreements that exist between the Debtors and the MCA Lenders are unconscionable within the meaning of Florida UCC § 2-302 and are contracts of adhesion.

232. The contract terms unreasonably favored the drafter, were non-negotiable, and are unenforceable, and were procured through fraud, undue influence, failure of consideration, and/or lack of meaningful consent.

233. Since the contracts are unenforceable as adhesion contracts, the provisions relating to arbitration, jury waiver, and other matters are unenforceable.

234. Pursuant to 28 U.S.C. § 2201, the Debtors seek declaratory judgment in which the Court conclusively rules to determine that the MCA agreements between the Debtor and the MCA Lenders are adhesion contracts and as such some or all of its provisions are unenforceable against the Debtor's estate.

235. The Trustee seeks a declaratory judgment from this Court that the MCA agreements are contracts of adhesion and that the one-sided provisions favoring the MCA Lenders, including, without limitation, the choice-of-law, arbitration, jury waiver, and other provisions, are unenforceable against the Debtors.

236. The Trustee further seeks a declaratory judgment from this Court that the obligations imposed by the agreements between the Debtor and the MCA Lenders are void under Florida and federal law.

Wherefore, the Trustee respectfully requests that this Court enter an Order declaring: (i) that the agreements between the Debtor and the MCA Lenders are unconscionable within the meaning of Florida UCC § 2-302 and are contracts of adhesion; (ii) that the obligations imposed by the agreements between the Debtor and the MCA Lenders are void and

unenforceable under applicable law; and (iii) granting any other relief that this Court deems appropriate.

**RESERVATION OF RIGHTS**

The Trustee reserves the right to bring all other claims or causes of action that the Trustee may have against any Defendant herein or subsequently added as a party with leave of court, on any and all grounds, as allowed under the law or in equity, including but not limited to, those claims not known by the Trustee at this time but that he may discover during the pendency of this adversary proceeding or that he may be entitled to assert based on the relief granted in this adversary proceeding. These reserved claims include, but are not limited to, actions to avoid and recover payments or other transfers made to parties herein pursuant to applicable law and objections to allowance and treatment of claims of the Defendants pending all Defendants filing claims and the Court's rulings in this adversary proceeding.

Respectfully submitted,

**MILLENNIAL LAW, INC.**

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One Fat Frog, Incorporated*

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By: /s/ Andrew J. Wit

**Andrew J. Wit** (FBN: 1038525)

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**Letitia James**

New York State Attorney General

## **Attorney General James Announces \$1 Billion Settlement with Predatory Lender Yellowstone Capital for Harming Small Businesses**

**Yellowstone Capital Will Cancel \$534 Million in Outstanding Debts for Small Businesses It Preyed on and Immediately Pay \$16.1 Million to Affected Businesses More Than 1,100 Small Businesses in New York Will Have Over \$36 Million in Debt Canceled**

**January 22, 2025**

NEW YORK – New York Attorney General Letitia James today [announced a settlement with a network of 25 predatory lending companies controlled by Yellowstone Capital \(Yellowstone\) and its officers](#) that will deliver over \$534 million in debt relief and provide at least \$16 million in restitution to small businesses across New York and the country that Yellowstone targeted with illegal high-interest loans. The settlement includes a \$1.065 billion judgment against Yellowstone, with over \$534 million of that paid by canceling all outstanding debts owed by small businesses, including over 1,100 across New York state and over 18,000 nationwide. The companies and the officers also immediately paid \$16.1 million to be distributed to impacted small businesses. The Yellowstone companies will be liable for the remaining \$514 million of the judgment.

“Targeting small businesses with predatory loans and outrageous interest rates threatens the livelihoods of hardworking business owners and their employees,” said **Attorney General James**. “Yellowstone and its executives lined their pockets at the expense of vulnerable small businesses who turned to them for help. Their predatory loans forced successful companies to close and put New Yorkers out of work. My office has put an end to these predatory loans and secured over \$534 million in debt relief for businesses that were harmed, helping them stay open and continue to thrive as the engine of our economy. I will always fight to protect New Yorkers’ jobs and will continue

to go after anyone who tries to take advantage of small businesses with fraud and deception.”

Attorney General James [filed a lawsuit](#) against Yellowstone CEO Isaac Stern, President Jeffrey Reece, and the Yellowstone entities in March 2024 after an Office of the Attorney General (OAG) investigation found that they exploited small businesses through fraudulent loans with astronomic interest rates. These loans were disguised as merchant cash advances, an increasingly prevalent form of short-term, high-interest funding for small businesses, particularly those that cannot get loans from traditional banks.

In a typical merchant cash advance, a business will receive a lump sum in exchange for a share of its revenue over time. In this case, Yellowstone and the other perpetrators of the scheme used contracts that fraudulently described each transaction as a purchase of a portion of a small business’s future revenues, with flexible payment amounts and open-ended terms. In reality, the predatory lenders collected fixed amounts directly from small businesses’ bank accounts every day during short repayment periods that often lasted just 60 or 90 days. These daily collections had little connection to the portion of the businesses’ revenues the lenders supposedly purchased. While the lenders promised to “reconcile” or refund small businesses’ daily payments to ensure they never rose above an agreed-upon percentage of their revenue, they used numerous fraudulent measures to ensure borrowers almost never qualified for these payment refunds. As a result, the transactions actually functioned as short-term loans with ultra-high interest rates of up to 820 percent per year – more than 50 times the legal interest rate.

Over 1,100 small businesses across New York were affected by Yellowstone’s predatory loans and will receive debt relief. These businesses include a food truck and caterer in Buffalo, a hair salon in Syracuse, and a Long Island tailoring shop.

One affected business in Manhattan, City Bakery, a caterer and bakery in Union Square, was forced to close after Yellowstone’s predatory loans trapped the business in a cycle of debt. When the owner was unable to get a traditional business loan from a bank, they turned to Yellowstone for merchant cash advances beginning in 2017. The exorbitant interest rates and punishing repayment terms ultimately led to City Bakery’s closure after nearly 30 years in business. Before closing, the bakery, which employed 30-50 full-time staffers, had to pay more than \$2,000 per day to Yellowstone.

The OAG will continue its lawsuit against the companies that took over Yellowstone's operations in 2021, Delta Bridge Funding and Cloudfund, as well as eight other individuals involved in the scam lending operation, including Yellowstone's co-founder David Glass. Before filing the lawsuit, [Attorney General James reached settlements with five other individuals](#), in which they paid \$3.37 million to OAG to be distributed to impacted small businesses and were banned from the merchant cash advance industry.

Under the settlement announced today, the Yellowstone entities are canceling all amounts owed by merchants, totaling \$534,552,724, and together with Stern and Reece, have made an immediate \$16.1 million payment toward the remaining \$514 million judgment that will be distributed to impacted small businesses. This cash payment will be increased to \$30 million if they fail to comply with the terms of the settlement. The Yellowstone entities are required to cease all attempts to collect on balances owed by businesses they lent to, discontinue pending actions to enforce them, vacate unsatisfied court judgments, and terminate some liens on small businesses' property. The companies and the officers will also be permanently banned from the merchant cash advance industry. The \$1.065 billion total judgment is the largest consumer settlement obtained by OAG, excluding multistate settlements.

Impacted small businesses that have a court judgment or pending lien against them from Yellowstone that they would like vacated will receive information by mail on how to make these requests, which must be made within the next six months. Business owners with questions about the settlement can find more information on [OAG's website](#).

This settlement is the latest example of Attorney General James taking action to protect small businesses from fraud. In February 2024, Attorney General James [secured a court judgment of more than \\$77 million against Richmond Capital Group](#), Jonathan Braun, and their affiliates and principals who were harming small businesses through phony merchant cash advances that were actually high-interest loans. In April 2023, Attorney General James [shut down two websites that impersonated the New York State Department of State and significantly overcharged aspiring small business owners and users for services provided for free from state government](#). Also in April 2023, Attorney General James [released a guide to help businesses](#) adopt effective data security measures to better protect New Yorkers' personal information.

This matter is being handled by Assistant Attorneys General Adam J. Riff and Dami Obaro, and former Assistant Attorney General John P. Figura and Attorney General Fellow

Emily E. Smith, under the supervision of Bureau Chief Jane M. Azia and Deputy Bureau Chief Laura J. Levine, all of the Bureau of Consumer Frauds & Protection. Data Analyst Blake Rubey also assisted in this matter, under the supervision of Victoria Kahn, Director of Research & Analytics. The Bureau of Consumer Frauds and Protection is a part of the Division for Economic Justice, which is led by Chief Deputy Attorney General Chris D'Angelo and is overseen by First Deputy Attorney General Jennifer Levy.



# CONGRATULATIONS!

You have been approved by Fox Capital Group in the amount of:

**\$230,000.00**

## CONTRACT CHECKLIST

To ensure a quick and smooth funding process, please review the important items in checklist below:

1. Please verify that your name on the documents is the exact same spelling as your name on your driver's license.
2. Please verify that the legal name and address of your business is correct on the documents.
3. Please ensure that your signature and initials are filled in on all pages of the documents as prompted by this red arrow .

**THANK YOU!**

**FOX CAPITAL GROUP, INC.**  
140 Broadway, 46th Floor, New York, NY 10005

**FUTURE RECEIVABLES SALE AND PURCHASE AGREEMENT**

This Agreement ("Agreement") dated 01-31-2020, is made between Fox Capital Group, Inc. ("FCG") and the following merchant(s) (hereinafter, "Merchant"), owner(s) ("Owner") and guarantor(s) ("Guarantor"):

**Legal Name of Merchant(s):** ONE FAT FROG, INCORPORATED

**D/B/A:**

**Form of Entity:** CORPORATION                      **State of Organization:** FL                      **EIN #:** 42-1668173

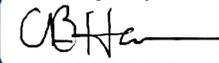
**Physical Address:** 2416 SAND LAKE RD, ORLANDO, FL 32809

**Mailing Address:** 2416 SAND LAKE RD, ORLANDO, FL 32809

<b><u>"Purchase Price"</u></b>	<b><u>"Purchased Percentage"</u></b>	<b><u>"Purchased Amount"</u></b>	<b><u>"Daily Remittance"</u></b>
\$ 230,000.00	25 %	\$ 305,900.00	\$ 2,039.33

**ME** DocuSigned by:  
  
 By: \_\_\_\_\_ ←  
AEC52E1D8C8B4F1...  
**Name:** CONNIE BAUGHER HASSANIEN  
**Title:** President  
**Business Phone:**

**MERCHANT (#2)**  
 By: \_\_\_\_\_ ←  
**Name:**  
**Title:**  
**Business Phone:**

**OW** DocuSigned by:  
  
 By: \_\_\_\_\_ ←  
AEC52E1D8C8B4F1...  
**Name:** CONNIE BAUGHER HASSANIEN  
**SSN:** ■■■-■■-■■■  
**Email:** CONNIEB@ONEFATFROG.COM  
**Phone:**  
**Address:** 9085 GREAT HERON CIR, ORLANDO, FL 32836

**OWNER/GUARANTOR #2**  
 By: \_\_\_\_\_ ←  
**Name:**  
**SSN:**  
**Email:**  
**Phone:**  
**Address:**

Subject to the Terms and Conditions below ("Terms"), Merchant hereby sells, assigns, and transfers to FCG (making FCG the absolute owner) in consideration of the Purchase Price specified above, the Purchased Percentage of all of Merchant's future accounts, receivables, contract rights and other entitlements arising from or relating to the payment of monies from Merchant's customers, vendees and/or other third-party payors (including all payments made by cash, check, credit card, debit card, electronic payment application, electronic transfer or other form of monetary payment in the ordinary course of the Merchant's business for the payments due to Merchant as a result of Merchant's sale of goods and/or services (the "Receipts")), until the entire Purchased Amount has been delivered by or on behalf of Merchant to FCG. This sale of Receipts to FCG is made without recourse against Merchant or any Guarantors, except as specifically set forth in this Agreement. In consideration of the sale by Merchant to FCG of the Receipts, FCG agrees to pay to Merchant the Purchase Price (reduced by any applicable fees), which shall be delivered to Merchant following Merchant's execution of this Agreement. FCG's payment of the Purchase Price (minus any applicable fees) shall be deemed the acceptance and performance by FCG of this Agreement.

THIS IS NOT A LOAN. Merchant is selling a portion of a future revenue stream to FCG at a discount, not borrowing money from FCG. There is no interest rate or payment schedule and no time period during which the Purchased Amount must be collected by FCG. In lieu of calculating the value of the Purchased Percentage of the Receipts each day, Merchant shall pay the Daily Remittance, which is a good faith approximation by FCG and Merchant of (a) the Purchased Percentage multiplied by (b) the gross revenues of Merchant during the previous calendar month divided by (c) the number of business days in the previous calendar month. The initial Daily Remittance shall be as described above. Merchant going bankrupt or going out of business, or experiencing a slowdown in business or a delay in collecting its receivables, in and of themselves, do not constitute a breach of this Agreement. Under such circumstances, the Daily Remittance may be subject to reconciliation or adjustment as set forth in Paragraph 1.4 of the Terms and Conditions provided Merchant is not otherwise in default of this Agreement. FCG is entering this Agreement knowing the risks that Merchant's business may slow down or fail. FCG assumes these risks based on Merchant's, each Owner's and each Guarantor's representations, warranties, and covenants in this Agreement, which are designed to give FCG a reasonable and fair opportunity to receive the benefit of its bargain. Merchant and each Guarantor are guaranteeing performance of the terms of this Agreement and are not guaranteeing absolute payment of the Purchased Amount. Nothing in this Agreement to the contrary, Merchant shall operate its business in good faith and do nothing to intentionally cause the diminution of its future receivables.

FCG will debit the Daily Remittance each business day from one depositing bank account, which account must be acceptable to, and pre-approved by, FCG (the "Account") into which Merchant and Merchant's customers shall exclusively remit all Receipts (regardless of the method by which Merchant receives them), until such time as FCG receives payment in full of the Purchased Amount. Merchant hereby authorizes FCG to ACH debit the Daily Remittance from the Account on each business day (i.e. Monday through Friday but not bank holidays), and to ACH debit the Daily Remittance twice on the first business day following a bank holiday that falls on Monday through Friday. Merchant understands that it is responsible for ensuring that an amount sufficient to cover the Daily Remittance to be debited by FCG remains in the Account. Merchant shall give 24 hours' written notice to FCG that there will be insufficient funds in the Account such that the debit of the Daily Remittance will not be honored by Merchant's bank, and shall promptly provide to FCG any requested documentation and allow for daily monitoring of its bank accounts. Merchant will be held responsible for any fees incurred by FCG resulting from a rejected ACH attempt or an Event of Default (as defined in the Terms below). FCG is not responsible for any overdrafts or rejected transactions that may result from FCG's ACH debiting the Daily Remittance under the terms of this Agreement. Notwithstanding anything to the contrary in this Agreement or any other agreement between FCG and Merchant, upon the occurrence of a default under Sections 1.11 or 3.1 of the Terms, the Purchased Percentage shall equal 100%. A list of all fees and liquidated damages applicable under this Agreement is contained in "Exhibit A" (the "Fee Schedule").

FOX CAPITAL GROUP, INC.
140 Broadway, 46th Floor, New York, NY 10005

TERMS AND CONDITIONS

1. TERMS OF ENROLLMENT IN PROGRAM

1.1. Term of Agreement. This Agreement for the purchase and sale of future Receipts does not have a fixed duration or term, making the term potentially infinite. The term of this Agreement shall commence as of the "Effective Date," which shall be calculated as the later of: (i) the date set forth in the preamble to this Agreement, and (ii) the date when FCG paid the Purchase Price to Merchant. This Agreement shall expire on either (a) the date ("Expiration Date") when the Purchased Amount and all other sums due to FCG are received by FCG in full, as per the terms of this Agreement, or (ii) provided Merchant is not in default under any term of this Agreement, the date of the total failure of Merchant's business and the complete cessation of all Receipts.

1.2. ACH Authorization and Agreement with Processor. Throughout the term of this Agreement, Merchant irrevocably authorizes FCG and/or its agent(s) to deposit the Purchase Price or any amounts owed to Merchant into the Account by electronic check or automated clearing house (ACH), and to debit by electronic check or ACH from the Account any amounts owed to FCG, including without limitation (a) the Daily Remittance or (b) the entire Purchased Amount (together with applicable fees) in the event that Merchant defaults under this Agreement. Merchant shall (a) execute an ACH authorization form in favor of FCG in the form annexed as "Exhibit B" to authorize FCG to obtain electronic fund transfer services to and from the Account, and (b) if applicable, execute an agreement acceptable to FCG with a credit and debit card processor (the "Processor") instructing the Processor to deposit all Receipts into the Account (from which FCG may debit amounts owed to it by Merchant). As of the Effective Date, the Account is as listed on Exhibit B. If Merchant needs to change the designated Account for any reason, Merchant must seek advance written approval from FCG, for which FCG shall have absolute discretion, and provide a new ACH authorization form with the updated account information. It is Merchant's exclusive responsibility to pay to its banking institution and to compensate FCG in case FCG is charged by its banking institution (in accordance with the Fee Schedule in Exhibit A) for any fees, charges and expenses incurred by either FCG or Merchant due to rejected electronic checks or ACH debit attempts, overdrafts or rejections.

1.2.1. Throughout the term of this Agreement, Merchant irrevocably grants access to FCG to view the Account information through the bank's webpage or other electronic access for the purpose of verifying Merchant's receivables, Receipts, deposits, and withdrawals into and from the Account, and shall execute the form annexed as "Exhibit C," providing FCG and/or its authorized agent(s) with all of the information, authorizations and passwords necessary for such purposes. Merchant understands that any attempt to block FCG's access to the Account or refusal to provide FCG with login credentials to the Account constitutes a default under this Agreement.

1.2.2. The authorizations in this Section 1.2 apply not only to the approved Account but also to any subsequent or alternate account used by the Merchant for its Receipts, whether pre-approved or agreed to by FCG or not. This additional authorization is not a waiver of FCG's entitlement to declare this Agreement breached by Merchant as a result of its use of an account which FCG did not first pre-approve in writing prior to Merchant's use thereof. The aforementioned authorizations shall be irrevocable without the written consent of FCG. The purported revocation of such authorizations shall constitute a breach of this Agreement.

1.2.3. In the event the Account or Processor shall become unavailable or shall cease providing services to Merchant during the term of this Agreement, prior to the first date of such unavailability or cessation of services, Merchant shall arrange for another Account or Processor and obtain advance written approval from FCG for the same.

1.3. Acceleration. Merchant may at any time after receipt from FCG of the Purchase Price accelerate delivery to FCG of the then undelivered portion of the Purchased Amount (such amount, the "Outstanding Purchased Amount") in accordance with the following procedures:

1.3.1. Unless otherwise agreed to in writing by FCG, the Outstanding Purchased Amount can only be delivered in full and not partially.

1.3.2. Merchant shall request the right to accelerate the delivery of the Outstanding Purchased Amount by notifying FCG to that effect, provided that such notice shall be in writing (by email to underwriting@foxbusinessfunding.com) and must contain information on the source(s) of the funds to be used for delivery of the Outstanding Purchased Amount and the approximate date of such delivery. FCG shall respond to Merchant's request within three business days from the date of its receipt by FCG, in which it will indicate the exact amount of the Outstanding Purchased Amount as of the date of the intended delivery by Merchant. As of the date agreed upon as between FCG and Merchant, Merchant shall deliver or cause to be delivered to FCG the full amount of the Outstanding Purchased Amount.

1.3.3. Under no circumstances shall Merchant suspend or modify, or cause to be suspended or modified, the delivery to FCG of the Daily Remittance prior to the delivery of the Outstanding Purchased Amount to FCG. Provided Merchant is not in default of this Agreement and no fees are due to FCG, upon delivery of the full Outstanding Purchased Amount to FCG, Merchant's obligations to FCG pursuant to this Agreement shall be fulfilled.

1.3.4. Upon FCG's receipt of the Outstanding Purchased Amount, FCG shall notify its payment processor or the bank at which the Account is located to stop transferring Daily Remittance from the Account. If FCG shall have received one or more Daily Remittances after delivery of the Outstanding Purchased Amount (due to the processor's or bank's delay in processing FCG's request or for any other reason), FCG will return the overage to Merchant. Nevertheless, Merchant acknowledges and agrees that FCG shall have the right to apply the overage toward Merchant's outstanding financial obligations to FCG under any separate agreement between Merchant and FCG (if any) in exchange for, and as an adequate and sufficient consideration for, FCG granting Merchant the right to accelerate the delivery of the Outstanding Purchased Amount.

1.4. Reconciliation of the Daily Remittance.

1.4.1. If Merchant has not defaulted under this Agreement, either party may give notice

to the other for a reconciliation of the Daily Remittance to more accurately reflect the Purchased Percentage for the thirty-day period prior to notice being given. The Daily Remittance may be (i) increased if the amount remitted to FCG was less than the Purchased Percentage of all revenue of Merchant for the previous thirty calendar days or (ii) decreased if the amount received by FCG was more than the Purchased Percentage of all revenue of Merchant during the previous two weeks. A reconciliation to decrease the amount of the Daily Remittance shall be Merchant's sole responsibility to initiate by instituting the process in Section 1.4.2. If a reconciliation is required, FCG shall modify the Daily Remittance such that the modified Daily Remittance amount is a good faith approximation by FCG of the (a) Purchased Percentage multiplied by (b) the gross revenues of Merchant during the previous two weeks divided by (c) the number of business days in the previous two weeks. The reconciliation shall be made within five business days of notice being given and shall be effective as of the date of the notice. Any reconciliation may substantially extend the duration of this Agreement.

1.4.2. In the event that Merchant desires a reconciliation of the Daily Remittance, it shall be Merchant's sole responsibility to make a formal written request for a reconciliation. Requests for reconciliation must be made in writing, including by email, and shall include a copy of Merchant's most recent bank statements or credit card statements (which statements shall also include the Merchant's bank account report showing transactions in the month to date). Email requests to FCG may be made to FCG at reconciliation@foxbusinessfunding.com, with the subject line "Request for Reconciliation." Merchant shall have the right to request a reconciliation as many times during the term of this Agreement as it deems proper, and FCG shall comply with each such request provided that: (i) each such request is made in accordance with the terms of Section 1.4; and (ii) if a request for reconciliation is made after the expiration of the term of this Agreement and, as the result of such reconciliation, the total amount actually debited by FCG will become less than the Purchased Amount, then and in such event the term of this Agreement shall automatically be extended until the time when the total amount actually debited pursuant to this Agreement shall become equal to the Purchased Amount.

1.4.3. Nothing set forth in Section 1.4 shall be deemed to: (i) provide Merchant with the right to interfere with FCG's right and ability to debit the Account while the request for reconciliation of Merchant's receipts is pending or until the Purchased Amount is collected by FCG in full, or (ii) modify the amount of the initial Daily Remittance. Nor shall Section 1.4 require FCG to reconcile installment payments for any period other than the thirty-day period prior to any request by the Merchant for reconciliation.

1.5. Financial Condition.

1.5.1. Merchant, each Owner and each Guarantor authorize FCG and its agents to investigate their financial responsibility and history, and will provide to FCG any authorizations, bank or financial statements, tax returns and other financial records as FCG deems necessary in its sole and absolute discretion prior to or at any time after execution of this Agreement through the Expiration Date. A photocopy of this Agreement and accompanying documents will be deemed as acceptable as an authorization for release of financial and credit information. FCG is authorized to update such information and financial and credit profiles from time to time as it deems appropriate. In addition to the authorizations set forth in Section 1.2 of this Agreement, Merchant authorizes all of its banks, brokers and processors to provide FCG with Merchant's banking, brokerage and/or credit card or other payment processing history to determine qualifications for this merchant cash advance transaction, compliance with this Agreement and for collections purposes. Notwithstanding Merchant's provision of its bank account log-in credentials, upon written request from FCG, Merchant shall provide FCG with copies of any documents related to Merchant's credit card processing activity or financial and banking affairs within five days.

1.5.2. Merchant represents that in entering this Agreement it previously disclosed to FCG (i) any and all bank, depository or other financial accounts currently maintained by Merchant for the purposes of Merchant's business including without limitation the Account, (ii) all current sources of Merchant's Receipts, revenues and receivables (including without limitation credit and debit card processors, electronic check or ACH processors, and customers or other third parties with significant accounts payable to Merchant), and (iii) all current sources of actual or potential financing, including without limitation, other merchant cash advance funders or lenders (all together, "Merchant's Financials"), and further represents that any documentation previously provided to FCG concerning Merchant's Financials is full, complete and accurate and has not omitted any of Merchant's Financials. Merchant acknowledges that FCG has relied upon such disclosures as a material consideration in entering into this Agreement. Following the Effective Date, it shall be a material breach of this Agreement for Merchant to without prior written permission from FCG (i) open another bank or credit card or payment processing account at a financial institution other than the bank at which the Account is located or the Processor, (ii) open another account at the bank at which the Account is located or with the Processor and into which account Merchant diverts its receivables or any portion thereof, or (iii) divert Merchant's receivables or any portion thereof from the Account to another bank account under the control of Merchant or a third-party.

1.6. Indemnification. Merchant, each Owner and each Guarantor jointly and severally indemnify and hold harmless the Processor or the Merchant's bank at which the Account is located, or either of their officers, directors and shareholders, against all losses, damages, claims, liabilities and expenses (including reasonable attorneys' fees) incurred by Processor or the bank resulting from (a) claims asserted by FCG for monies owed to FCG from Merchant and (b) actions taken by Processor or the bank in reliance upon any fraudulent, misleading, or deceptive information or instructions provided by Merchant. Processor and the bank are third-party beneficiaries of this provision. Merchant and each Guarantor waive any right to seek indemnification or contribution from FCG for such losses.

1.7. No Liability. In no event will FCG be liable for any claims asserted by Merchant, any Owner or any Guarantor under any legal theory for l... DS ues, lost business

Initials: [Handwritten Signature]

# FOX CAPITAL GROUP, INC.

140 Broadway, 46th Floor, New York, NY 10005

opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is waived by both Merchant, each Owner and each Guarantor. In the event that these claims are nonetheless raised, Merchant and each Guarantor will be jointly and severally liable for FCG's attorneys' fees and expenses resulting therefrom in accordance with Section 3.4. Further, the above notwithstanding, in no event will FCG's total liability to the Merchant for any claim or action exceed the amount of the Purchase Price.

**1.8. Reliance on Terms.** Sections 1.2, 1.3, 1.4, 1.5, 1.6 and 2.5 of this Agreement are agreed to for the benefits of Merchant, FCG, Processor and Merchant's bank, and, notwithstanding the fact that Processor and the bank are not parties to this Agreement, Processor and the bank may rely upon their terms and raise them as a defense in any action.

**1.9. Sale of Receipts.**

**1.9.1.** Merchant and FCG acknowledge and agree that the Purchase Price under this Agreement is in exchange for the Purchased Amount of Merchant's Receipts, and that such Purchase Price is not intended to be, nor shall it be construed, as a loan from FCG to Merchant. There is no interest rate or payment schedule in this Agreement. FCG has purchased and shall own all the Receipts described in this Agreement up to the full Purchased Amount as the Receipts are created except that so long as the Merchant is not in default, Merchant shall only be required to deliver the Daily Remittance each business day until the Purchased Amount is delivered in full. Payments made to FCG in respect to the full amount of the Receipts shall be conditioned upon Merchant's sale of products and services, and the payment therefore by or on behalf of Merchant's customers. FCG is a bona fide purchaser of the Purchased Amount for fair value and Merchant retains no legal or equitable interest in the Purchased Amount. Merchant agrees that the Purchase Price equals the fair market value for the risk undertaken by FCG in consideration for the Purchased Amount of Merchant's Receipts.

**1.9.2.** FCG agrees to purchase the Receipts knowing the risks that Merchant's business may slow down or fail, and FCG assumes this risk based exclusively upon the information provided to it by Merchant and Merchant's business operations prior to the date hereof, and upon Merchant's representations, warranties and covenants contained in this Agreement that are designed to give FCG a reasonable and fair opportunity to receive the benefit of its bargain. This sale of Receipts is made without express or implied warrant to FCG of collectability of the Receipts and without recourse against Merchant, any Owner or any Guarantor if Receipts are not generated in the regular course of Merchant's business operations or cannot be collected, except as specifically set forth in this Agreement. Thus, the period of time that it will take FCG to collect the Purchased Amount is not fixed, is unknown to both parties as of the Effective Date and will depend on how well or poorly Merchant's business performs following the Effective Date. As an extreme example, in the event Merchant's business ceases to exist after FCG's purchase of the Receipts and prior to the delivery of the Purchased Amount as a result of a cessation of revenues for reasons outside Merchant's control, FCG may never collect all or a substantial portion of the Receipts and will never recover the Purchase Price.

**1.9.3.** In no event shall the Purchased Amount, the aggregate of any amounts or any portion thereof be deemed as interest. It is the express intention of the parties that Merchant not pay or contract to pay, and that FCG not receive or contract to receive, directly or indirectly in any manner whatsoever, any amount deemed to be interest in excess of that which may be paid by Merchant under applicable law. As a result thereof, Merchant knowingly and willingly waives the claim or defense of usury in any legal action or proceeding.

**1.9.4.** In the event a court of competent jurisdiction finds this Agreement to be a loan or to require the payment of interest, despite the parties specifically representing that it does not require payment of interest, this Agreement shall be modified such that no sum charged or collected hereunder shall exceed the highest rate permissible by New York law (which is currently 16%). The rate in effect hereunder shall automatically be reduced to the maximum rate permitted by applicable law, and FCG shall promptly refund to Merchant any interest received by FCG in excess of the maximum lawful rate.

**1.9.5.** Merchant agrees that it will treat the Purchase Price and Purchased Amount in a manner consistent with a sale in its accounting records and tax returns and not as a loan. Merchant hereby waives any rights of privacy, confidentiality or taxpayer privilege in any litigation or arbitration arising out of this Agreement in which Merchant asserts that this transaction is anything other than a sale of future receipts.

**1.10. Power of Attorney.** Merchant irrevocably appoints FCG as its agent and attorney-in-fact coupled with an interest in the Receipts with full authority to take any action or execute any instrument or document to settle all obligations due to FCG from Processor or any customers, vendees or third-party payors of Merchant in the case of a violation by Merchant of Section 1.1 or the occurrence of an Event of Default under Section 3 hereof, including without limitation (i) to obtain and adjust insurance; (ii) to collect monies due or to become due under or in respect of the Receipts and any of the "Collateral" (as defined in the Pledge of Security below); (iii) to receive, endorse and collect any checks, notes, drafts, instruments, documents or chattel paper in connection with clause (i) or clause (ii) above; (iv) to sign Merchant's name on any invoice, bill of lading, or assignment directing customers or account debtors to make payment directly to FCG; (v) to contact Merchant's banks and financial institutions using Merchant's and any Guarantor's personal information to verify the existence of an account and obtain account balances; (vi) to file any claims or take any action or institute any proceeding which FCG may deem necessary for the collection of any of the unpaid Purchased Amount from the Receipts or Collateral, or otherwise to enforce its rights with respect to payment of the Purchased Amount; and (vii) to contact any payment processor of Merchant and to direct such payment processor to deliver directly to FCG all or any portion of the amounts received by such payment processor and to provide any information regarding Merchant requested by FCG. In connection therewith, all costs, expenses, and fees, including legal fees incurred by FCG shall be payable by Merchant.

**1.11. Protections against Default.** The following Protections 1 through 8 may be invoked by FCG immediately and without notice to Merchant in the event that: (a) Merchant takes any action to discourage the use of electronic check or credit or debit card processing that is settled through Processor or the Account, or permits any event to occur that could have an

adverse effect on the use, acceptance, or authorization of checks or other payments or deposits for the purchase of Merchant's services and products; (b) Merchant changes its arrangements with Processor or the bank at which the Account is located in any way that is adverse or unacceptable to FCG; (c) Merchant changes the processor through which the Receipts are settled from Processor to another processor, or permits any event to occur that could cause diversion of any of Merchant's check, credit card, debit card or deposit transactions to another processor; (d) Merchant intentionally interrupts the operation of its business or transfers, moves, sells, disposes, diverts or otherwise conveys its business and/or assets (including its customers or receivables) without (i) the express prior written consent of FCG, and (ii) the written agreement of any purchaser or transferee to assume all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to FCG; (e) Merchant takes any action, fails to take any action, or offers any incentive (economic or otherwise) the result of which will be to induce any customer or customers to pay for Merchant's services with any means other than payments, checks or deposits that are settled through Processor or deposited in the Account or otherwise violates Section 2.7; (f) Merchant fails to remit its receivables into the Account; (g) Merchant opens another account at a financial institution other than the bank at which the Account is located, or opens another account at the bank at which the Account is located and into which account Merchant diverts deposit of its receivables or any portion thereof, without prior written permission from FCG; (h) Merchant blocks FCG's viewing access to the Account, including by changing its log-in credential or otherwise; (i) Merchant fails to provide financial documents or other information requested by FCG including, without limitation, copies of any documents related to Merchant's credit card or payment processing activity or financial and banking affairs (pursuant to Sections 1.2 and 1.5) within five days after a request from FCG, which failure to provide same shall also constitute evidence of Merchant's violation of Section 1.11(a)-(i); or (j) any Event of Default as defined in Section 3.1. These protections are cumulative and not exclusive, and are in addition to any other remedies available to FCG at law, in equity or otherwise pursuant to this Agreement.

**Protection 1.** FCG may declare the full uncollected Purchased Amount plus any fees due under this Agreement (including attorneys' fees) due and payable immediately.

**Protection 2.** FCG may enforce the provisions of the below Pledge of Security or Guaranty.

**Protection 3.** Merchant and each Guarantor authorizes FCG or FCG's attorneys-at-law to, without prior notice to Merchant, to the extent permitted by law, either: (a) file in any court of competent jurisdiction an affidavit of confession of judgment ("Confession of Judgment") that has been executed by Merchant and/or each Guarantor together with the execution of this Agreement in the amount of the Purchased Amount, plus either a reasonable estimate or percentage of the Purchased Amount to cover FCG's reasonable attorney's fees and any other amounts owed to FCG under this Agreement ("COJ Amount"), enter the same as a judgment and execute thereon, and thereupon to release all errors and waive all right to appeal and stay of execution; or (b) execute in the name of the Merchant and each Guarantor a cognovit judgment or confession of judgment in favor of FCG in the COJ Amount, and file the same in any court in the state and county where the Merchant or any Guarantor resides or has its, his or her principal place of business or signed this Agreement or can be found, and enter the same as a judgment and execute thereon, and thereupon to release all errors and waive all right to appeal and stay of execution. Nothing in this provision shall constitute a requirement that Merchant execute a Confession of Judgment.

**Protection 4.** FCG may proceed to protect and enforce its rights and remedies by lawsuit. In any such lawsuit, if FCG prevails against Merchant, Merchant shall be liable for all of FCG's costs of the lawsuit, including but not limited to all reasonable attorneys' fees and court costs as provided in Section 3.4 of this Agreement.

**Protection 5.** This Agreement shall be deemed Merchant's assignment to FCG of Merchant's lease of Merchant's business premises to the extent permitted under the lease and applicable law ("Assignment of Lease"). Upon breach of any provision in this Agreement, FCG may exercise its rights under this Assignment of Lease without prior notice to Merchant.

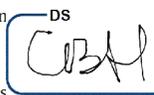
**Protection 6.** FCG may debit Merchant's depository accounts wherever situated by means of ACH debit for all sums due to FCG.

**Protection 7.** FCG shall have the right, without waiving any of its rights and remedies and without notice to Merchant and/or each Guarantor, to notify the Processor or any other credit card or payment processor used by Merchant of the sale of Receipts under this Agreement, and to direct such credit card or payment processor to make payment to FCG of all or any portion of the amounts received by such credit card or payment processor on behalf of Merchant.

**Protection 8.** FCG shall have the rights to: (i) enter, without notice, the premises of Merchant's business for the purpose of inspecting and checking Merchant's transaction processing terminals to ensure the terminals are properly programmed to submit and/or batch Merchant's daily Receipts to Processor, to inspect any other books and records of Merchant, and to ensure that Merchant has not violated any other provision of this Agreement. Merchant shall provide access to its employees and records and all other items as requested by FCG and provide information about its business operations, banking relationships, vendors, landlord and other information to allow FCG to interview any relevant parties.

**1.12. Protection of Information.** Merchant and each person signing this Agreement on behalf of Merchant and/or as Owner or Guarantor, in respect of himself or herself personally, authorize FCG to disclose information concerning Merchant's and each Owner's and each Guarantor's credit standing (including credit bureau reports that FCG obtains) and business conduct only to agents, affiliates, subsidiaries, funding partners and credit reporting bureaus. Merchant, each Owner and each Guarantor hereby waive to the maximum extent permitted by law any claim for damages against FCG or any of its affiliates relating to any (i) investigation undertaken by or on behalf of FCG as permitted by this Agreement, or (ii) disclosure of information as permitted by this Agreement.

**1.13. Confidentiality.** Merchant understands and consents and conditions

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of the products and services offered by FCG, including this Agreement and any other FCG documents (collectively, "**Confidential Information**"), are proprietary and confidential information of FCG. Accordingly, unless disclosure is required by law or court order, Merchant shall not disclose Confidential Information of FCG to any person other than an attorney, accountant, financial advisor, or employee of Merchant who needs to know such information for the purpose of advising Merchant ("**Advisor**"), provided such Advisor uses such information solely for the purpose of advising Merchant and first agrees in writing to be bound by the terms of this section. Merchant agrees that the breach or threatened breach of this provision would cause irreparable harm to FCG, which could not be adequately remedied through payment of damages. In the event of Merchant's breach or threatened breach of this provision, FCG shall be entitled to injunctive relief, including both a temporary restraining order and a preliminary injunction, without the requirement of posting a bond or security, in addition to any other relief available to FCG under the law, equity, or this Agreement (including without limitation monetary damages and an award of attorneys' fees as provided in Section 3.4).

1.14. **Publicity.** Merchant, each Owner and each Guarantor all hereby authorize FCG to use its, his, or her name and logo in listings of clients and in advertising and marketing materials.

1.15. **D/B/As.** Merchant hereby acknowledges and agrees that FCG may be using "doing business as" or "d/b/a" names or acting through authorized agents in connection with various matters relating to the transaction between FCG and Merchant, including the filing of UCC-1 financing statements and other notices or filings.

1.16. **Phone Recordings and Contact Authorized.** To the maximum extent permitted by law, Merchant agrees that any call between FCG and Merchant and their agents and employees may be recorded or monitored. Further, Merchant agrees that (i) it has an established business relationship with FCG, its employees and agents and that Merchant may be contacted from time-to-time regarding this or other business transactions; (ii) that such communications and contacts are not unsolicited or inconvenient; and (iii) that any such contact may be made at any phone number, email address or facsimile number given to FCG by the Merchant, its agents or employees, including cellular telephones. Merchant also agrees that FCG may use any other medium not prohibited by law, including but not limited to mail, e-mail, text message and facsimile to contact Merchant. Merchant expressly consents to conduct business by electronic means.

1.17. **Applicable Fees and Closing Costs.** Merchant acknowledges that the applicable fees and closing costs (that is, such costs as are payable at the time of the execution of this Agreement) that may be charged by FCG are set forth in **Exhibit A** to this Agreement and were subject to arms-length negotiation between Merchant and FCG. Merchant hereby agrees to pay the closing costs in full from the Purchase Price and authorizes FCG to apply a portion of the Purchase Price due to Merchant toward satisfaction of the closing costs by deducting the amount of the closing costs from the Purchase Price prior to delivering it to Merchant. For avoidance of doubt, the deduction of the closing costs from the Purchase Price shall not be deemed to be a reduction of the Purchase Price. Additionally, to the extent that Merchant has agreed to a broker fee with a third-party broker with respect to this Agreement (which is not a party hereto), Merchant hereby requests and agrees for FCG to withhold from the Purchase Price, and pay to the third-party broker associated with this Agreement, the professional service fee contained in **Exhibit A**. Other than the fees listed in this Agreement, FCG is NOT CHARGING ANY ADDITIONAL FEES OR CLOSING COSTS to Merchant and if Merchant is charged by any other party for any fee not listed in this Agreement, such fee is not charged by FCG. Moreover, as all working capital received under this Agreement is required to ensure Merchant's continued success, Merchant warrants and covenants not to pay any fee and/or commission with regard to this transaction other than as provided for herein.

1.18. **Multiple Merchant Entities.** In the event the term "Merchant" (as used on page 1) is comprised of more than one entity, than the term "Merchant" as used in this Agreement shall mean all such entities, individually and collectively, each of which is an affiliate of all other such entities, that is such entity or any Owner or Guarantor controls, is under the control of, or has direct or indirect common ownership with the other entities, or any Owner or Guarantor. The representations, warranties, covenants, obligations and liabilities of each Merchant entity shall be joint and several under this Agreement. The liability of each Merchant entity under this Agreement shall be direct and immediate and shall not be conditional or contingent upon the pursuit of any remedies against any other person or entity, including any other Merchant entity. The Specified Percentage, Receipts, Daily Remittance, and Purchased Amount shall apply to each of the Merchant entities.

1.19. **Application of Amounts received by FCG.** FCG reserved the right to apply amounts received by it under this Agreement to any fees or other charges due to FCG from Merchant prior to applying such amounts to reduce the amount of any outstanding Purchased Amount.

## 2. REPRESENTATIONS, WARRANTIES, AND COVENANTS

Merchant, each Owner and each Guarantor represent, warrant and covenant that, as of this date and during the term of this Agreement:

2.1. **Financial Condition and Financial Information.** Merchant's, any Owner's or any Guarantor's bank and financial statements (copies of which have been furnished to FCG, and future statements which will be furnished hereafter at the request and discretion of FCG) fairly represent the financial condition of Merchant and each Guarantor at such dates, and since those dates there has been no material adverse changes, financial or otherwise, in such condition, operation, or ownership of Merchant. Merchant and each Guarantor have a continuing, affirmative obligation to advise FCG of any material adverse change in their financial condition, operations, or ownership.

2.2. **Governmental Approvals and Compliance.** Merchant is in compliance and, during the term of this Agreement, shall comply, with all laws and has and will maintain valid permits, authorizations and licenses to own, operate and lease its properties and to conduct the business in which it is presently engaged and/or will engage in hereafter. Merchant is not in default of, and will promptly pay, all necessary federal, state and local taxes, including but not

limited to income, employment, sales and use taxes, imposed upon Merchant by law, and will maintain workers compensation insurance required by applicable governmental authorities.

2.3. **Authorization.** Merchant, the person(s) signing this Agreement on behalf of Merchant, and each Guarantor have full power and authority to incur and perform the obligations under this Agreement, all of which have been duly authorized. All organizational and other proceedings required to be taken by Merchant or Guarantor to authorize the execution, delivery and performance of this Agreement have been taken.

2.4. **Insurance.** Merchant will maintain general liability and business-interruption insurance naming FCG as loss payee and additional insured in the amounts and against risks as are satisfactory to FCG and shall provide FCG proof of such insurance upon request.

2.5. **Electronic Check Processing Agreement.** Merchant will not change its Processor, add terminals, change its financial institution or bank account(s) or take any other action that could have any adverse effect upon Merchant's obligations under this Agreement without FCG's prior written consent. Any such changes shall be a material breach of this Agreement.

2.6. **Change of Name or Location or Sale or Closing of Business.** Merchant, and any successor in interest of Merchant, will not conduct Merchant's businesses under any name other than as disclosed to FCG, nor shall Merchant change any of its places of business without prior written consent by FCG. Merchant will not sell, dispose, transfer or otherwise convey all or substantially all of its business or assets (including without limitation the Collateral or any portion thereof) without (i) the express prior written consent of FCG, and (ii) the written agreement of any purchaser or transferee assuming all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to FCG. Except as disclosed to FCG in writing, Merchant has no current plans to close its business either temporarily, whether for renovations, repairs or any other purpose, or permanently. Merchant shall not make or send notice of any intended bulk sale or transfer. Merchant agrees that until FCG has received all of the Purchased Amount, Merchant will not voluntarily close its business for renovations, repairs or any other purposes. This provision, however, does not prohibit Merchant from closing its business if such closing is required to conduct renovations or repairs that are required by local ordinance or other legal order, such as from a health or fire inspector, or if otherwise forced to do so by circumstances outside of the control of Merchant. Prior to any closure, Merchant will provide FCG written notice as required by Section 3.5.

2.7. **No Diversion of Future Receivables.** Merchant shall not allow any event to occur that would cause a diversion of any portion of Merchant's receivables from the Account or Processor without FCG's written permission.

2.8. **Daily Batch Out.** Merchant will clear and settle Merchant's receivables with the Processor on a daily basis.

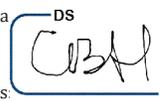
2.9. **Estoppel Certificate.** Merchant will at every and all times, and from time to time, upon at least one day's prior notice from FCG to Merchant, execute, acknowledge, and deliver to FCG and/or to any other person, firm or corporation specified by FCG, a statement certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and stating the dates which the Purchased Amount or any portion thereof has been delivered.

2.10. **No Pending or Contemplated Bankruptcy.** As of the date of this Agreement, Merchant is not insolvent and does not contemplate filing for bankruptcy in the next six months and has not consulted with a bankruptcy attorney or filed any petition for bankruptcy protection under Title 11 of the United States Code, or any other law for the relief of debtors, and there has been no involuntary petition brought or pending against Merchant. Merchant further warrants that it does not anticipate filing any such bankruptcy petition, and it does not anticipate that an involuntary petition will be filed against it.

2.11. **Unencumbered Receipts.** Merchant has good, complete, unencumbered and marketable title to all of Merchant's receivables, free and clear of any and all liabilities, liens, claims, changes, restrictions, conditions, options, rights, mortgages, security interests, equities, pledges, and encumbrances of any kind or nature whatsoever or any other rights or interests that may be inconsistent with the transactions contemplated with, or adverse to the interests of, FCG, except as provided in "**Exhibit D**," which contains true and correct information as to the names of all of Merchant's secured creditors and the amounts that Merchant owes of those creditors as of the Effective Date. As of the date hereof, Merchant is not engaged in negotiations either directly or through a broker for any other merchant cash advances or other transactions which would contemplate the sale or encumbrance of Merchant's receivables other than those listed in Exhibit D. To Merchant's, any Owner's or any Guarantor's knowledge, there are no litigations or other proceedings pending or judgments or awards entered against Merchant in any court or tribunal in any jurisdiction concerning Merchant's receivables and there are no outstanding executions or levies concerning Merchant's receivables. In the event Merchant, any Owner or any Guarantor learns that such a proceeding has been filed, it/they/he/she shall immediately provide notice of the proceeding to FCG, which notice shall include the title, forum and case number of the proceeding. Merchant indemnifies and holds harmless FCG for any and all damages and losses (including without limitation legal fees and expenses) incurred by FCG as the result of the representations in this paragraph being untrue, incorrect or incomplete.

2.12. **Business Purpose.** Merchant is a valid business in good standing under the laws of the jurisdiction(s) in which it is organized and/or operates. Merchant hereby acknowledges that it fully understands that (i) FCG's ability to collect the Purchased Amount (or any portion thereof) is contingent upon Merchant's continued operation of its business and successful generation of the Receipts until the Purchased Amount is delivered to FCG in full, and (ii) that in the event of decreased efficiency or total failure of Merchant's business, FCG's receipt of the full or any portion of the Purchased Amount may be delayed indefinitely. Based on the foregoing, Merchant is entering into this Agreement for the benefit and advancement of Merchant's business operations, and will use the Purchase Price exclusively for the benefit and advancement of Merchant's business operations and will not use any portion of the Purchase Price for any other purpose, including but not limited to consumer, personal, family or household purposes.

2.13. **Defaults under Other Contracts.** Merchant <sup>DS</sup> /or performance

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under this Agreement, will not cause or create an event of default by Merchant under any contract with another person or entity, including without limitation any other merchant cash advance provider or any other creditor.

2.14. Good Faith. Merchant is receiving the Purchase Price and selling FCG the Purchased Amount in good faith and will use the Purchase Price funds to maintain and grow Merchant's business. Merchant is not actively working with or being instructed by any debt relief consultant or debt relief attorneys and will not use the Purchase Price to either pay the fees of such consultants or attorneys or pay down prior loans or receipt purchase transactions.

2.15. Stacking Prohibited. Merchant shall not enter into any merchant cash advance, factoring or loan agreement that relates to or involves Merchant's future receivables with any party other than FCG at any time prior to the Expiration Date without (i) written consent of FCG and (ii) the written agreement of the funder or lender to either deliver the Outstanding Purchased Amount to FCG prior to providing funding to Merchant in accordance with paragraph 1.3, or to guaranty all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to FCG.

2.16. No Other Confessions of Judgment. Until the Expiration Date, Merchant shall not enter into any affidavits of confession of judgment, or execute a document containing a confession of judgment, with any party other than FCG without FCG's prior written consent.

2.17. Protections. In the event of a misrepresentation or violation of any provision of this Article 2, in addition to any other remedy under this Agreement, FCG may invoke any of the Protections 1-8 listed in Section 1.11 hereof immediately and without notice to Merchant.

3. EVENTS OF DEFAULT AND REMEDIES

3.1. Events of Default. Without limitation of any other default provision of this Agreement, the occurrence of any of the following events shall constitute an "Event of Default" hereunder:

- a) Merchant commits any of the acts listed in paragraph 1.11;
b) Merchant, any Owner or any Guarantor violates any term or covenant in this Agreement;
c) Any representation or warranty by Merchant, any Owner or any Guarantor in this Agreement was incorrect, false, or misleading in any material respect when made;
d) The sending of notice of termination by Merchant or any Guarantor or verbally notifying FCG of their intent to breach this Agreement;
e) Merchant fails to give FCG 24 hours' advance notice that there will be insufficient funds in the Account such that the ACH of the specific daily amount will not be honored by Merchant's bank;
f) Merchant fails to supply all requested financial documentation and allow for daily monitoring of its bank account;
g) Merchant changes its Processor in violation of the terms of Section 2.5;
h) Merchant transfers or sells all or substantially all of its assets;
i) Merchant makes or sends notice of any intended bulk sale or transfer by Merchant;
j) Merchant uses multiple depository accounts without the prior written consent of FCG;
k) Merchant changes the Account without the prior written consent of FCG; or
l) Merchant closes the Account without the prior written consent of FCG
m) FCG's receives three or more "not sufficient funds" (NSF) notices when attempting to ACH debit the Account on three separate dates and Merchant has not given notice that there will be insufficient funds in the Account as a result of its declining revenues;
n) Merchant's bank returns a code other than Not Sufficient Funds (NSF) when declining FCG's attempts to debit Merchant's account;
o) Merchant defaults under any of the terms, covenants, and conditions of any other agreement with FCG, including without limitation the below Pledge of Security and Guaranty;
p) Any person or entity files a litigation or proceeding or enters a judgment concerning or claiming ownership of Merchant's receivables in any court or tribunal in any jurisdiction (unless Merchant disclosed the same to FCG prior to entering this Agreement and it is listed on Exhibit D); or
q) Merchant applies for, or enters into an agreement for, another form of financing without the prior written consent of FCG.

Merchant's nonpayment of the Daily Remittance in and of itself is not a default under this Agreement, provided no other Event of Default has occurred.

3.2. Personal Guaranty. In an Event of Default, FCG may enforce its rights against any Guarantor of this transaction in accordance with the below Guaranty.

3.3. Remedies. In case any Event of Default occurs and is not waived pursuant to Section 6.4. hereof, FCG may proceed to protect and enforce its rights or remedies either (a) through the Protections listed in Section 1.11 hereof, or (b) by suit in equity or by action at law, or both, whether for the specific performance of any covenant, agreement or other provision

contained herein, or to enforce the discharge of Merchant's obligations hereunder (including the Pledge of Security and Guaranty), or any other legal or equitable right or remedy. Upon an Event of Default, the full uncollected Purchased Amount plus any applicable fees due under this Agreement will become due and payable in full immediately. All rights, powers, remedies and Protections of FCG in connection with this Agreement may be exercised at any time by FCG after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers, or remedies provided by law or equity.

3.4. Costs. Merchant shall pay to FCG all costs (including reasonable attorneys' fees and court costs) associated with (a) an Event or Default, (b) breach by Merchant of the representations, warranties, and covenants in this Agreement, and the enforcement thereof, (c) the enforcement of FCG's remedies set forth in this Agreement, (d) any action or proceeding to confirm or vacate an arbitration award issued in accordance with the arbitration provision of this Agreement, and (e) any other dispute arising out of or relating to this Agreement (whether brought in litigation or arbitration). The amount of costs and attorneys' fees under this Section or under any other provision of this Agreement shall include the amount of costs and fees incurred by FCG in making an application for costs and fees (so-called "fees on fees"), on appeal or in bankruptcy court.

3.5. Equitable Remedies. Without limitation of any other provision in this Agreement, in the event that Merchant or any Guarantor breach or threaten to breach any of the covenants, representations and warranties in this Agreement, Merchant and each Guarantor hereby consent and agree that FCG shall be entitled to the ex parte (without advanced notice) entry of a preliminary or permanent injunction, temporary restraining order, prejudgment attachment or other equitable relief, including without limitation to protect against such breach or threatened breach, from any court of competent jurisdiction, without the necessity of showing any actual damages or that monetary damages would not afford an adequate remedy, and without the necessity of posting any bond or other security with respect to obtaining or continuing any injunction or temporary restraining order. Further, Merchant and each Guarantor release FCG from, and waive any claim for, damages that may result to Merchant and each Guarantor from FCG obtaining any equitable relief pursuant to this Agreement. If a bond or other security is required, Merchant and each Guarantor consent that its damages would be de minimis and that the amount of the bond or security shall be no more than \$500. Merchant and each Guarantor consent to pay the amount of \$15,000 as liquidated damages, and not as a penalty, for FCG's successful application for injunctive relief under this paragraph, which the parties agree is a reasonable estimate of the costs for such an application (which shall not be a limitation on the overall amount of attorneys' fees and costs FCG shall be entitled to recover in any action). The amount of liquidated damages shall be awarded to FCG upon prevailing on the initial application for injunctive relief, without the need for FCG to prevail in the ultimate judgment in the proceeding, and Merchant and each Guarantor consents to the court or tribunal including the liquidated amount in the total amounts of any assets to be stayed or attached pursuant to its order granting equitable relief. Merchant and each Guarantor agree that the aforementioned equitable relief shall not diminish any other right or remedy that FCG may have at law or in equity to enforce the provisions of this Agreement. Merchant and each Guarantor agree that any such equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages or other available forms of relief.

3.6. Required Notifications. Without limitation of any of Merchant's other obligations under this Agreement, Merchant is required to give FCG written notice (a) within 24 hours of any filing under Title 11 of the United States Code or any other law for the protection of debtors, and (b) at a commercially reasonable (but no less than seven days' time) prior to FCG closing or slowing down its business or transferring, moving, selling, disposing, diverting or otherwise conveying its business and/or assets (including its customers or receivables).

3.7. Waiver of Separate Entity Rule. Merchant and each Guarantor waive, to the maximum extent permitted by law, the separate entity rule, such that any notice, demand, lien, levy, prejudgment attachment, postjudgment attachment, turnover order, restraining notice or other process served upon any branch, department or unit of Merchant's or any Guarantor's bank, third-party payor, account debtor or other garnishee shall be deemed served regardless of the branch, department or unit served anywhere in the world, and will subject to attachment or collection any and all assets or other interests held by or for the benefit of Merchant or any Guarantor, regardless of the location of the assets or other interests anywhere in the world.

4. PLEDGE OF SECURITY

4.1. Security Interest. As security for the performance of any and all liabilities, obligations, covenants or agreements of Merchant under this Agreement (and any future amendments of this Agreement, if any), Merchant hereby pledges to FCG a security interest in and lien ("Pledge") upon: (a) all accounts, chattel paper, documents, equipment, general intangibles, instruments, and inventory, as those terms are each defined in Article 9 of the Uniform Commercial Code (the "UCC"), now or hereafter owned or acquired by Merchant, (b) all proceeds, as that term is defined in Article 9 of the UCC, (c) all funds at any time in the Merchant's Account, regardless of the source of such funds, and (d) present and future electronic check transactions (collectively, the "Collateral"). This Pledge will secure all of FCG's entitlements under this Agreement and any other agreements now existing or later entered into between Merchant, FCG or an affiliate of FCG. With respect to such Pledge, FCG will have all rights afforded under the UCC, any other applicable law and in equity. Merchant will obtain from FCG written consent prior to granting a security interest of any kind in the Collateral to a third party and any such grant of a security interest without FCG's written consent shall be null and void. Merchant acknowledges and agrees that any security interest granted to FCG under any other agreement between Merchant, any Owner or any Guarantor and FCG will secure the obligations under this Agreement. Merchant agrees to execute any documents or take any action in connection with this security interest as FCG deems necessary to perfect or maintain FCG's first priority security interest in the Collateral, including the execution of any account control agreements. Merchant hereby authorizes FCG to file any financing statements deemed necessary or desirable by FCG to perfect or maintain FCG's security interest without prior notice to Merchant. FCG is authorized to execute and documents in

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Merchant's and each Guarantor's name. The UCC filing may state that such sale is intended to be a sale and not an assignment for security and may state that the Merchant is prohibited from obtaining any financing that impairs the value of the Receipts or FCG's right to collect same.

4.2. Remedies. Upon any Event of Default, FCG may pursue any remedy available at law (including those available under the provisions of the UCC), or in equity to collect, enforce or satisfy any obligations then owing to FCG against the Collateral.

4.3. Termination of Pledge. Upon the full performance by Merchant of Merchant's obligations under this Agreement, the security interest in the Collateral shall automatically terminate without any further act of either party being required, and all rights to the Collateral shall revert to Merchant.

4.4. Representations with Respect to Collateral. Merchant hereby represents and warrants to FCG that the execution, delivery and performance by Merchant of this Pledge and the remedies in respect of the Collateral under this Agreement (i) have been duly authorized;

4.5. Further Assurances. Upon the request of FCG, Merchant, at Merchant's sole cost and expense, shall execute and deliver all such further UCC-1s, continuation statements, assurances and assignments of the Collateral and consents with respect to the pledge of the Collateral and the execution of this Pledge, and shall execute and deliver such further instruments, agreements and other documents and do such further acts and things, as FCG may request in order to more fully effectuate the purposes of this Pledge and the assignment of the Collateral and obtain the full benefits of this Pledge and the rights and powers herein created, and authorizes FCG to make such filings and do such other acts as it deems necessary or desirable to perfect and maintain its security interest.

5. GUARANTY OF PERFORMANCE

5.1. Guaranty. As an additional inducement for FCG to enter into this Agreement, each Guarantor hereby provides FCG with this "Guaranty." Each Guarantor hereby irrevocably, absolutely and unconditionally guarantees to FCG prompt, full, faithful and complete performance and observance of all of Merchant's obligations under this Agreement and each Guarantor unconditionally covenants to FCG that if default or breach shall at any time be made by Merchant, Guarantor shall well and truly pay or perform (or cause to be paid or performed) such obligations and pay all damages and other amounts stipulated in this Agreement with respect to the non-performance of Merchant's obligations, or any of them (collectively, the "Guaranteed Obligations").

5.2. No Notice. FCG does not have to notify Guarantor of any of the following events, and Guarantor will not be released from its obligations under this Guaranty if it is not notified of: (i) Merchant's failure to timely pay any amount required under this Agreement; (ii) any adverse change in Merchant's financial condition or business; (iii) any sale or other disposition of any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations; (iv) FCG's acceptance of this Guaranty; and (v) any renewal, extension, or other modification of this Agreement or Merchant's other obligations to FCG.

5.3. Guarantor's Obligations Severable. In the event of a breach of this Agreement, FCG may seek recovery from each Guarantor for all of FCG's losses and damages (including without limitation any right to recover costs, attorneys' fees or other amounts as set forth in this Agreement) for the enforcement of FCG's rights under this Guaranty without first seeking to obtain payment from Merchant or any other Guarantor.

are not necessary parties to any litigation brought under this Guaranty. FCG may proceed in litigation against any Guarantor to enforce the Guaranteed Obligations even if Merchant has filed for bankruptcy protection.

5.4. Guarantor Waiver of Rights. Until the Purchased Amount and Merchant's other obligations to FCG under this Agreement are paid in full, Guarantor shall not seek reimbursement from Merchant or any other guarantor for any amounts paid by it under this Guaranty. Guarantor permanently waives and shall not seek to exercise any of the following rights that it may have against Merchant, any other guarantor, or any collateral provided by Merchant or any other guarantor, for any amounts paid by it, or acts performed by it, under this Guaranty: (i) subrogation, (ii) reimbursement, (iii) performance, (iv) indemnification or (v) contribution.

5.5. Multiple Guarantors. In the event "Guarantor" (as defined on page 1 of this Agreement) is comprised of more than one individual, then: (i) the term "Guarantor" shall mean, individually and collectively, all such individuals; (ii) each Guarantor is an affiliate of all other Guarantor(s); (iii) the representations, warranties, covenants, obligations and liabilities of each Guarantor shall be joint and several under this Agreement; (iv) the liability of each Guarantor under this Agreement shall be direct and immediate and shall not be conditional or contingent upon the pursuit of any remedies against any other person or entity; and (v) FCG may pursue its rights and remedies under this Agreement against any one or any number of individuals that constitute Guarantor without obligation to assert, prosecute or exhaust any remedy or claim against any other Guarantor or Merchant.

5.6. Guarantor Acknowledgement. Each Guarantor acknowledges that he/she/it: (i) is an owner, officer or manager of Merchant and/or will benefit from Merchant and FCG entering into this Agreement; (ii) irrevocably, absolutely and unconditionally guarantees to FCG performance of all of the obligations of Merchant under this Agreement; (iii) is bound by the Jury Trial and Class Action Waiver provisions below; (iii) understands the seriousness of the provisions of this Guaranty; (iv) has had a full opportunity to consult with counsel of his/her/its choice; and (v) has consulted with counsel or has decided not to avail himself/herself/itself of that opportunity.

6. MISCELLANEOUS

6.1. Modifications. No modification, amendment, waiver or consent of any provision of this Agreement shall be effective unless the same shall be in writing and signed by Merchant and FCG. The parties may enter into one or more written addendums to this Agreement (in addition to any exhibits) that modify, clarify or supplement the terms of this Agreement.

6.2. Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of Merchant, FCG, and their respective successors and assigns. FCG may assign, transfer or sell its rights to receive the Purchased Amount or delegate its duties hereunder, either in whole or in part, with or without prior written notice to Merchant. Merchant may not assign, transfer or sell its rights or obligations under this Agreement without an express written modification of this Agreement.

6.3. Notices. Except as otherwise provided herein, all notices, requests, consents, demands, and other communications hereunder shall be delivered by certified mail, return receipt requested, to the respective parties to this Agreement at the addresses set forth in this Agreement. Merchant and each Guarantor shall promptly notify FCG of any change of address. Notices to FCG shall become effective only upon receipt by FCG. Notices to Merchant and any Guarantor shall become effective three days after mailing.

6.4. Waiver of Remedies. No failure on the part of FCG to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided hereunder are cumulative and not exclusive of any remedies provided by law or equity.

6.5. Governing Law, Venue, and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regards to any applicable principles of conflicts of law. Any suit, action, or proceeding arising out of or relating to this Agreement or the transaction contemplated herein or the interpretation, performance, or breach hereof, shall be instituted in any federal or state court sitting in the State of New York (the "Acceptable Forums"), provided that FCG may institute suit in another forum. Merchant, each Guarantor and each Owner agree that the Acceptable Forums are convenient to them, and submit to the personal jurisdiction of the Acceptable Forums and waive any and all objections to jurisdiction or venue in the Acceptable Forums. Should a proceeding be initiated by Merchant, any Guarantor or any Owner in any other forum, Merchant, each Guarantor and each Owner waives any right to oppose any motion or application made by FCG to dismiss such proceeding, to remove and/or transfer the proceeding to an Acceptable Forum, and for an anti-suit injunction against such proceeding (which FCG may make in the Acceptable Forums). ADDITIONALLY, MERCHANT, EACH OWNER AND EACH GUARANTOR WAIVE PERSONAL SERVICE OF ANY SUMMONS AND/OR COMPLAINT OR OTHER PROCESS TO COMMENCE ANY LITIGATION AND AGREE THAT SERVICE OF SUCH DOCUMENTS SHALL BE EFFECTIVE AND COMPLETE IF MAILED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO THE ADDRESS(ES) LISTED ON PAGE 1 OF THIS AGREEMENT. MERCHANT WILL THEN HAVE 30 CALENDAR DAYS AFTER SERVICE IS COMPLETE IN WHICH TO RESPOND.

6.6. Survival of Representations. All representations, warranties, and covenants herein shall survive the execution and delivery of this Agreement and shall continue in full force until all obligations under this Agreement shall have been satisfied.

Initials: [Handwritten Signature] DS

FOX CAPITAL GROUP, INC.
140 Broadway, 46th Floor, New York, NY 10005

shall have terminated.

6.7. Interpretation. This Agreement embodies the arms-length negotiation and mutual agreement between the parties and shall not be construed against any party as having been drafted by such party.

6.8. Severability. In case any of the provisions in this Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of any other provision contained herein shall not in any way be affected or impaired.

6.9. FCG's Consent. Merchant agrees that in every instance in which Merchant's rights under this Agreement are contingent upon first obtaining FCG's consent, such consent may be withheld, granted or conditioned at FCG's sole and absolute discretion.

6.10. Consultation. Merchant represents that it is a business operated by one or more experienced business persons. The person(s) authorized to make management and financial decisions on behalf Merchant with respect to this Agreement either (i) have such knowledge, experience and skill in financial and business matters in general and with respect to transactions of a nature similar to the one contemplated by this Agreement so as to be capable of evaluating the merits and risks of, and making an informed business decision with regard to, Merchant entering into this Agreement, or (b) have consulted with such other persons as are capable of advising Merchant with respect to the transaction.

6.11. Entire Agreement. This Agreement (including any exhibits, addendums or affidavits of confession of judgment) embodies the entire agreement between Merchant, each Guarantor and each Owner and FCG and supersedes all prior agreements, understandings or oral or written representations relating to the subject matter hereof.

6.12. JURY TRIAL WAIVER. THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION, OR PROCEEDING ON ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OF THE TRANSACTION CONTEMPLATED HEREIN.

6.13. CLASS ACTION WAIVER. TO THE EXTENT PERMITTED BY LAW, THE PARTIES AGREE THAT ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING OUT OF

OR RELATING TO THIS AGREEMENT OF THE TRANSACTION CONTEMPLATED MUST BE PURSUED ON AN INDIVIDUAL BASIS ONLY. THE PARTIES WAIVE ANY RIGHT TO COMMENCE OR BE A PARTY TO ANY CLASS, COLLECTIVE OR REPRESENTATIVE ACTION OR TO BRING JOINTLY OR COLLECTIVELY ANY CLAIM. TO THE EXTENT MERCHANT IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST FCG, THE PARTIES AGREE THAT: (1) MERCHANT SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS, COLLECTIVE OR REPRESENTATIVE ACTION; AND (2) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS, COLLECTIVE OR REPRESENTATIVE ACTION.

6.14. ARBITRATION. FCG HAVE THE RIGHT TO REQUEST THAT ANY DISPUTE, CONTROVERSY OR CLAIM BETWEEN FCG AND MERCHANT, ANY GUARANTOR OR ANY OWNER, WHETHER ARISING OUT OF OR RELATING TO THE CONSTRUCTION AND INTERPRETATION OF THIS AGREEMENT OR OTHERWISE (INCLUDING WITHOUT LIMITATION CLAIMS FOR FRAUD, MISREPRESENTATION, INTENTIONAL TORT, NEGLIGENT TORT OR UNDER ANY LOCAL, STATE OR FEDERAL STATUTE OR RULE), BE SUBMITTED TO ARBITRATION BEFORE AND IN ACCORDANCE WITH THE COMMERCIAL RULES OF THE AMERICAN ARBITRATION ASSOCIATION IN NEW YORK, NEW YORK FCG MAY DEMAND THAT SUCH DISPUTE BE SUBMITTED TO ARBITRATION EITHER BY (I) SENDING A WRITTEN NOTICE OF INTENT TO ARBITRATE TO ALL OTHER PARTIES IN ACCORDANCE WITH THE NOTICE PROVISION IN PARAGRAPH 6.5 OF THIS AGREEMENT, OR (II) SENDING A WRITTEN NOTICE OF INTENT TO ARBITRATE TO THE ATTORNEY OF RECORD FOR MERCHANT, ANY GUARANTOR OR ANY OWNER WHO HAS BROUGHT ANY ACTION OR PROCEEDING BEFORE ANY COURT OR TRIBUNAL AGAINST FCG.

6.15. ACKNOWLEDGEMENT. EACH OF THE PARTIES ACKNOWLEDGES THAT IT: (I) HAS READ THIS AGREEMENT AND FULLY UNDERSTANDS THE CONTENTS AND LEGAL EFFECTS THEREOF; (II) HAS BEEN GIVEN A REASONABLE AMOUNT OF TIME TO CONSIDER THIS AGREEMENT; (III) HAS BEEN ADVISED TO SEEK COUNSEL AS TO THE MEANING AND CONSEQUENCES OF THIS AGREEMENT; (IV)

6.16. HAS BEEN SO ADVISED BY COUNSEL AS TO THE MEANING AND CONSEQUENCES OF THIS AGREEMENT OR HAS VOLUNTARILY WAIVED PROCUREMENT OF COUNSEL; (V) DESIRES TO ENTER INTO THIS AGREEMENT AND IS DOING SO KNOWINGLY, VOLUNTARILY AND WITHOUT COERCION OR DURESS; AND (VI) HAS NOT RELIED ON ANY REPRESENTATIONS, PROMISES, OR AGREEMENTS OF ANY KIND MADE TO HIM, HER OR IT IN CONNECTION WITH HIS, HER OR ITS DECISION TO ACCEPT AND SIGN THIS AGREEMENT EXCEPT THOSE EXPRESSLY SET FORTH IN THIS DOCUMENT.

6.17. Facsimile & Digital Acceptance. This Agreement can be signed in one or more counterparts, each of which shall constitute an original and all of which when taken together, shall constitute one and the same agreement. Facsimile, email, PDF or digital signatures hereon shall be deemed acceptable for all purposes. This Agreement shall be valid and in force even if it is not initialed.

In witness whereof, the parties have executed this Agreement as of the date first listed above.

DocuSigned by: [Signature]
By: AEC52E1D8C8B4F1...
Name: CONNIE BAUGHER HASSANIEN
Title: President

DocuSigned by: [Signature]
By: AEC52E1D8C8B4F1...
Name: CONNIE BAUGHER HASSANIEN

MERCHANT (#2)
By:
Name:
Title:

OWNER/GUARANTOR #2
By:
Name:

FOX CAPITAL GROUP INC.
By:
Name:
Title:

**FOX CAPITAL GROUP, INC.**  
140 Broadway, 46th Floor, New York, NY 10005

**EXHIBIT A - FEE SCHEDULE**

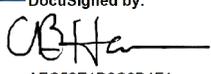
CLOSING COSTS

- A. Origination Fee: 4% to cover cost of Origination and ACH Setup.\*
- B. Underwriting Fee \$295.00 to cover underwriting and related expenses.\*
- C. Processing Fee: to cover processing and related expenses.\*

APPLICABLE FEES

- D. Wire Fee: Each Merchant shall receive their funding electronically to their designated bank account and will be charged \$50.00 for a federal wire or \$0.00 for a bank ACH. \*
- E. Bank Change Fee: \$150.00 when Merchant requires a change of the Account, which requires changes to FCG’s records and systems.
- F. NSF Fee (Standard): \$50.00 (each) to cover bank charges for Not Sufficient Funds in Merchant’s bank account unless Merchant provides timely notice. A default may be declared after three (3) or more occurrences.
- G. Stacking Fee: For each occurrence, \$ \$5,000.00 or 10% of the balance of the undelivered Purchased Amount at the time of breach, whichever is greater, to be charged if Merchant has sold or sells any future receipts to, or has obtained or obtains a loan or advance secured by any future receipts from any person or entity without FCG’s prior written consent, due to increased risk profile.\*\*
- H. Unauthorized Account Fee: \$5,000.00 or 10% of the balance of the undelivered Purchased Amount at the time of breach, whichever is greater, to be charged if Merchant blocks any one of FCG’s ACH debits of the Account, simultaneously uses multiple bank accounts or credit card processors to deposit or process its Receipts, or prevents FCG from electronic monitoring of the Account, or otherwise violates paragraph 1.5 of the Agreement due to increased risk profile.\*\*

All fees and/or liquidated damage amounts (i) may be added to the balance owed to FCG under the Agreement (if not already paid out of the Purchase Price), and (ii) are in addition to FCG’s rights and remedies under the Agreement, including the right to declare Merchant in default.

DocuSigned by:  
  
AEC52E1D8C8B4F1...  
MERCHANT (#1)

By: CONNIE BAUGHER HASSANIEN  
Title: President

\_\_\_\_\_  
MERCHANT (#1)

By:  
Title:

\* These fees will be paid out of the Purchase Price/funding amount.  
\*\* Merchant acknowledges these fees as liquidated damages, and not as penalties, and reasonable estimates of the damages likely to be incurred by FCG in the event of Merchant’s breach of the Agreement.

**FOX CAPITAL GROUP, INC.**  
140 Broadway, 46th Floor, New York, NY 10005

**EXHIBIT B - AUTHORIZATION FOR DIRECT DEPOSIT (ACH CREDIT) AND DIRECT PAYMENTS (ACH DEBITS)**

**DEFINITIONS**

**FCG:** Fox Capital Group, Inc.

**Merchant (Legal Name):** ONE FAT FROG, INCORPORATED

**Merchant Agreement:** Secured Merchant Agreement between FCG and Merchant, dated

**Designated Checking Account:**

Bank Name: \_\_\_\_\_ Branch: \_\_\_\_\_

ABA: \_\_\_\_\_ Routing: \_\_\_\_\_

Capitalized terms used in this Authorization Form without definition shall have the meanings set forth in the Merchant Agreement.

This Authorization for Direct Deposit (ACH Credit) and Direct Payments (ACH Debits) is part of (and incorporated by reference into) the Merchant Agreement. Merchant should keep a copy of this important legal document for Merchant's records.

**DISBURSEMENT OF ADVANCE PROCEEDS.** By signing below, Merchant authorizes FCG to disburse the advance proceeds less the amount of any applicable fees upon advance approval by initiating ACH credits to the Designated Checking Account, in the amounts and at the times specified in the Merchant Agreement. **By signing below, Merchant also authorizes FCG to collect amounts due from Merchant under the Merchant Agreement by initiating ACH Debits from the Designated Checking Account. The initial authorized amount is as follows, which may be adjusted by FCG from time to time in accordance with the Merchant Agreement:**

In the amount of: \$ 2,039.33

(Or) percentage of each Banking Deposit: 25 %

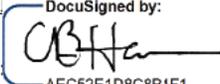
On the following days: MONDAY-FRIDAY

If any payment date falls on a weekend or holiday, Merchant understands and agrees that the payment may be executed on the next business day. If a payment is rejected by Merchant's financial institution for any reason, including without limitation insufficient funds, Merchant understands that FCG may, at its discretion, attempt to process the payment again as permitted under applicable ACH rules. Merchant also authorizes FCG to initiate ACH entries to correct any erroneous payment transaction.

**MISCELLANEOUS.** FCG is not responsible for any fees charged by Merchant's bank as the result of credits or debits initiated under this Authorization Agreement. The origination of ACH Debits and Credits to the Designated Checking Account must comply with applicable provisions of state and federal law, and the rules and operating guidelines of NACHA (National Automated Clearing House Association). This Authorization Agreement is to remain in full force and effect until FCG has received written notification from Merchant at the address set forth above at least five banking days prior of its termination to afford FCG a reasonable opportunity to act on it. The individual signing below on behalf of Merchant certifies that he/she is an authorized signer on the Designated Checking Account. Merchant will not dispute any ACH transaction initiated pursuant to this Authorization Agreement, provided the transaction corresponds to the terms of this Authorization Agreement. Merchant requests the financial institution that holds the Designated Checking Account to honor all ACH entries initiated in accordance with this Authorization Agreement.

By signing below, Merchant attests that the Designated Checking Account was established for business purposes and not primarily for personal, family or household purposes.

FOR THE \_\_\_\_\_ DocuSigned by: \_\_\_\_\_

Signature:  \_\_\_\_\_ ←

Name: CONNIE BAUGHER HASSANIEN

SSN/EIN: 

Title: President

FOR THE MERCHANT (#2)

Signature: \_\_\_\_\_ ←

Name:

SSN/EIN:

Title:

# FOX CAPITAL GROUP, INC.

140 Broadway, 46th Floor, New York, NY 10005

## **EXHIBIT C – BANK ACCOUNT ACCESS INFORMATION**

Dear Merchant,

Thank you for accepting an offer from Fox Capital Group. We look forward to being your funding partner for as long as you need.

Please note that the way your sale of receivables is set up, we will need viewing access to your bank account each business day in order to calculate the amount of your daily payment. Please be assured that we will carefully safeguard your confidential information and only essential personnel will have access to it. We will also require viewing access to your bank account, prior to funding, as part of our underwriting process. The requested access is for “look in” or viewing purposes only. We are not requesting any change or modification to your account.

Please fill out the form below with the access information for your account. Be sure to indicate capital or lower case letters.

**Please fill out the form below with the access information for your account.**

Bank portal website: \_\_\_\_\_

Username: \_\_\_\_\_

Password: \_\_\_\_\_

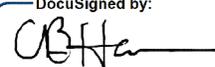
Security Question/Answer 1: \_\_\_\_\_

Security Question/Answer 2: \_\_\_\_\_

Security Question/Answer 2: \_\_\_\_\_

**ACKNOWLEDGED AND AGREED:**

DocuSigned by:



Signature: \_\_\_\_\_ 

AEC52E1D8C8B4F1...

Name: CONNIE BAUGHER HASSANIEN

Title: **President**

Dated:

Please note in the event that we cannot access your account, we will take the Daily Remittance set forth in the Receivables Purchase Agreement each day we do not have access. Failure to timely reestablish our access ability is a breach of your merchant agreement for which we reserve the right to exercise all remedies under the merchant agreement. If you have any questions, please feel free to contact us at 212-971-9244.

**FOX CAPITAL GROUP, INC.**  
140 Broadway, 46th Floor, New York, NY 10005

**EXHIBIT D – MERCHANT’S CURRENT SECURED CREDITORS**

**Secured Creditor Name**

**Balance**

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____



(800) 895-4424 | [underwriting@foxbusinessfunding.com](mailto:underwriting@foxbusinessfunding.com)

# CONGRATULATIONS!

You have been approved by Fox Capital Group in the amount of:

**\$300,000.00**

## CONTRACT CHECKLIST

To ensure a quick and smooth funding process, please review the important items in checklist below:

1. Please verify that your name on the documents is the exact same spelling as your name on your driver's license.
2. Please verify that the legal name and address of your business is correct on the documents.
3. Please ensure that your signatures and initials are filled in on all pages of the documents as prompted by this red arrow .

THANK YOU!

# Fox Capital Group, Inc.

P: (800) 895-4424 | F: 866-557-0455 | underwriting@foxbusinessfunding.com

## FUTURE RECEIVABLES SALE AND PURCHASE AGREEMENT

This Agreement ("Agreement") dated March 13, 2023, is made between Fox Capital Group, Inc. ("FCG") and the following merchant(s) (hereinafter, "Merchant"), owner(s) ("Owner") and guarantor(s) ("Guarantor"):

**Legal Name of Merchant(s):** ONE FAT FROG, INCORPORATED and entities appearing on "Exhibit D"

**D/B/A:** ONE FAT FROG RESTAURANT EQUIPMENT

**Form of Entity:** CORPORATION      **State of Organization:** FL      **EIN #:** 42-1668173

**Physical Address:** 2416 SAND LAKE RD, ORLANDO, FL, 32809

**Mailing Address:** 2416 SAND LAKE RD, ORLANDO, FL, 32809

<u>"Purchase Price"</u>	<u>"Purchased Percentage"</u>	<u>"Purchased Amount"</u>	<u>"Daily Remittance"</u>
\$300,000.00	5.0%	\$417,000.00	\$1,985.71

DocuSigned by:  
  
 AEC52E1D8C8B4F1...  
 Title: President  
 Business Phone: 407-480-3409

ORATED ←

DocuSigned by:  
  
 AEC52E1D8C8B4F1...  
 SSN: [REDACTED]  
 Email: connieb@onefatfrog.com  
 Phone: 407-687-8057  
 Address: 2416 SAND LAKE RD,  
 ORLANDO, FL, 32809-7642

←

Subject to the Terms and Conditions below ("Terms"), Merchant hereby sells, assigns, and transfers to FCG (making FCG the absolute owner) in consideration of the Purchase Price specified above, the Purchased Percentage of all of Merchant's accounts receivable and payment rights arising out of or relating to Merchant's sale or delivery of goods and/or services due to Merchant after the date of this Agreement, whether paid directly by Merchant's customers or paid by others on Merchant's customers' behalves or as reimbursements (the "Receipts") up to the Purchased Amount, which shall be remitted to FCG in the manner set forth in this Agreement until the entire Purchased Amount has been delivered by Merchant to FCG (except in the case that Merchant ceases to receive Receipts because, for example, it goes out of business or goes bankrupt in the regular course of its business). This sale of Receipts to FCG is made without recourse against Merchant or any Guarantors, except as specifically set forth in this Agreement. In consideration of the sale by Merchant to FCG of the Receipts, FCG agrees to pay to Merchant the Purchase Price (reduced by any applicable fees), which shall be delivered to Merchant following Merchant's execution of this Agreement. FCG's payment of the Purchase Price (minus any applicable fees) shall be deemed the acceptance and performance by FCG of this Agreement.

THIS IS NOT A LOAN. Merchant is selling a portion of a future revenue stream to FCG at a discount, not borrowing money from FCG. There is no interest rate or payment schedule and no time period during which the Purchased Amount must be collected by FCG. In lieu of calculating the value of the Purchased Percentage of the Receipts each day, Merchant shall remit the Daily Remittance, which is a good faith approximation by FCG and Merchant of (a) the Purchased Percentage multiplied by (b) the gross revenues of Merchant during the previous calendar month divided by (c) the number of business days in the previous calendar month. The initial Daily Remittance shall be as described above. Merchant going bankrupt or going out of business, or experiencing a slowdown in business or a delay in collecting its receivables, in and of themselves, do not constitute a breach of this Agreement. Under such circumstances, the Daily Remittance shall be subject to reconciliation or adjustment as set forth in Paragraph 1.4 of the Terms and Conditions provided Merchant is not otherwise in default of this Agreement and makes a reconciliation request. FCG is entering this Agreement knowing the risks that Merchant's business may slow down or fail. FCG assumes these risks based on Merchant's, each Owner's and each Guarantor's representations, warranties, and covenants in this Agreement, which are designed to give FCG a reasonable and fair opportunity to receive the benefit of its bargain. Merchant and each Guarantor are guaranteeing performance of the terms of this Agreement and are not guaranteeing absolute payment of the Purchased Amount. Nothing in this Agreement to the contrary, Merchant shall operate its business in good faith and do nothing to intentionally cause the diminution or diversion of its Receipts.

So long as Merchant is generating Receipts and has not requested a reconciliation, FCG will debit the Daily Remittance each business day from one depositing bank account (the "Account"), into which Merchant and Merchant's customers shall exclusively remit all Receipts (regardless of the method by which Merchant receives them), until such time as FCG receives remittance in full of the Purchased Amount (except in the case that Merchant ceases to receive Receipts because it goes out of business or goes bankrupt in the regular course of its business). Merchant hereby authorizes FCG to ACH debit the Daily Remittance from the Account on each business day (i.e., Monday through Friday but not bank holidays). Merchant understands that it is responsible for ensuring that it is responsible for notifying FCG if it has no Receipts or if there is not an amount sufficient to cover the Daily Remittance to be debited by FCG in the Account. In the event that there will be insufficient funds in the Account such that the debit of the Daily Remittance will not be honored by Merchant's bank, Merchant shall give 24 hours' advanced written notice (or other reasonable notice as necessitated by the circumstances, but no later than two days after Merchant is sent notice of a rejected debit) to FCG such that FCG may be able to cancel any pending debits, and shall promptly provide to FCG bank statements and other financial records to verify Merchant's revenues and account balances. Provided there is no other Event of Default (as defined in Section 3.1 of the Terms), Merchant will not be held in default if timely notice of insufficient funds is provided and Merchant cooperates in providing information requested, even if a Daily Remittance is rejected by Merchant's bank for insufficient funds. Merchant will be held responsible for any fees incurred by FCG resulting from a rejected ACH attempt (unless timely notice of insufficient funds is provided to FCG) or caused by another Event of Default. FCG is not responsible for any overdrafts or rejected transactions that may result from FCG's ACH debiting the Daily Remittance under the terms of this Agreement. Notwithstanding anything to the contrary in this Agreement or any other agreement between FCG and Merchant, upon the occurrence of a default under Sections 1.11 or 3.1 of the Terms, FCG shall be entitled to immediately collect any outstanding amount of the Purchased Amount as damages.

**Fox Capital Group, Inc.**

P: (800) 895-4424 | F: 866-557-0455 | underwriting@foxbusinessfunding.com

**FEE SCHEDULE**

**THE FOLLOWING “FEE SCHEDULE” INCLUDES ALL FEES AND LIQUIDATED DAMAGES APPLICABLE UNDER THIS AGREEMENT (OTHER THAN ATTORNEYS’ FEES AND COLLECTIONS COSTS ASSESSED IN AN EVENT OF DEFAULT):**

**CLOSING COSTS**

- A. Origination Fee: \$0.00 to cover cost of origination and ACH Setup.\*
- B. Underwriting Fee: \$0.00 to cover underwriting and related expenses.\*
- C. Processing Fee: \$0.00 to cover professional service fees.\*
- D. Wire Fee: Each Merchant shall receive their funding electronically to their designated bank account and will be charged \$50 for a federal wire or \$0 for a bank ACH. \*

**APPLICABLE FEES**

- E. Bank Change Fee: \$150 when Merchant requires a change of the Account, which requires changes to FCG’s records and systems.
- F. Not-Sufficient-Funds Fee (Standard): \$50 (each) to cover bank charges for Not Sufficient Funds in Merchant’s bank account unless Merchant provides timely notice. A default may be declared after five (5) or more occurrences.
- G. Stacking Fee: For each occurrence, \$5,000.00 or 10% of the balance of the undelivered Purchased Amount at the time of breach, whichever is greater, to be charged if Merchant has sold or sells any future receipts to, or has obtained or obtains a loan or advance secured by any future receipts from any person or entity without FCG’s prior written consent, due to increased risk profile.\*\*
- H. Default Fee: \$5,000, to be charged for each Event of Default under Section 3.1.\*\*
- I. Court costs, collection agency fees, attorneys’ fees, expert fees, other related collections costs and costs for indemnification, as provided in the Terms of the Agreement.

All fees and/or liquidated damage amounts (i) may be added to the balance owed to FCG under the Agreement (if not already paid out of the Purchase Price), and (ii) are in addition to FCG’s rights and remedies under the Agreement, including the right to declare Merchant in default.

**Total fees of \$0.00 shall be deducted from the Purchase Price prior to funding. Merchant will receive a net purchase price in the amount of \$300,000.00 at the time of delivery by FCG.**

\* These fees will be paid out of the Purchase Price/funding amount.

\*\* Merchant acknowledges these fees as liquidated damages, and not as penalties, and reasonable estimates of the damages likely to be incurred by FCG in the event of Merchant’s breach of the Agreement.

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TERMS AND CONDITIONS

1. TERMS OF ENROLLMENT IN PROGRAM

1.1 Term of Agreement. This Agreement for the purchase and sale of future Receipts does not have a fixed duration or term, making the term potentially infinite. The term of this Agreement shall commence as of the "Effective Date", which shall be calculated as the later of: (i) the date set forth in the preamble to this Agreement, and (ii) the date when FCG paid the Purchase Price to Merchant. This Agreement shall expire on either (a) the date ("Expiration Date") when the Purchased Amount and all other sums due to FCG are received by FCG in full, as per the terms of this Agreement, or (ii) provided Merchant is not in default under any term of this Agreement, the date of the total failure of Merchant's business and the complete cessation of all Receipts.

1.2 ACH Authorization and Agreement with Processor. Throughout the term of this Agreement, Merchant irrevocably authorizes FCG and/or its agent(s) to deposit the Purchase Price or any amounts owed to Merchant into the Account by electronic check or automated clearing house (ACH), and to debit by electronic check or ACH from the Account any amounts owed to FCG, including without limitation (a) the Daily Remittance or (b) the entire Purchased Amount (together with applicable fees) in the event that Merchant defaults under this Agreement. Merchant shall (a) execute an ACH authorization form in favor of FCG in the form annexed as "Exhibit A" to authorize FCG to obtain electronic fund transfer services to and from the Account, and (b) if applicable, execute an agreement acceptable to FCG with a credit and debit card processor (the "Processor") instructing the Processor to deposit all Receipts into the Account (from which FCG may debit amounts owed to it by Merchant). As of the Effective Date, the Account is as listed on Exhibit A. If Merchant needs to change the designated Account for any reason, Merchant must seek advance written approval from FCG, for which FCG shall not unreasonably withhold consent, and provide a new ACH authorization form with the updated account information. It is Merchant's exclusive responsibility to pay to its banking institution and to compensate FCG in case FCG is charged by its banking institution (in accordance with the Fee Schedule) for any fees, charges and expenses incurred by either FCG or Merchant due to rejected electronic checks or ACH debit attempts, overdrafts or rejections.

1.2.1 Throughout the term of this Agreement, Merchant irrevocably grants access to FCG to view the Account information through the bank's webpage or other electronic access for the purpose of verifying Merchant's receivables, Receipts, deposits, and withdrawals into and from the Account, and shall execute the form annexed as "Exhibit B", providing FCG and/or its authorized agent(s) with all of the information, authorizations and passwords necessary for such purposes. Merchant understands that any attempt to block FCG's access to the Account or refusal to provide FCG with login credentials to the Account constitutes a default under this Agreement.

1.2.2 The authorizations in this Section 1.2 apply not only to the approved Account but also to any subsequent or alternate account used by the Merchant for its Receipts, whether pre-approved or agreed to by FCG or not. This additional authorization is not a waiver of FCG's entitlement to declare this Agreement breached by Merchant as a result of its use of an account which FCG did not first pre-approve in writing prior to Merchant's use thereof. The aforementioned authorizations shall be irrevocable without the written consent of FCG. The purported revocation of such authorizations shall constitute a breach of this Agreement.

1.2.3 In the event the Account or Processor shall become unavailable or shall cease providing services to Merchant during the term of this Agreement, prior to the first date of such unavailability or cessation of services, Merchant shall arrange for another Account or Processor and obtain advance written approval from FCG for the same.

1.3 Acceleration. Merchant may at any time after receipt from FCG of the Purchase Price accelerate delivery to FCG of the then undelivered portion of the Purchased Amount (such amount, the "Outstanding Purchased Amount") in accordance with the following procedures:

1.3.1 Unless otherwise agreed to in writing by FCG, the Outstanding Purchased Amount can only be delivered in full and not partially

1.3.2 Merchant shall request the right to accelerate the delivery of the Outstanding Purchased Amount by notifying FCG to that effect, provided that such notice shall be in writing (by email to underwriting@foxbusinessfunding.com) and must contain information on the source(s) of the funds to be used for delivery of the Outstanding Purchased Amount and the approximate date of such delivery. FCG shall respond to Merchant's request within three business days from the date of its receipt by FCG, in which it will indicate the exact amount of the Outstanding Purchased Amount as of the date of the intended delivery by Merchant. As of the date agreed upon as between FCG and Merchant, Merchant shall deliver or cause to be delivered to FCG the full amount of the Outstanding Purchased Amount.

1.3.3 Merchant shall not suspend or modify, or cause to be suspended or modified, the delivery to FCG of the Daily Remittance prior to the delivery of the Outstanding Purchased Amount to FCG, unless there are insufficient funds in the Account and Merchant has given FCG due notice. Provided Merchant is not in default of this Agreement and no fees are due to FCG, upon delivery of the full Outstanding Purchased Amount to FCG, Merchant's obligations to FCG pursuant to this Agreement shall be fulfilled.

1.3.4 Upon FCG's receipt of the Outstanding Purchased Amount, FCG shall notify its payment processor or the bank at which the Account is located to stop transferring Daily Remittance from the Account. If FCG shall have received one or more Daily Remittances after delivery of the Outstanding Purchased Amount (due to the processor's or bank's delay in processing FCG's request or for any other reason), FCG will return the overage to Merchant. Nevertheless, Merchant acknowledges and agrees that FCG shall have the right to apply the overage toward Merchant's outstanding financial obligations to FCG under any separate agreement between Merchant and FCG (if any) in exchange for, and as an adequate and sufficient consideration for, FCG granting Merchant the right to accelerate the delivery of the Outstanding Purchased Amount.

1.4 Reconciliation/Adjustment.

1.4.1 Either party may give notice to the other for a reconciliation of the Daily Remittance to more accurately reflect the Purchased Percentage. In the event of such reconciliation, the Daily Remittance will either be (i) increased if the amount remitted to FCG was less than the Purchased Percentage of all revenue of Merchant since the Effective Date (ii) decreased if the amount received by FCG was more than the Purchased Percentage of all revenue of Merchant since the Effective Date. In the event Merchant requires a reconciliation to decrease the amount of the Daily Remittance, it shall be Merchant's sole responsibility to initiate the process in the manner set forth in Section 1.4.2. If a reconciliation is required, FCG shall modify the Daily Remittance such that the modified Daily Remittance amount is a good faith approximation by FCG of the (a) Purchased Percentage multiplied by (b) the gross revenues of Merchant during the prior period divided by (c) the number of business days in the prior period. Any reconciliation will extend or reduce the duration of the period over which the Purchased Amount is delivered.

1.4.2 In the event that Merchant desires a reconciliation of the Daily Remittance, Merchant shall make a formal written request for a reconciliation. Requests for reconciliation must be made by email and shall include a copy of Merchant's most recent bank statements or credit card processing statements as well as Merchant's account reports showing transactions in the month to date, or other documents or reports available to Merchant for the verification of its revenues. Email requests to FCG must be made to FCG at reconciliation@foxbusinessfunding.com, with the subject line "Request for Reconciliation." The reconciliation shall be made by FCG within two business days of notice being given and shall be effective as

of the date of the notice (such that any overpayment by Merchant after the date of the notice shall be credited to Merchant). Merchant shall not be in default if it does not have the amount of the higher Daily Remittance on account each day between making its request for reconciliation and FCG's reconciliation and adjustment of the debits through its payment processor, provided however that Merchant shall at the time of making the reconciliation request notify FCG that it has an insufficient balance and no other Event of Default has occurred. Merchant shall have the right to request a reconciliation as many times during the term of this Agreement as it deems proper, and FCG shall comply with each such request provided that: (i) each such request is made in accordance with the terms of Section 1.4; and (ii) if a request for reconciliation is made after the expiration of the term of this Agreement and, as the result of such reconciliation, the total amount actually debited by FCG will become less than the Purchased Amount, then and in such event the term of this Agreement shall automatically be extended until the time when the total amount actually debited pursuant to this Agreement shall become equal to the Purchased Amount.

1.4.3 Nothing set forth in Section 1.4 shall be deemed to prevent Merchant from requesting a stop or reduction to the Daily Remittances in the event of a material reduction or cessation of its Receipts.

1.5 Financial Condition

1.5.1 Merchant, each Owner and each Guarantor authorize FCG and its agents to investigate their financial responsibility and history, and will provide to FCG any authorizations, bank or financial statements, tax returns and other financial records as FCG deems necessary in its sole and absolute discretion prior to or at any time after execution of this Agreement through the Expiration Date. A photocopy of this Agreement and accompanying documents will be deemed as acceptable as an authorization for release of financial and credit information. FCG is authorized to update such information and financial and credit profiles from time to time as it deems appropriate. In addition to the authorizations set forth in Section 1.2 of this Agreement, Merchant authorizes all of its banks, brokers and processors to provide FCG with Merchant's banking, brokerage and/or credit card or other payment processing history to determine qualifications for this merchant cash advance transaction, compliance with this Agreement and for collections purposes. Notwithstanding Merchant's provision of its bank account log-in credentials, upon written request from FCG, Merchant shall provide FCG with copies of any documents related to Merchant's credit card processing activity or financial and banking affairs within five days.

1.5.2 Merchant represents that in entering this Agreement it previously disclosed to FCG (i) any and all bank, depository or other financial accounts currently maintained by Merchant for the purposes of Merchant's business including without limitation the Account, (ii) all current sources of Merchant's Receipts, revenues and receivables (including without limitation credit and debit card processors, electronic check or ACH processors, and customers or other third parties with significant accounts payable to Merchant), and (iii) all current sources of actual or potential financing, including without limitation, other merchant cash advance funders or lenders (all together, "Merchant's Financials"), and further represents that any documentation previously provided to FCG concerning Merchant's Financials is full, complete and accurate and has not omitted any of Merchant's Financials. Merchant acknowledges that FCG has relied upon such disclosures as a material consideration in entering into this Agreement. Following the Effective Date, it shall be a material breach of this Agreement for Merchant to without prior written permission from FCG (i) open another bank or credit card or payment processing account at a financial institution other than the bank at which the Account is located or the Processor, (ii) open another account at the bank at which the Account is located or with the Processor and into which account Merchant diverts its receivables or any portion thereof, or (iii) divert Merchants' receivables or any portion thereof from the Account to another bank account under the control of Merchant or a third-party

1.6 Indemnification. Merchant, each Owner and each Guarantor jointly and severally indemnify and hold harmless the Processor or the Merchant's bank at which the Account is located, or either of their officers, directors and shareholders, against all losses, damages, claims, liabilities and expenses (including reasonable attorneys' fees) incurred by Processor or the bank resulting from (a) claims asserted by FCG for monies owed to FCG from Merchant and (b) actions taken by Processor or the bank in reliance upon any fraudulent, misleading, or deceptive information or instructions provided by Merchant. Processor and the bank are third-party beneficiaries of this provision. Merchant and each Guarantor waive any right to seek indemnification or contribution from FCG for such losses.

1.7 No Liability. In no event will FCG be liable for any claims asserted by Merchant, any Owner or any Guarantor under any legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is waived by both Merchant, each Owner and each Guarantor. In the event that these claims are nonetheless raised, Merchant and each Guarantor will be jointly and severally liable for FCG's attorneys' fees and expenses resulting therefrom in accordance with Section 3.4. Further, the above notwithstanding, in no event will FCG's total liability to the Merchant for any claim or action exceed the amount of the Purchase Price.

1.8 Reliance on Terms. Sections 1.2, 1.3, 1.4, 1.5, 1.6 and 2.5 of this Agreement are agreed to for the benefits of Merchant, FCG, Processor and Merchant's bank, and, notwithstanding the fact that Processor and the bank are not parties to this Agreement, Processor and the bank may rely upon their terms and raise them as a defense in any action.

1.9 Sale of Receipts.

1.9.1 Notwithstanding any other provision of this Agreement, Merchant and FCG acknowledge and agree that the Purchase Price under this Agreement is in exchange for the Purchased Amount of Merchant's Receipts, and that such Purchase Price is not intended to be, nor shall it be construed, as a loan from FCG to Merchant. There is no interest rate or payment schedule in this Agreement. FCG has purchased and shall own all the Receipts described in this Agreement up to the full Purchased Amount as the Receipts are created, and the Receipts shall be held in the Account in trust in favor of FCG, and Merchant shall have no legal or equitable interest in the Purchased Amount of Receipts, except that so long as the Merchant is not in default, Merchant shall only be required to deliver the Daily Remittance each business day until the Purchased Amount is delivered in full. Remittances made to FCG in respect of the full amount of the Receipts shall be conditioned upon Merchant's sale of products and services, and the remittances therefor by or on behalf of Merchant's customers. FCG is a bona fide purchaser of the Purchased Amount for fair value. Merchant agrees that the Purchase Price equals the fair market value for the risk undertaken by FCG in consideration for the Purchased Amount of Merchant's Receipts. The parties intend for the sale of Receipts and not an assignment for security.

1.9.2 FCG agrees to purchase the Receipts knowing the risks that Merchant's business may slow down, go bankrupt or fail, and FCG assumes this risk based exclusively upon the information provided to it by Merchant and Merchant's business operations prior to the date of this Agreement, and upon Merchant's representations, warranties and covenants contained in this Agreement that are designed to give FCG a reasonable and fair opportunity to receive the benefit of its bargain. This sale of Receipts is made without express or implied warranty to FCG of collectability of the Receipts and without recourse against Merchant, any Owner or any Guarantor if Receipts are not generated in the regular course of Merchant's business operations or cannot be collected, except as specifically set forth in this Agreement. Thus, the period of time over which it will take FCG to collect the Purchased Amount is not fixed, is unknown to both parties as of the Effective Date and will depend on how well or poorly Merchant's business performs following the Effective Date. As an extreme example, in the event Merchant's business ceases to exist after FCG's

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purchase of the Receipts and prior to the delivery of the Purchased Amount as a result of a cessation of revenues for reasons outside Merchant's control, FCG may never collect all or a substantial portion of the Purchased Amount.

1.9.3. In no event shall the Purchased Amount, the aggregate of any amounts or any portion thereof be deemed as interest. It is the express intention of the parties that Merchant not pay or contract to pay, and that FCG not receive or contract to receive, directly or indirectly in any manner whatsoever, any amount deemed to be interest in excess of that which may be paid by Merchant under applicable law. As a result thereof, absent a modification agreed to in writing by Merchant, the Purchased Amount can never increase above the amount set forth on the first page of this Agreement.

1.9.4. In the event a court of competent jurisdiction finds this Agreement to be a loan or to require the payment of interest, despite the parties specifically representing that it does not require payment of interest, this Agreement shall be modified such that no sum charged or collected hereunder shall exceed the highest rate permissible by law. The rate in effect hereunder shall automatically be reduced to the maximum rate permitted by applicable law, and FCG shall promptly refund to Merchant any interest received by FCG in excess of the maximum lawful rate.

1.9.5. Merchant agrees that it will treat the Purchase Price and Purchased Amount in a manner consistent with a sale in its accounting records and tax returns and not as a loan. Merchant hereby waives any rights of privacy, confidentiality or taxpayer privilege in any litigation or arbitration arising out of this Agreement in which Merchant asserts that this transaction is anything other than a sale of future receipts.

1.9.6. Because the parties acknowledge and rely upon the lawfulness of this transaction under the laws of the State of Florida and the fairness of its terms, Merchant knowingly and willingly waives and is estopped from asserting any claim or defense of usury in any legal action or proceeding, whether based on Florida law or the law of any other jurisdiction.

1.9.7. FCG may request, and Merchant shall execute, a Deposit Account Control Agreement (DACA) for the Account in a form acceptable to Merchant's bank, by which Merchant shall grant non-invoked control of the Account to FCG, maintaining Merchant's access to the Account unless and until there is an Event of Default, at which FCG may invoke control of the Account.

1.9.8. In the event Merchant notifies that it is unable or unwilling to collect all or some of the Receipts, FCG shall have the right, without waiving any of its other rights and remedies under this Agreement, to notify the Processor, any other credit card or payment processor used by Merchant, or any third party having monies owed to Merchant for its sale or deliver of goods or services (including without limitation Merchant's customers), of the sale of the Specified Percentage of the Receipts under this Agreement, and to direct such credit card, payment processor or other third party to make payment to FCG of all or any portion of the amounts received by such credit card, payment processor or third party on behalf of Merchant. If no Event of Default has occurred, FCG shall remit back to Merchant the excess above the Specified Percentage of the Receipts that it collected pursuant to this paragraph within 2 business days of payment and shall provide a reconciliation in accordance with paragraph 1.4.

**1.10 Intentionally Omitted.**

1.11 **Collectability Covenants.** The following covenants are intended to ensure the collectability of the portion of the Receipts purchased by FCG as they are generated and shall not be construed as modifications of the above provisions that FCG has purchased only the Specified Percentage of the Receipts as a contingent purchase of receivables:

1.11.1. Merchant, without written notice to FCG, shall not: (a) take any action to discourage the use of electronic check or credit or debit card processing that is settled through Processor or the Account, or permits any event to occur that could have an adverse effect on the use, acceptance, or authorization of checks or other payments or deposits for the purchase of Merchant's services and products; (b) change its arrangements with Processor or the bank at which the Account is located in any way that is adverse or unacceptable to FCG; (c) change the processor through which the Receipts are settled from Processor to another processor, or permits any event to occur that could cause diversion of any of Merchant's check, credit card, debit card or deposit transactions to another processor.

1.11.2. Merchant without the written consent of FCG, shall not: (a) intentionally interrupt the operation of its business or transfer, move, sell, dispose, divert or otherwise convey its business and/or assets (including its customers or receivables) without (i) the express prior written consent of FCG, and (ii) the written agreement of any purchaser or transferee to assume all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to FCG; (b) take any action, fails to take any action, or offer any incentive (economic or otherwise) the result of which will be to induce any of Merchant's customers to pay for Merchant's goods or services with any means other than payments, checks or deposits that are settled through Processor or deposited in the Account or otherwise violates Section 2.7; (c) fail to remit its receivables into the Account; (d) opens another account at a financial institution other than the bank at which the Account is located, or opens another account at the bank at which the Account is located and into which account Merchant diverts deposit of its receivables or any portion thereof; (e) close the Account, block the Account or make any other material changes to the Account that would prevent FCG from debiting the Account in the manner agreed to in Section 1.2; or (f) purport to revoke the ACH authorization agreed to in Section 1.2.

1.11.3. Merchant shall not (a) block FCG's viewing access to the Account, including by changing its log-in credential or otherwise; (i) Merchant fails to provide financial documents or other information requested by FCG including, without limitation, copies of any documents related to Merchant's credit card or payment processing activity or financial and banking affairs (pursuant to Sections 1.2 and 1.5) within five days after a request from FCG.

1.12 **Protection of Information.** Merchant and each person signing this Agreement on behalf of Merchant and/or as Owner or Guarantor, in respect of himself or herself personally, authorize FCG to disclose information concerning Merchant's and each Owner's and each Guarantor's credit standing (including credit bureau reports that FCG obtains) and business conduct only to agents, affiliates, subsidiaries, funding partners and credit reporting bureaus. Merchant, each Owner and each Guarantor hereby waive to the maximum extent permitted by law any claim for damages against FCG or any of its affiliates relating to any (i) investigation undertaken by or on behalf of FCG as permitted by this Agreement, or (ii) disclosure of information as permitted by this Agreement.

**1.13 Intentionally Omitted.**

1.14 **Publicity.** Merchant, each Owner and each Guarantor all hereby authorize FCG to use its, his, or her name and logo in listings of clients and in advertising and marketing materials.

1.15 **D/B/A's.** Merchant hereby acknowledges and agrees that FCG may be using "doing business as" or "d/b/a" names or acting through authorized agents in connection with various matters relating to the transaction between FCG and Merchant, including the filing of UCC-1 financing statements and other notices or filings.

1.16 **Phone Recordings and Contact Authorized.** To the maximum extent permitted by law, Merchant agrees that any call between FCG and Merchant and their agents and employees may be recorded or monitored. Further, Merchant agrees that (i) it has an established business relationship with FCG, its employees and agents and that Merchant may be contacted from time-to-time regarding this or other business transactions; (ii) that such communications and contacts are not unsolicited or inconvenient; and (iii) that any such contact may be made at any phone number, email address or facsimile number given to FCG by the Merchant, its agents or employees, including cellular telephones. Merchant also agrees that FCG may use any other medium not prohibited by law, including but not limited to mail, e-mail, text

message and facsimile to contact Merchant. Merchant expressly consents to conduct business by electronic means.

1.17 **Applicable Fees and Closing Costs.** Merchant acknowledges that the applicable fees and closing costs (that is, such costs as are payable at the time of the execution of this Agreement) that may be charged by FCG are set forth in the Fee Schedule in the beginning of this Agreement and were subject to arms-length negotiation between Merchant and FCG. Merchant hereby agrees to pay the closing costs in full from the Purchase Price and authorizes FCG to apply a portion of the Purchase Price due to Merchant toward satisfaction of the closing costs by deducting the amount of the closing costs from the Purchase Price prior to delivering it to Merchant. For avoidance of doubt, the deduction of the closing costs from the Purchase Price shall not be deemed to be a reduction of the Purchase Price. Additionally, to the extent that Merchant has agreed to a broker fee with a third-party broker with respect to this Agreement (which is not a party hereto), Merchant hereby requests and agrees for FCG to withhold from the Purchase Price, and pay to the third-party broker associated with this Agreement, the professional service fee in the Fee Schedule contained at the beginning of this Agreement. Other than the fees listed in this Agreement, FCG is NOT CHARGING ANY ADDITIONAL FEES OR CLOSING COSTS to Merchant and if Merchant is charged by any other party for any fee not listed in this Agreement, such fee is not charged by FCG. Moreover, as since the funds delivered to merchant as part of the Purchase price must be used to ensure Merchant's continued success, Merchant warrants and covenants not to pay any fee and/or commission with regard to this transaction other than as provided for herein.

1.18 **Multiple Merchant Entities.** In the event the term "Merchant" (as used on page 1) is comprised of more than one entity, then the term "Merchant" as used in this Agreement shall mean all such entities, individually and collectively, each of which is an affiliate of all other such entities, that is such entity or any Owner or Guarantor controls, is under the control of, or has direct or indirect common ownership with the other entities, or any Owner or Guarantor. The representations, warranties, covenants, obligations and liabilities of each Merchant entity shall be joint and several under this Agreement. The liability of each Merchant entity under this Agreement shall be direct and immediate and shall not be conditional or contingent upon the pursuance of any remedies against any other person or entity, including any other Merchant entity. The Specified Percentage, Receipts, Daily Remittance, and Purchased Amount shall apply to each of the Merchant entities.

1.19 **Application of Amounts received by FCG.** FCG reserves the right to apply amounts received by it under this Agreement to any fees or other charges due to FCG from Merchant prior to applying such amounts to reduce the amount of any outstanding Purchased Amount.

**2. REPRESENTATIONS, WARRANTIES, AND COVENANTS**

Merchant, each Owner and each Guarantor represent, warrant and covenant that, as of this date and during the term of this Agreement:

2.1 **Financial Condition and Financial Information.** Merchant's, any Owner's or any Guarantor's bank and financial statements (copies of which have been furnished to FCG, and future statements which will be furnished hereafter at the request and discretion of FCG) fairly represent the financial condition of Merchant and each Guarantor at such dates, and since those dates there has been no material adverse changes, financial or otherwise, in such condition, operation, or ownership of Merchant. Merchant and each Guarantor have a continuing, affirmative obligation to advise FCG of any material adverse change in their financial condition, operations, or ownership.

2.2 **Governmental Approvals and Compliance.** Merchant is in compliance and, during the term of this Agreement, shall comply, with all laws and has and will maintain valid permits, authorizations and licenses to own, operate and lease its properties and to conduct the business in which it is presently engaged and/or will engage in hereafter. Merchant is not in default of, and will promptly pay, all necessary federal, state and local taxes, including but not limited to income, employment, sales and use taxes, imposed upon Merchant by law, and will maintain workers compensation insurance required by applicable governmental authorities.

2.3 **Authorization.** Merchant, the person(s) signing this Agreement on behalf of Merchant, and each Guarantor have full power and authority to incur and perform the obligations under this Agreement, all of which have been duly authorized. All organizational and other proceedings required to be taken by Merchant or each Guarantor to authorize the execution, delivery and performance of this Agreement have been taken.

2.4 **Insurance.** Merchant will maintain general liability and business-interruption insurance.

2.5 **Electronic Check Processing Agreement.** Merchant will not change its Processor, add terminals, change its financial institution or bank account(s) or take any other action that could have any adverse effect upon Merchant's obligations under this Agreement without FCG's prior written consent. Any such changes shall be a material breach of this Agreement.

2.6 **Change of Name or Location or Sale or Closing of Business.** Merchant, and any successor in interest of Merchant, will not conduct Merchant's businesses under any name other than as disclosed to FCG, nor shall Merchant change any of its places of business without prior written consent by FCG. Merchant will not sell, dispose, transfer or otherwise convey all or substantially all of its business or assets (including without limitation the Collateral or any portion thereof) without (i) the express prior written consent of FCG, and (ii) the written agreement of any purchaser or transferee assuming all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to FCG. Except as disclosed to FCG in writing, Merchant has no current plans to close its business either temporarily, whether for renovations, repairs or any other purpose, or permanently. Merchant shall not make or send notice of any intended bulk sale or transfer. Merchant agrees that until FCG has received all of the Purchased Amount, Merchant will not voluntarily close its business for renovations, repairs or any other purposes. This provision, however, does not prohibit Merchant from closing its business (i) if such closing is required to conduct renovations or repairs that are required by local ordinance or other legal order, such as from a health or fire inspector, or (ii) if otherwise forced to close by circumstances not reasonably in the control of Merchant. Prior to any closure, Merchant will provide FCG written notice as required by Section 3.5. In the event of a closure, Merchant shall cooperate with FCG and provide sufficient documentation to ascertain whether all or any part of the Purchased Amount may still be recovered.

2.7 **No Diversion of Future Receivables.** Merchant shall not cause a diversion of any portion of the Receipts from the Account or Processor without FCG's written permission, which permission shall not be unreasonably withheld. This provision is to ensure collectability of the portion of the Receipts purchased by FCG.

2.8 **Daily Batch Out.** Merchant will clear and settle Merchant's receivables with the Processor on a daily basis.

2.9 **Estoppel Certificate.** Merchant will at every and all times, and from time to time, upon at least one day's prior notice from FCG to Merchant, execute, acknowledge, and deliver to FCG and/or to any other person, firm or corporation specified by FCG, a statement certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and stating the dates which the Purchased Amount or any portion thereof has been delivered.

2.10 **No Pending or Contemplated Bankruptcy.** As of the date of this Agreement, Merchant is not insolvent and does not contemplate filing for bankruptcy in the next six months and has not consulted with a bankruptcy attorney or filed any petition for bankruptcy protection under Title 11 of the United States Code, or any other law for the relief of debtors, and there has been no involuntary petition brought

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or pending against Merchant. Merchant further warrants that it does not anticipate filing any such bankruptcy petition, and it does not anticipate that an involuntary petition will be filed against it.

2.11 **Unencumbered Receipts.** Merchant has good, complete, unencumbered and marketable title to all of Merchant's receivables, free and clear of any and all liabilities, liens, claims, changes, restrictions, conditions, options, rights, mortgages, security interests, equities, pledges, and encumbrances of any kind or nature whatsoever or any other rights or interests that may be inconsistent with the transactions contemplated with, or adverse to the interests of, FCG, except as provided in "Exhibit C", which contains true and correct information as to the names of all of Merchant's secured creditors and the amounts that Merchant owes to those creditors as of the Effective Date. As of the date hereof, Merchant is not engaged in negotiations either directly or through a broker for any other merchant cash advances or other transactions which would contemplate the sale or encumbrance of Merchant's receivables other than those listed in Exhibit C. To Merchant's, any Owner's or any Guarantor's knowledge, there are no litigations or other proceedings pending or awards entered against Merchant in any court or tribunal in any jurisdiction concerning Merchant's receivables and there are no outstanding executions or levies concerning Merchant's receivables. In the event Merchant, any Owner or any Guarantor learns that such a proceeding has been filed, it/they/he/she shall immediately provide notice of the proceeding to FCG, which notice shall include the title, forum and case number of the proceeding. Merchant indemnifies and holds harmless FCG for any and all damages and losses (including without limitation legal fees and expenses) incurred by FCG as the result of the representations in this paragraph being untrue, incorrect or incomplete.

2.12 **Business Purpose.** Merchant is a valid business in good standing under the laws of the jurisdiction(s) in which it/they is/are organized and/or operates. Merchant hereby acknowledges that it fully understands that (i) FCG's ability to collect the Purchased Amount (or any portion thereof) is contingent upon Merchant's continued operation of its business and successful generation of the Receipts until the Purchased Amount is delivered to FCG in full, and (ii) that in the event of decreased efficiency or total failure of Merchant's business, FCG's receipt of the full or any portion of the Purchased Amount may be delayed indefinitely. Based on the foregoing, Merchant is entering into this Agreement for the benefit and advancement of Merchant's business operations, and will use the Purchase Price exclusively for the benefit and advancement of Merchant's business operations and will not use any portion of the Purchase Price for any other purpose, including but not limited to consumer, personal, family or household purposes.

2.13 **Defaults under Other Contracts.** Merchant's execution of, and/or performance under this Agreement, will not cause or create an event of default by Merchant under any contract with another person or entity, including without limitation any other merchant cash advance provider or any other creditor.

2.14 **Good Faith.** Merchant is receiving the Purchase Price and selling FCG the Purchased Amount in good faith and will use the Purchase Price funds to maintain and grow Merchant's business. Merchant is not actively working with or being instructed by any debt relief consultant or debt relief attorneys and will not use the Purchase Price to either pay the fees of such consultants or attorneys or pay down prior loans or receipt purchase transactions. Nothing herein limits Merchant's, any Owner's or any Guarantor's right to seek the advice of an independent attorney or financial consultant to advise them with respect to this Agreement.

2.15 **Stacking Prohibited.** Merchant shall not enter into any merchant cash advance, factoring or loan agreement that relates to or involves Merchant's future receivables with any party other than FCG at any time prior to the Expiration Date without (i) written consent of FCG and (ii) the written agreement of the funder or lender to either deliver the Outstanding Purchased Amount to FCG prior to providing funding to Merchant in accordance with paragraph 1.3, or to guaranty all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to FCG. In the event Merchant violates this provision, in addition to any other rights or remedies under this Agreement, FCG may without prior notice to Merchant or declaring Merchant to be in default: (a) assess against Merchant the stacking fee set forth in Appendix A, and/or (b) receive the benefits granted under such subsequently entered transaction, for example in the event that the daily payment (or, if payments are not made daily, the average amount owed for each business day of the payment term) or buy rate (that is the discount rate of the purchase price from the amount of receivables purchased) under such subsequently entered transaction is higher than the Daily Remittance or buy rate hereunder, FCG may either raise the Daily Remittance to an amount that is equal to the amount of such daily payment or raise the buy rate to be equal to the buy rate by which the other funder purchased Merchant's receivables. The remedies hereunder are cumulative and in addition to other remedies available to FCG under this Agreement. Further, FCG may share information regarding this Agreement with any third party in order to determine whether Merchant is in compliance with this provision.

2.16 **No Confessions of Judgment.** Until the Expiration Date, Merchant shall not enter into any affidavits of confession of judgment, or execute a document containing a confession of judgment, with any party without FCG's prior written consent.

2.17 **Protections.** In the event of a misrepresentation or violation of any provision of this Article 2, in addition to any other remedy under this Agreement, FCG may invoke any of the protections listed in paragraph 1.11 hereof immediately and without notice to Merchant.

**3. EVENTS OF DEFAULT AND REMEDIES**

3.1 **Events of Default.** Without limitation of any other default provision of this Agreement, the occurrence of any of the following events shall constitute an "Event of Default" hereunder:

- 1) Merchant violates or causes a violation of any of the covenants listed in paragraph 1.11;
- 2) Merchant violates any term or covenant in this Agreement
- 3) Any representation or warranty by Merchant, any Owner or any Guarantor in this Agreement was incorrect, false, or misleading in any material respect when made;
- 4) The sending of notice of termination by Merchant or Merchant giving verbal notification to FCG of its intent to breach this Agreement;
- 5) On five or more occasions, Merchant fails to give FCG advance notice that there will be insufficient funds in the Account such that the ACH of the Daily Amount will not be honored by Merchant's bank and does not notify FCG within two days of Merchant's bank sending notice to Merchant of the rejected debit, provided Merchant has not requested a reconciliation in accordance with paragraph 1.4 and fails to reasonably respond to FCG's communications seeking to ascertain the circumstances of the insufficient funds;
- 6) Merchant fails to supply all requested financial documentation and allow for daily monitoring of its bank account;
- 7) Merchant changes its Processor in violation of the terms of paragraph 2.5;
- 8) Merchant transfers or sells all or substantially all of its assets without prior notice and written approval from FCG;
- 9) Merchant makes or sends notice of any intended bulk sale or transfer by Merchant;
- 10) Merchant's bank returns a code other than Not Sufficient Funds (NSF) when declining FCG's attempts to debit Merchant's account, except if the code indicates that a debit is declined because of an act of the bank or a third-party outside of Merchant's control or through no act of Merchant or if merchant gave timely notice that the Account has or will have insufficient funds such that the ACH of the Daily Amount will not be honored by Merchant's bank and has not requested a reconciliation request in accordance with paragraph 1.4;

11) Merchant defaults under any of the terms, covenants, and conditions of any other agreement with FCG, including without limitation the below Pledge of Security and Guaranty;

12) Any person or entity files a litigation or proceeding or enters a judgment concerning or claiming ownership of Merchant's receivables in any court or tribunal in any jurisdiction (unless Merchant disclosed the same to FCG prior to entering this Agreement and it is listed on Exhibit D); or

13) Merchant applies for, or enters into an agreement for, another form of financing that effects FCG's rights under the Pledge of Security (Section 4 below) without the prior written consent of FCG.

3.2 **Guaranty.** In an Event of Default, FCG may enforce its rights against any Guarantor of this transaction in accordance with the below Guaranty.

3.3 **Remedies.** In case any Event of Default occurs and is not waived pursuant to Section 6.4. hereof, FCG shall have the right to declare the full uncollected Purchased Amount plus any fees due under this Agreement (plus reasonable attorneys' fees and costs incurred in collection) due and payable immediately. FCG may enforce any rights and remedies under this Agreement through the following procedures: (a) FCG may enforce the provisions of the below Pledge of Security (b) FCG may enforce the provisions of the below Guaranty; (c) FCG may debit Merchant's depository accounts wherever situated by means of ACH debit for any amounts owed; (d) FCG may proceed to enforce its rights and remedies under this Agreement by lawsuit or arbitration (and in such action or proceeding will be entitled to an award of attorneys' fees and costs in accordance with Section 3.4), which may be a suit in equity or by action at law, or both, whether for the specific performance of any covenant, agreement or other provision contained herein, or to enforce any obligations in this Agreements (including without limitation the Pledge of Security and Guaranty), or any other legal or equitable right or remedy. All rights, powers, and remedies of FCG in connection with this Agreement may be exercised at any time by FCG after the occurrence of an Event of Default, in any order, and are cumulative and not exclusive, and shall be in addition to any other rights, powers, or remedies provided by law or equity.

3.4 **Attorneys' Fees and Costs.** Merchant and each Guarantor must pay all of FCG's reasonable attorneys' fees and costs associated with (i) any breach by Merchant or any Guarantor of the covenants of this Agreement and enforcement thereof, (ii) any Event of Default, (iii) and exercise by FCG of its rights and remedies under this Agreement, or (iv) any suit, action or proceeding between FCG and Merchant or any Guarantor, arising out of or relating to this Agreement or the transactions contemplated hereby, whether commenced by FCG or by Merchant or any Guarantor, and whether brought in court or in arbitration or in any proceeding to confirm or vacate an arbitration award. FCG shall be entitled, without limitation, to collection agency fees or attorneys' fees (which may include a contingency fee of up to thirty-three percent (33%) of the outstanding Purchased Amount as of the earlier of an Event of Default or the commencement of such proceeding), expert witness fees and costs of suit. FCG shall further be entitled to an award of costs and fees incurred by FCG on any appeal and in making an application for costs and fees (so-called "fees on fees").

3.5 **Equitable Remedies.** Without limitation of any other provision in this Agreement, in the event that Merchant or any Guarantor breach or threaten to breach any of the covenants, representations and warranties in this Agreement, Merchant and each Guarantor hereby consent and agree that FCG shall be entitled to the ex parte (without advanced notice) entry of a preliminary or permanent injunction, temporary restraining order, prejudgment attachment or other equitable relief, including without limitation to protect against such breach or threatened breach, from any court of competent jurisdiction, without the necessity of showing any actual damages or that monetary damages would not afford an adequate remedy, and without the necessity of posting any bond or other security with respect to obtaining or continuing any injunction or temporary restraining order. Further, Merchant and each Guarantor release FCG from, and waive any claim for, damages that may result to Merchant and each Guarantor from FCG obtaining any equitable relief pursuant to this Agreement. If a bond or other security is required, Merchant and each Guarantor consent that its damages would be de minimis and that the amount of the bond or security shall be no more than \$500. Merchant and each Guarantor consent to pay the amount of \$15,000 as liquidated damages, and not as a penalty, for FCG's successful application for injunctive relief under this paragraph, which the parties agree is a reasonable estimate of the costs for such an application (which shall not be a limitation on the overall amount of attorneys' fees and costs FCG shall be entitled to recover in any action). The amount of liquidated damages shall be awarded to FCG upon prevailing on the initial application for injunctive relief, without the need for FCG to prevail in the ultimate judgment in the proceeding, and Merchant and each Guarantor consents to the court or tribunal including the liquidated amount in the total amounts of any assets to be stayed or attached pursuant to its order granting equitable relief. Merchant and each Guarantor agree that the aforementioned equitable relief shall not diminish any other right or remedy that FCG may have at law or in equity to enforce the provisions of this Agreement. Merchant and each Guarantor agree that any such equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages or other available forms of relief

3.6 **Required Notifications.** Without limitation of any of Merchant's other obligations under this Agreement, Merchant is required to give FCG written notice (a) within 24 hours of any filing under Title 11 of the United States Code or any other law for the protection of debtors, and (b) at a commercially reasonable (but no less than seven days' time) prior to FCG closing or slowing down its business or transferring, moving, selling, disposing, diverting or otherwise conveying its business and/or assets (including its customers or receivables).

3.7 **Waiver of Separate Entity Rule.** Merchant and each Guarantor waive, to the maximum extent permitted by law, the separate entity rule, such that any notice, demand, lien, levy, prejudgment attachment, postjudgment attachment, turnover order, restraining notice or other process served upon any branch, department or unit of Merchant's or any Guarantor's bank, third-party payor, account debtor or other garnishee shall be deemed served regardless of the branch, department or unit served anywhere in the world, and will subject to attachment or collection any and all assets or other interests held by or for the benefit of Merchant or any Guarantor, regardless of the location of the assets or other interests anywhere in the world.

**4. PLEDGE OF SECURITY**

4.1 **Security Interest.** As security for the performance of any and all liabilities, obligations, covenants or agreements of Merchant under this Agreement (and any future amendments of this Agreement, if any), Merchant hereby pledges to FCG a security interest in and lien ("Pledge") upon: all accounts and proceeds as those terms are defined in the Uniform Commercial Code (the "Collateral"). This Pledge will secure all of FCG's rights under this Agreement and any other agreements now existing or later entered into between Merchant, FCG or an affiliate of FCG. With respect to such Pledge, FCG will have all rights afforded under the UCC, any other applicable law and in equity. Merchant will obtain from FCG written consent prior to granting a security interest of any kind in the Collateral to a third party and any such grant of a security interest without FCG's written consent shall be null and void. Merchant acknowledges and agrees that any security interest granted to FCG under any other agreement between Merchant, any Owner or any Guarantor and FCG will secure the obligations under this Agreement. Merchant agrees to execute any documents or take any action in connection with this security interest as FCG deems necessary to perfect or maintain FCG's first priority security interest in the Collateral, including the execution of any account control agreements. Merchant hereby authorizes FCG to file any financing statements deemed necessary or desirable by FCG to perfect or maintain FCG's security interest without prior notice to Merchant. FCG is authorized to execute all such instruments and documents in Merchant's and each Guarantor's name. The UCC filing may state that such sale is intended to be a sale and not an assignment for security and may state that the Merchant is prohibited from obtaining any financing that

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impairs the value of the Receipts or FCG's right to collect same. Merchant acknowledges and agrees that FCG's rights pursuant to this Pledge of Collateral and/or as set forth in any UCC statements filed by FCG shall survive and be incorporated into any judgment FCG may obtain against the Merchant in connection with this Agreement.

**4.2 Remedies.** Upon any Event of Default, FCG may pursue any remedy available at law (including those available under the provisions of the UCC), or in equity to collect, enforce or satisfy any obligations then owing to FCG against the Collateral. This Pledge may be exercised by FCG without notice or demand of any kind by making an immediate withdrawal or freezing the Collateral. FCG shall have the right to notify account debtors at any time. Pursuant to Article 9 of the UCC, as amended from time to time, FCG has control over and may direct the disposition of the Collateral without further consent of Merchant. Merchant hereby represents and warrants that no other person or entity has a security interest in the Collateral (unless disclosed in **Exhibit C**). Merchant and each Guarantor agree not to create, incur, assume, or permit to exist, directly or indirectly, any lien on or with respect to any of the Collateral, as applicable. Merchant shall be liable for, and FCG may charge and collect, all costs and expenses, including but not limited to attorneys' fees, which may be incurred by FCG in protecting, preserving and enforcing FCG's security interest and rights.

**4.3 Termination of Pledge.** Upon the full performance by Merchant of Merchant's obligations under this Agreement, the security interest in the Collateral shall automatically terminate without any further act of either party being required, and all rights to the Collateral shall revert to Merchant. Upon any such termination, FCG will execute, acknowledge (where applicable) and deliver such satisfactions, releases and termination statements, as Merchant shall reasonably request.

**4.4 Representations with Respect to Collateral.** Merchant hereby represents and warrants to FCG that the execution, delivery and performance by Merchant of this Pledge and the remedies in respect of the Collateral under this Agreement (i) have been duly authorized; (ii) do not require the approval of any governmental authority or other third party or require any action of, or filing with, any governmental authority or other third party to authorize same (other than the filing of the UCC-1s); and (iii) do not and shall not (a) violate or result in the breach of any provision of law or regulation, any order or decree of any court or other governmental authority, and/or (b) violate, result in the breach of or constitute a default under or conflict with any indenture, mortgage, deed of trust, agreement or any other instrument to which Merchant is a party or by which any of Merchant's assets (including, without limitation, the Collateral) are bound.

**4.5 Further Assurances.** Upon the request of FCG, Merchant, at Merchant's sole cost and expense, shall execute and deliver all such further UCC-1s, continuation statements, assurances and assignments of the Collateral and consents with respect to the pledge of the Collateral and the execution of this Pledge, and shall execute and deliver such further instruments, agreements and other documents and do such further acts and things, as FCG may request in order to more fully effectuate the purposes of this Pledge and the assignment of the Collateral and obtain the full benefits of this Pledge and the rights and powers herein created, and authorizes FCG to make such filings and do such other acts as it deems necessary or desirable to perfect and maintain its security interest.

**4.6 Acknowledgment.** For avoidance of doubt, this Pledge is made for the purpose of securing Merchant's performance of its obligations to FCG and shall not (i) permit FCG to collect the Purchased Amount in the event that Merchant itself is not required to remit it, such as for the reasons set forth in Section 1.9.2. of this Agreement, or (ii) otherwise affect the contingent nature of this transaction.

**5. GUARANTY OF PERFORMANCE**

**5.1 Guaranty.** As an additional inducement for FCG to enter into this Agreement, each Guarantor hereby provides FCG with this "Guaranty". Each Guarantor hereby irrevocably, absolutely and unconditionally guarantees to FCG prompt, full, faithful and complete performance of Merchant's obligations under this Agreement and each Guarantor unconditionally covenants to FCG that if an Event of Default shall at any time be made by Merchant, each Guarantor shall well and truly perform (or cause to be performed) such obligations and pay all damages and other amounts stipulated in this Agreement with respect to the non-performance of Merchant's obligations, or any of them (collectively, the "Guaranteed Obligations"). The Guaranteed Obligations are due at the time of any breach by Merchant of any representation, warranty, or covenant made by Merchant in this Agreement. For avoidance of doubt, this Guaranty is made for the purpose of securing performance of Merchant's obligations to FCG and, (i) no Guarantor shall be liable to remit the Purchased Amount in the event that Merchant itself is not required to do so, such as for the reasons set forth in Section 1.9.2. of this Agreement, and (ii) this Guaranty does not otherwise affect the contingent nature of this transaction.

**5.2 No Notice.** FCG does not have to notify Guarantor of any of the following events, and Guarantor will not be released from its obligations under this Guaranty if it is not notified of: (i) Merchant's failure to timely remit any amount required under this Agreement; (ii) any adverse change in Merchant's financial condition or business; (iii) any sale or other disposition of any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations; (iv) FCG's acceptance of this Guaranty; and (v) any renewal, extension, or other modification of this Agreement or Merchant's other obligations to FCG. In addition, FCG may take any of the following actions without releasing Guarantor from any of its obligations under this Guaranty: (i) renew, extend, or otherwise modify this Agreement or Merchant's other obligations to FCG; (ii) release Merchant from its obligations to FCG or settle with Merchant; (iii) sell, release, impair, waive, or otherwise fail to realize upon any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations; and (iv) foreclose on any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations in a manner that impairs or precludes the right of Guarantor to obtain reimbursement for payment under this Guaranty.

**5.3 Guarantor's Obligations Severable.** In the event of a breach of this Agreement, FCG may seek recovery from each Guarantor for all of FCG's losses and damages (including without limitation any right to recover costs, attorneys' fees or other amounts as set forth in this Agreement) for the enforcement of FCG's rights under this Guaranty without first seeking to obtain payment from Merchant or any other Guarantor. Merchant and any other guarantor are not necessary parties to any litigation brought under this Guaranty.

**5.4 Guarantor Waiver of Rights.** Until the Purchased Amount and Merchant's other obligations to FCG under this Agreement are paid in full, Guarantor shall not seek reimbursement from Merchant or any other guarantor for any amounts paid by it under this Guaranty. Guarantor permanently waives and shall not seek to exercise any of the following rights that it may have against Merchant, any other guarantor, or any collateral provided by Merchant or any other guarantor, for any amounts paid by it, or acts performed by it, under this Guaranty: (i) subrogation, (ii) reimbursement, (iii) performance, (iv) indemnification or (v) contribution. Each Guarantor knowingly and willingly waive(s) any claims or affirmative defenses that might otherwise be available to Merchant, including without limitation bad faith, unjust enrichment, usury, duress, unconscionability, unfair business practices, consumer protection statutes, champerty, contract of adhesion or fraud (including fraud in the inducement of this Guaranty), except for the defense of payment.

**5.5 Multiple Guarantors.** In the event "Guarantor" (as defined on page 1 of this Agreement) is comprised of more than one individual, then: (i) the term "Guarantor" shall mean, individually and collectively, all such individuals; (ii) each Guarantor is an affiliate of all other Guarantor(s); (iii) the representations, warranties, covenants, obligations and liabilities of each Guarantor shall be joint and several under this Agreement; (iv) the liability of each Guarantor under this Agreement shall be direct and immediate and shall not be conditional or contingent upon the pursuance of any remedies against any

other person or entity; and (v) FCG may pursue its rights and remedies under this Agreement against any one or any number of individuals that constitute Guarantor without obligation to assert, prosecute or exhaust any remedy or claim against any other Guarantor or Merchant.

**5.6 Guarantor Acknowledgement.** Each Guarantor acknowledges that he/she/it: (i) is an owner, officer or manager of Merchant and/or will benefit from Merchant and FCG entering into this Agreement; (ii) irrevocably, absolutely and unconditionally guarantees to FCG performance of all of the obligations of Merchant under this Agreement; (iii) is bound by the Jury Trial and Class Action Waiver provisions below; (iii) understands the seriousness of the provisions of this Guaranty; (iv) has had a full opportunity to consult with counsel of his/her/ its choice; and (v) has consulted with counsel or has decided not to avail himself/herself/itself of that opportunity.

**6. MISCELLANEOUS**

**6.1 Modifications.** No modification, amendment, waiver or consent of any provision of this Agreement shall be effective unless the same shall be in writing and signed by Merchant and FCG. The parties may enter into one or more written addendums to this Agreement (in addition to any exhibits) that modify, clarify or supplement the terms of this Agreement.

**6.2 Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of Merchant, FCG, and their respective successors and assigns. FCG may assign, transfer or sell its rights to receive the Purchased Amount or delegate its duties hereunder, either in whole or in part, with or without prior written notice to Merchant. Merchant may not assign, transfer or sell its rights or obligations under this Agreement without an express written modification of this Agreement.

**6.3 Notices.** Except as otherwise provided herein, all notices, requests, consents, demands, and other communications hereunder shall be delivered (i) to FCG, by email to [underwriting@foxbusinessfunding.com](mailto:underwriting@foxbusinessfunding.com) or fax to 866-557-0455, or (ii) to Merchant or Guarantor, by email, fax or mail at the contact information set forth in this Agreement. Merchant and each Guarantor shall promptly notify FCG of any change to its contact information. Notices to FCG shall become effective only upon receipt by FCG. Notices to Merchant and any Guarantor shall be effective when sent by email or fax, or three days after mailing.

**6.4 Waiver of Remedies.** No failure on the part of FCG to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided hereunder are cumulative and not exclusive of any remedies provided by law or equity.

**6.5 Governing Law, Venue, and Jurisdiction.** This Agreement, and any dispute arising out of or relating to this Agreement or the parties' relationship, shall be governed by and construed in accordance with the laws of the State of Florida, without regard to any applicable principles of conflicts of law. Any suit, action, or proceeding arising out of or relating to this Agreement or the transaction contemplated herein or the interpretation, performance, or breach hereof, shall be instituted in any state court sitting in the State of Florida (the "Acceptable Forums"), provided that FCG may institute suit in another forum. Merchant, each Guarantor and each Owner agree that the Acceptable Forums are convenient to them, and submit to the personal jurisdiction of the Acceptable Forums and waive any and all objections to jurisdiction or venue in the Acceptable Forums. Should a proceeding be initiated by Merchant, any Guarantor or any Owner in any other forum, Merchant, each Guarantor and each Owner waives any right to oppose any motion or application made by FCG to dismiss such proceeding, to remove and/or transfer the proceeding to an Acceptable Forum, and for an anti-suit injunction against such proceeding (which FCG may make in the Acceptable Forums). ADDITIONALLY, MERCHANT, EACH OWNER AND EACH GUARANTOR WAIVE PERSONAL SERVICE OF ANY SUMMONS AND/OR COMPLAINT OR OTHER PROCESS TO COMMENCE ANY LITIGATION AND AGREE THAT SERVICE OF SUCH DOCUMENTS SHALL BE EFFECTIVE AND COMPLETE IF SENT BY PRIORITY MAIL OR FIRST CLASS MAIL TO THE MAILING ADDRESS(ES) SET FORTH FOR MERCHANT ABOVE, AND EMAILED TO THE EMAIL ADDRESS, LISTED ON PAGE 1 OF THIS AGREEMENT OR THE UPDATED MAILING AND EMAIL ADDRESS IN ACCORDANCE WITH PARAGRAPH 6.3. SERVICE SHALL BE EFFECTIVE AND COMPLETE 5 DAYS AFTER THE MAILING. MERCHANT WILL THEN HAVE 30 CALENDAR DAYS AFTER SERVICE IS COMPLETE IN WHICH TO APPEAR IN THE ACTION OR PROCEEDING.

**6.6 Statute of Limitations.** Merchant, Owner and each Guarantor agree that notwithstanding any other statute of limitations or repose or tolling under state or federal law (including any statute permitting equitable recoupment), there shall be a one (1) year statute of limitations from the date of accrual of a cause of action or defense with respect to the filing or interposing of any claim, defense suit, action or proceeding by Merchant, Owner and any Guarantors that arises out of or relates to this Agreement, the transaction contemplated herein, or the interpretation, performance of breach hereof. If such a claim is filed more than one (1) year after accrual it shall be time-barred, regardless of the nature of the cause of action. This provision does not apply to claims by FCG against Merchant, Owner or any Guarantor.

**6.7 Survival of Representations.** All representations, warranties, and covenants herein shall survive the execution and delivery of this Agreement and shall continue in full force until all obligations under this Agreement shall have been satisfied in full and this Agreement shall have terminated.

**6.8 Interpretation.** This Agreement embodies the arms-length negotiation and mutual agreement between the parties and shall not be construed against any party as having been drafted by such party. As such, the parties further agree that this Agreement has been jointly drafted, so that in the event any portion, word, clause, phrase, sentence, or paragraph of this Agreement is deemed ambiguous, said ambiguity shall not be construed against any of the parties.

**6.9 Severability.** In case any of the provisions in this Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of any other provision contained herein shall not in any way be affected or impaired. Any provision hereof prohibited by law shall be ineffective only to the extent of such prohibition without invalidating the remaining provisions hereof.

**6.10 FCG's Consent.** Merchant agrees that in every instance in which Merchant's rights under this Agreement are contingent upon first obtaining FCG's consent, such consent may be withheld, granted or conditioned at FCG's sole and absolute discretion. For avoidance of doubt, this discretion does not apply to FCG's obligation to provide a reconciliation to Merchant under Section 1.4.1-1.4.2.

**6.11 Consultation.** Merchant represents that it is a business operated by one or more experienced business persons. The person(s) authorized to make management and financial decisions on behalf of Merchant with respect to this Agreement either (i) have such knowledge, experience and skill in financial and business matters in general and with respect to transactions of a nature similar to the one contemplated by this Agreement so as to be capable of evaluating the merits and risks of, and making an informed business decision with regard to, Merchant entering into this Agreement, or (b) have consulted with such other persons as are capable of advising Merchant with respect to the transaction. Such person (s): (i) has read and fully understands the content of this Agreement; (ii) has received all information that such persons deemed necessary to make an informed decision with respect to a transaction contemplated by this Agreement; and (iii) has had unrestricted opportunity to make such investigation as such person desired pertaining to the transaction contemplated by this Agreement and to verify any such information furnished to him or her by FCG. In the event such person(s) has not done any of the foregoing, he or she has knowingly and intentionally waived the opportunity to do so.

**6.12 Entire Agreement.** This Agreement (including any exhibits or addendums) embodies the entire agreement between Merchant, each Guarantor and each Owner and FCG and supercedes all prior agreements, understandings or oral or written representations relating to the subject matter hereof.

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Merchant each Guarantor and each Owner represent that they have no inducements, representations, or promises by FCG, anyone acting on FCG's behalf, or any broker that may have solicited each Guarantor and each Owner to enter into this or any other agreement, other than as expressly set forth herein. No course of performance or other conduct subsequently pursued or acquiesced in, and no oral agreement or representation subsequently made, by FCG, anyone acting on its behalf, or any broker, whether or not relied or acted upon, and no usage of trade, whether or not relied or acted upon, shall amend this Agreement or impair or otherwise affect Merchant's, each Guarantor's and each Owner's obligations pursuant to this Agreement or any rights and remedies of the parties hereto.

6.13 **JURY TRIAL WAIVER.** THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION, OR PROCEEDING ON ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OF THE TRANSACTION CONTEMPLATED HEREIN. THE PARTIES HERETO ACKNOWLEDGE THAT EACH MAKES THIS WAIVER KNOWINGLY, WILLINGLY AND VOLUNTARILY AND WITHOUT DURESS, AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH THEIR ATTORNEYS.

6.14 **CLASS ACTION WAIVER.** TO THE EXTENT PERMITTED BY LAW, THE PARTIES AGREE THAT ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OF THE TRANSACTION CONTEMPLATED (INCLUDING WITHOUT LIMITATION ANY ARBITRATION IN ACCORDANCE WITH SECTION 6.15) MUST BE PURSUED ON AN INDIVIDUAL BASIS ONLY. THE PARTIES WAIVE ANY RIGHT TO COMMENCE OR BE A PARTY TO ANY CLASS, COLLECTIVE, REPRESENTATIVE OR MASS ACTION OR PROCEEDING OR TO BRING JOINTLY OR COLLECTIVELY ANY CLAIM. TO THE EXTENT MERCHANT IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST FCG, THE PARTIES AGREE THAT: (1) MERCHANT SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS, COLLECTIVE OR REPRESENTATIVE ACTION; AND (2) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS, COLLECTIVE OR REPRESENTATIVE ACTION.

6.15 **ARBITRATION.** FCG HAS THE RIGHT TO REQUEST THAT ANY DISPUTE, CONTROVERSY OR CLAIM BETWEEN FCG AND MERCHANT, ANY GUARANTOR OR ANY OWNER, WHETHER ARISING OUT OF OR RELATING TO THE CONSTRUCTION AND INTERPRETATION OF THIS AGREEMENT OR OTHERWISE (INCLUDING WITHOUT LIMITATION CLAIMS FOR FRAUD, MISREPRESENTATION, INTENTIONAL TORT, NEGLIGENT TORT OR UNDER ANY LOCAL, STATE OR FEDERAL STATUTE OR RULE), BE SUBMITTED TO ARBITRATION BEFORE EITHER (I) THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS COMMERCIAL RULES, OR (II) MEDIATION AND CIVIL ARBITRATION INC. D/B/A RAPIDRULING ([WWW.RAPIDRULING.COM](http://WWW.RAPIDRULING.COM)) IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES. THE ARBITRATION SHALL BE

GOVERNED BY THE FEDERAL ARBITRATION ACT. THE ARBITRATION SHALL BE DEEMED TO BE LOCATED IN BROWARD COUNTY, FLORIDA, REGARDLESS OF THE LOCATION OF THE PARTIES OR ARBITRATOR. TO THE EXTENT PERMITTED BY THE ARBITRATOR RULES, THE ARBITRATION PROCEEDINGS SHALL PROCEED VIRTUALLY OR REMOTELY AND SHALL NOT REQUIRE THE PARTIES TO APPEAR IN-PERSON. ALL QUESTIONS CONCERNING ARBITRABILITY OF ANY DISPUTE SHALL BE DECIDED BY THE ARBITRATOR. FCG MAY DEMAND THAT SUCH DISPUTE BE SUBMITTED TO ARBITRATION EITHER BY (I) SENDING A WRITTEN NOTICE OF INTENT TO ARBITRATE TO ALL OTHER PARTIES IN ACCORDANCE WITH THE NOTICE PROVISION IN PARAGRAPH 6.5 OF THIS AGREEMENT, OR (II) SENDING A WRITTEN NOTICE OF INTENT TO ARBITRATE TO THE ATTORNEY OF RECORD FOR MERCHANT, ANY GUARANTOR OR ANY OWNER WHO HAS BROUGHT ANY ACTION OR PROCEEDING BEFORE ANY COURT OR TRIBUNAL AGAINST FCG. INITIALLY, THE PARTIES WILL SPLIT THE ARBITRATION FILING FEE, ADMINISTRATION FEE AND ARBITRATOR FEE. IF FCG PREVAILS IN ARBITRATION, THE ARBITRATOR MAY AWARD TO FCG ITS ATTORNEYS' FEES (IN ACCORDANCE WITH PARAGRAPH 4.4 OF THIS AGREEMENT) AND SHARE OF THE ARBITRATION FILING FEE, ADMINISTRATION FEE AND ARBITRATOR FEE. MERCHANT, ANY GUARANTOR AND ANY OWNER MAY OPT OUT OF THIS ARBITRATION PROVISION BY SENDING FCG A NOTICE THAT HE, SHE OR IT DOES NOT WANT THIS PROVISION TO APPLY IN ACCORDANCE WITH PARAGRAPH 6.3 WITHIN 14 DAYS AFTER THE EFFECTIVE DATE OF THIS AGREEMENT.

6.16 **ACKNOWLEDGEMENT.** EACH OF THE PARTIES ACKNOWLEDGES THAT IT: (I) HAS READ THIS AGREEMENT AND FULLY UNDERSTANDS THE CONTENTS AND LEGAL EFFECTS THEREOF; (II) HAS BEEN GIVEN A REASONABLE AMOUNT OF TIME TO CONSIDER THIS AGREEMENT; (III) HAS BEEN ADVISED TO SEEK COUNSEL AS TO THE MEANING AND CONSEQUENCES OF THIS AGREEMENT; (IV) HAS BEEN SO ADVISED BY COUNSEL TO THE MEANING AND CONSEQUENCES OF THIS AGREEMENT OR HAS VOLUNTARILY WAIVED PROCUREMENT OF COUNSEL; (V) DESIRES TO ENTER INTO THIS AGREEMENT AND IS DOING SO KNOWINGLY, VOLUNTARILY AND WITHOUT COERCION OR DURESS; AND (VI) HAS NOT RELIED ON ANY REPRESENTATIONS, PROMISES, OR AGREEMENTS OF ANY KIND MADE TO HIM, HER OR IT IN CONNECTION WITH HIS, HER OR ITS DECISION TO ACCEPT AND SIGN THIS AGREEMENT EXCEPT THOSE EXPRESSLY SET FORTH IN THIS DOCUMENT.

6.17 **Facsimile & Digital Acceptance.** This Agreement can be signed in one or more counterparts, each of which shall constitute an original and all of which when taken together, shall constitute one and the same agreement. Facsimile, email, PDF or digital signatures hereon shall be deemed acceptable for all purposes. This Agreement shall be valid and in force even if it is not initialed.

In witness whereof, the parties have executed this Agreement as of the date first listed above.

FOR ONE EATEROC INCORPORATED

DocuSigned by:  
B *Connie B Hassanien*  
N AEC52E1D8C8B4F1

Title: President

Fox Capital Group, Inc.

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

GUARANTOR #1

DocuSigned by:  
B *Connie B Hassanien*  
N AEC52E1D8C8B4F1

### Fox Capital Group, Inc.

P: (800) 895-4424 | F: 866-557-0455 | underwriting@foxbusinessfunding.com

#### EXHIBIT A – AUTHORIZATION FOR DIRECT DEPOSIT (ACH CREDIT) AND DIRECT PAYMENTS (ACH DEBITS)

#### DEFINITIONS

**FCG:** Fox Capital Group, Inc.

**Merchant (Legal Name):** ONE FAT FROG, INCORPORATED and entities appearing on Exhibit “E”

**Merchant Agreement:** Secured Merchant Agreement between FCG and Merchant, dated March 13, 2023

#### Designated Checking Account:

Bank Name: \_\_\_\_\_ Branch: \_\_\_\_\_  
ABA: \_\_\_\_\_ Routing: \_\_\_\_\_

Capitalized terms used in this Authorization Form without definition shall have the meanings set forth in the Merchant Agreement.

This Authorization for Direct Deposit (ACH Credit) and Direct Payments (ACH Debits) is part of (and incorporated by reference into) the Merchant Agreement. Merchant should keep a copy of this important legal document for Merchant’s records.

**DISBURSEMENT OF ADVANCE PROCEEDS.** By signing below, Merchant authorizes FCG to disburse the advance proceeds less the amount of any applicable fees upon advance approval by initiating ACH credits to the Designated Checking Account, in the amounts and at the times specified in the Merchant Agreement. **By signing below, Merchant also authorizes FCG to collect amounts due from Merchant under the Merchant Agreement by initiating ACH Debits from the Designated Checking Account. The initial authorized amount is as follows, which may be adjusted by FCG from time to time in accordance with the Merchant Agreement:**

In the amount of: **\$1,985.71**

(Or) percentage of each Banking Deposit: **5.0%**

On the following days: **MONDAY-FRIDAY**

If any payment date falls on a weekend or holiday, Merchant understands and agrees that the payment may be executed on the next business day. If a payment is rejected by Merchant’s financial institution for any reason, including without limitation insufficient funds, Merchant understands that FCG may, at its discretion, attempt to process the payment again as permitted under applicable ACH rules. Merchant also authorizes FCG to initiate ACH entries to correct any erroneous payment transaction.

**MISCELLANEOUS.** FCG is not responsible for any fees charged by Merchant’s bank as the result of credits or debits initiated under this Authorization Agreement. The origination of ACH Debits and Credits to the Designated Checking Account must comply with applicable provisions of state and federal law, and the rules and operating guidelines of NACHA (National Automated Clearing House Association). This Authorization Agreement is to remain in full force and effect until FCG has received written notification from Merchant at the address set forth above at least five banking days prior of its termination to afford FCG a reasonable opportunity to act on it. The individual signing below on behalf of Merchant certifies that he/she is an authorized signer on the Designated Checking Account. Merchant will not dispute any ACH transaction initiated pursuant to this Authorization Agreement, provided the transaction corresponds to the terms of this Authorization Agreement. Merchant requests the financial institution that holds the Designated Checking Account to honor all ACH entries initiated in accordance with this Authorization Agreement.

By signing below, Merchant attests that the Designated Checking Account was established for business purposes and not primarily for personal, family or household purposes.

#### FOR ONE FAT FROG, INCORPORATED

DocuSigned by:  
Signature: Connie B Hassanien ←  
Name: \_\_\_\_\_  
SSN/EIN: [REDACTED]  
Title: President

### Fox Capital Group, Inc.

P: (800) 895-4424 | F: 866-557-0455 | [underwriting@foxbusinessfunding.com](mailto:underwriting@foxbusinessfunding.com)

#### EXHIBIT B – BANK ACCOUNT ACCESS INFORMATION

Dear Merchant,

Thank you for accepting an offer from Fox Capital Group. We look forward to being your funding partner for as long as you need.

Please note that the way your sale of receivables is set up, we will need viewing access to your bank account each business day in order to calculate the amount of your daily payment in accordance with Section 1.2 of your agreement. Please be assured that we will carefully safeguard your confidential information and only essential personnel will have access to it. We will also require viewing access to your bank account, prior to funding, as part of our underwriting process. The requested access is for “look in” or viewing purposes only. We are not requesting any change or modification to your account.

Please fill out the form below with the access information for your account. Be sure to indicate capital or lower case letters.

#### Please fill out the form below with the access information for your account

Bank portal website:

Username:

Password:

Security Question/Answer 1:

Security Question/Answer 2:

Security Question/Answer 3:

#### ACKNOWLEDGED AND AGREED:

DocuSigned by:  
Signature: Connie B Hassanien ←  
Name: AEC52E1D8C8B4F1...  
Title: President  
Dated: 3/13/2023

Failure to timely establish our our access ability to your account is a breach of your merchant agreement for which we reserve the right to exercise all remedies under the merchant agreement. If you have any questions, please feel free to contact us at (800) 895-4424.

**Fox Capital Group, Inc.**

P: (800) 895-4424 | F: 866-557-0455 | [underwriting@foxbusinessfunding.com](mailto:underwriting@foxbusinessfunding.com)

**EXHIBIT C – MERCHANT’S CURRENT SECURED CREDITORS**

**Secured Creditor Name**

**Balance**

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**Fox Capital Group, Inc.**

P: (800) 895-4424 | F: 866-557-0455 | underwriting@foxbusinessfunding.com

**EXHIBIT D**

**List of Additional Entities Included in the Definition of the Term “Merchant” That Have Sold Future Receipts and Granted FCG a Blanket Security Interest**

KING RESTAURANT EQUIPMENT,  
INC.  
2416 SAND LAKE ROAD,  
ORLANDO, FL 32809  
EIN: 27-5034601

FCG may file a UCC-1 financing statement with the appropriate Secretary of State(s) reflecting a blanket security interest in the assets of the above-listed entities.of the above-listed entities.

ACKNOWLEDGED AND AGREED ON BEHALF OF THE FOREGOING ENTITIES:

DocuSigned by:  
*Connie B Hassanien* \_\_\_\_\_   
AEC52E1D8C8B4F1...

### Fox Capital Group, Inc.

P: (800) 895-4424 | F: 866-557-0455 | underwriting@foxbusinessfunding.com

#### ADDENDUM TO SECURED MERCHANT AGREEMENT FOR WEEKLY REMITTANCE

WHEREAS Fox Capital Group, Inc. ("FCG") and ONE FAT FROG, INCORPORATED ("**Merchant**") are parties to the Secured Merchant Agreement, dated March 13, 2023 (the "**Agreement**"); and

WHEREAS, Merchant requested that for Merchant's convenience FCG make weekly debits toward the Purchased Amount instead of debits of the Daily Remittance each business day, and FCG grants Merchant's request as a courtesy to Merchant;

NOW, THEREFORE, it is agreed as follows:

- 1. **Definitions.** Except as otherwise defined in this Addendum, all capitalized terms have the same meaning as in the Agreement. The term "**Weekly Remittance**" means the following amount, \$9,928.55, which is a good faith approximation of five times the Daily Remittance. The term "**Payment Day**" means Monday, the day of the week on which payment of the Weekly Remittance is due.
- 2. **Weekly Remittance.** Without modification or waiver of any term of the Agreement and as a courtesy to Merchant, rather than debiting the Daily Remittance each business day, FCG will debit the Weekly Remittance from the Account once each week on every Payment Day that is not a bank holiday until such time as FCG receives payment in full of the Purchased Amount or until FCG elects to revoke or cancel this Addendum. If any Payment Day falls on a bank holiday, FCG will debit the Weekly Remittance on the next business day following that Payment Day. If the next business day falls during the next week, FCG will debit the Weekly Remittance for both weeks during that following week and which will result in FCG debiting twice in a week. By way of example only, if the Payment Day is Friday and the next business day falls the following Monday, FCG will debit the Weekly Remittance on Monday and Friday of that following week. Nothing herein prevents an adjustment of the Daily Remittance under paragraph 1.4 of the Agreement, in which case the Weekly Remittance will be adjusted accordingly.
- 3. **Revocation.** FCG in its sole and absolute discretion may revoke or cancel this Addendum at any time and for any reason upon 24 hours' notice by email to the Merchant. Upon revocation or cancellation of this Addendum, FCG may resume regular debiting of the Daily Remittance in the manner set forth in the Agreement. If Merchant is aware that there will be insufficient funds in the Account such that the debit of the Daily Remittance will not be honored by Merchant's bank, Merchant shall notify FCG within 18 hours of receiving FCG's email notice.

FOR ONE FAT FROG, INCORPORATED

DocuSigned by:  
 Signature: *Connie B Hassanien*  
 Name: C...  
 Title: President



AGREED AND ACCEPTED:

FOR FOX CAPITAL GROUP, INC.

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



**BIZFUND**  
COM

LOYAL TO YOU AND YOUR GROWTH

BizFund, LLC  
2371 McDonald Ave 2nd FL  
Brooklyn, NY 11223

**MERCHANT CASH ADVANCE AGREEMENT**

Agreement (this "Agreement" or "Merchant Agreement") dated 03-13-2023 between, BizFund, LLC, a Delaware limited liability company ("Purchaser"), and the Merchant listed below ("Merchant"). Purchaser and Merchant are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties." Capitalized terms used in this Agreement shall have the respective meanings given to them in Section 5 of the attached Terms and Conditions (the "Terms"). The Terms are hereby incorporated into and made a part of this Agreement as if set forth in this Agreement in full.

**MERCHANT INFORMATION**

Merchant's Legal Name: ONE FAT FROG, INCORPORATED

D/B/A: ONE FAT FROG State of Incorporation/Organization: FL

Type of entity (check one): Corporation  Limited Liability Company  Limited Partnership   
 Limited Liability Partnership  General Partnership  Sole Proprietor

Address of Executive Offices: 2416 SAND LAKE ROAD City ORLANDO State FL Zip 32809

Mailing Address: SAME AS ABOVE City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Date business started (mm/yy): 05/2005 Federal ID# 42-1668173

IN CONSIDERATION OF THE PREMISES and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of Merchant and Purchaser, the Parties, intending to be legally bound, hereby agree as follows:

**Section 1. Purchase and Sale of Future Receipts.**

1.1 Merchant hereby sells, assigns, transfers and delivers to Purchaser absolutely, without recourse, all of its right, title and interest in, to and under its future Receipts in the amount specified below (the "Purchased Amount") for the purchase price specified below (the "Purchase Price"). Purchaser hereby purchases such future Receipts in the amount of the Purchased Amount (the "Purchased Receipts") for the Purchase Price on behalf of itself or on behalf of itself and/or as Agent for certain Syndicate Partners. Merchant hereby agrees that it retains no right, title, ownership or other interest, legal, beneficial or otherwise, in the Purchased Receipts.

1.2 (a) Merchant and Purchaser agree that the Purchased Amount shall be delivered to Purchaser from the proceeds of the collection of the specified percentage (the "Specified Percentage") of Receipts set forth below. Merchant represents that the Specified Percentage of its average weekly receipts during the past three (3) months is approximately equal to the estimated specific weekly amount set forth below (the "Specific Weekly Amount"). Merchant shall establish, and shall maintain at all times during the duration of this Agreement and until all Merchant Obligations have been irrevocably satisfied in full, a depository account (the "Specified Account") at a commercial bank or other financial institution selected by Merchant that is reasonably acceptable to Purchaser (the "Financial Institution"). Merchant hereby irrevocably authorizes Purchaser to effect ACH Debits to the Specified Account in an amount equal to the Specific Weekly Amount until Purchaser irrevocably receives an aggregate amount equal to all Merchant Obligations. Purchaser may affect ACH Debits to the Specified Account on the first Business Day of each calendar week in an amount equal to the Specific Weekly Amount.

(b) In the event that for any reason Purchaser is unable to effect an ACH Debit pursuant to Section 1.2(a) in any calendar week, Merchant hereby agrees that Purchaser shall thereafter be entitled to, and hereby irrevocably authorizes Purchaser to, effect ACH Debits to the Specified Account on each Business Day in an amount equal to the specific daily amount set forth below (the "Specific Daily Amount"), provided that on the Business Day prior to a legal bank holiday occurring during any business week (Monday through Friday), Purchaser may affect an ACH Debit to the Specified Account in an amount equal to twice the Specific Daily Amount. The Specific Daily Amount equals approximately one fifth (1/5<sup>th</sup>) of the Specific Weekly Amount and Merchant represents that the Specific Daily Amount approximates the Specified Percentage of its average daily receipts during the past three (3) months.

1.3 Merchant and Purchaser acknowledge that the Merchant's Receipts will depend upon Merchant's success in selling its products and services and the collection of payment therefor, that Merchant's average daily Receipts from and after the date of this Agreement may be more or less than the average of Merchant's daily Receipts during the three (3) months prior to the date of this Agreement and that there is no assurance that the Specified Percentage of Merchant's Receipts will be sufficient to enable Purchaser to collect Receipts in a total amount equal to the Purchased Amount. There is no time period during which the Purchased Amount of Receipts must be collected by Purchaser and there is no interest rate or required amortization schedule associated therewith. If Receipts arise more slowly than Purchaser anticipates because Merchant's business slows, or if the Purchased Amount is not collected in full because Merchant becomes bankrupt or otherwise ceases operations in the ordinary course of business, Merchant will have no obligation or liability to Purchaser unless Merchant has breached a representation, warranty, covenant or other obligation on its part to be performed under this Agreement. Consequently, Merchant and Purchaser intend and agree that the transactions provided for in this Agreement constitute a purchase and sale of future Receipts at a discount for all purposes and shall in no event constitute, or be deemed or construed to constitute, a loan transaction. This Agreement has no term but shall remain in full force and effect until all Merchant Obligations have been irrevocably satisfied in full.

1.4 This Agreement shall become effective and binding upon Merchant and Owner/Guarantor when it is executed and delivered by Merchant and Purchaser provides funds to pay the Purchase Price, even if Purchaser has not executed and delivered to Merchant a counterpart of this Agreement.

## Section 2. Authorization of ACH Debits.

2.1 Merchant shall irrevocably authorize and instruct the Financial Institution to honor and effect the ACH Debits permitted by this Agreement by properly completing, executing and delivering to the Financial Institution, with a copy to Purchaser, a written authorization substantially in the form attached to this Agreement as Appendix B. Merchant shall not change the Specified Account or the Financial Institution without the express prior written consent of Purchaser, which Purchaser may give or withhold in its sole discretion. Merchant shall ensure that all of its Receipts are deposited in or otherwise credited to the Specified Account; provided that Merchant shall only deposit, or permit to be deposited, Purchased Receipts into the Specified Account. Merchant shall not block or otherwise interfere with Purchaser's access to the Specified Account to effect ACH Debits in accordance with the terms of this Agreement. Notwithstanding the foregoing provisions of this Section 2.1, Merchant may revoke such authorization and change the financial institution at which it maintains a depository account upon the irrevocable satisfaction in full of all Merchant Obligations.

2.2 Merchant shall properly complete, execute and deliver to Purchaser a Bank Login Authorization in the form attached to this Agreement as Appendix C and will provide Purchaser with all such other access codes and other information or documents necessary to enable Purchaser to affect the ACH Debits provided for in Section 1.2 or elsewhere in this Agreement, as well as all monthly bank statements relating to the Specified Account, promptly upon Purchaser's request. Merchant shall be responsible for, and shall pay upon demand, any fees or costs incurred by Purchaser as a result of any dishonor of an ACH Debit permitted by this Agreement. Purchaser shall in no event be responsible or liable to Merchant or the Financial Institution for any fees, costs or other expenses arising or resulting from or in connection with any rejected ACH Debit transaction or overdraft that may result from Purchaser effecting or attempting to effect an ACH Debit permitted by this Agreement.

2.3 Without the express prior written consent of Purchaser, which Purchaser may give or withhold in its sole discretion, Merchant will not (a) permit to occur or suffer to exist any event that could cause the diversion of any of Merchant's Receipts to any account with a financial institution other than the Financial Institution or to any account with the Financial Institution other than the Specified Account; (b) change the arrangements with the Financial Institution or with respect to the Specified Account or the relevant access codes or other information with respect thereto in any way that is adverse to Purchaser; (d) directly or indirectly make any promise or offer with respect to, or provide, any incentive, economic or otherwise, such as, but not limited to, loyalty points for payment by credit card or any other method other than cash, a personal check or other cash equivalent, the effect or result of which could be to (i) discourage the generation of a Receipt that is not deposited in the Specified Account, or induce a customer of Merchant to pay for Merchant's goods or services with any means other than cash, a personal check or other cash equivalent; or (e) take any other action that could have any adverse effect upon Merchant's Obligations or Purchaser's rights or remedies under this Agreement or fail to take any action if such failure could have such adverse effect.

Section 3. Reconciliations.

3.1 Either Party may request a reconciliation of Merchant's account under this Agreement (a "Reconciliation Request") by providing written notice to the other Party. Promptly upon receiving a Reconciliation Request from Purchaser, and together with any a Reconciliation Request made by Merchant, Merchant shall provide to Purchaser, true, correct and complete copies of all bank statements relating to the Specified Account and all monthly statements of any bank or other financial institution at which Merchant or any of its Affiliates maintain or have maintained a depository or other account since the date of this Agreement through the end of the calendar month immediately prior to the calendar month in which the Reconciliation Request is made (collectively, the "Account Statements"). Any Reconciliation Request shall be in writing and given in accordance with the notice provisions set forth in Section 11.12.

3.2 As soon as reasonably practicable after receipt of all Account Statements, Purchaser shall provide to Merchant, without charge, a statement (a "Reconciliation Statement") that sets forth: (a) the total amount of Receipts that Merchant originated after the date of this Agreement, (b) the amount equal to the product of the Specified Percentage and the total amount of Receipts that originated after the date of this Agreement, and (c) the aggregate amount of ACH Debits effected by Purchaser pursuant to Section 1.2. The Reconciliation Statement shall provide the foregoing information as of the last day of the calendar month immediately prior to Purchaser's receipt of the Reconciliation Request.

Each Reconciliation Statement shall be final, binding and conclusive on Merchant, absent manifest error. Within ten (10) Business Days after the delivery of a Reconciliation Statement, Purchaser shall either deposit into the Specified Account the amount, if any, by which the amount described in clause (c) of Section 3.2 as set forth in such Reconciliation Statement exceeds the amount described in clause (b) of Section 3.2 as set forth in such Reconciliation Statement, or shall debit by ACH Debit the Specified Account in the amount, if any, by which the amount described in clause (b) of Section 3.2 as set forth in such Reconciliation Statement exceeds the amount described in clause (c) of Section 3.2 as set forth in such Reconciliation Statement.

3.4 In the event that Merchant fails to deliver all such Account Statements on a timely basis, Purchaser shall have no obligation under this Agreement or otherwise to provide a Reconciliation Statement with respect to such Reconciliation Request. A failure by Merchant to make a Reconciliation Request with respect to any period, or to provide Account Statements pursuant to Section 3.2 with respect to a Reconciliation Request, shall not constitute a waiver by Merchant of its right to make a Reconciliation Request in accordance with this Section 3 on a future occasion.

Section 4. Certain Adjustments; Fees.

4.1 Notwithstanding and in addition to Merchant’s right to make a Reconciliation Request pursuant to Section 3.1, Merchant may request that Purchaser adjust, and Purchaser in its sole discretion may adjust, the Specified Percentage, the Specific Daily Amount, any Fee or any other payment due under this Agreement to a percentage or an amount Purchaser deems appropriate in its sole discretion. Notwithstanding anything to the contrary in this Agreement or any other agreement between Purchaser and Merchant, upon the occurrence of an Event of Default, automatically, without any demand or other notice from Purchaser, the Specified Percentage shall be increased to 100% and the entire remaining uncollected portion of the Purchased Amount (the “Purchased Amount Balance”) shall immediately become due and payable.

4.2 In addition to the foregoing, Merchant shall be responsible for and shall pay when due all fees, costs and expenses provided for in Appendix A attached to this Agreement (collectively “Fees”). Appendix A is hereby incorporated into and made a part of this Agreement as if set forth in this Agreement in full. Subject to applicable law, Purchaser may apply amounts collected hereunder to the Merchant Obligations in such manner as Purchaser chooses in its sole discretion

ANY MISREPRESENTATION MADE BY MERCHANT OR OWNER OR GUARANTOR IN CONNECTION WITH THIS AGREEMENT MAY CONSTITUTE A SEPARATE CAUSE OF ACTION FOR FRAUD, FRAUDULENT INDUCMENT OR INTENTIONAL MISREPRESENTATION.

Purchase Price:	Specified Percentage	Estimated Specific Weekly Amount:	Estimated Specific Daily Amount:	Purchased Amount:
\$ <u>300,000.00</u>	<u>15%</u>	\$ <u>9,929.00</u>	\$ <u>1,986.00</u>	\$ <u>417,000.00</u>

IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement as of the date first above written:

MERCHANT (#1)

By CONNIE BAUGHER  
(Print Name and Title):

  
Connie Baugher (Mar 13, 2023 14:13 EDT)  
(Signature)

Sign Here

FOR MERCHANT (#2)

By \_\_\_\_\_  
(Print Name and Title):

\_\_\_\_\_  
(Signature)

Sign Here

OWNER/GUARANTOR #1

By CONNIE BAUGHER  
(Print Name):

  
Connie Baugher (Mar 13, 2023 14:13 EDT)  
(Signature)

Sign Here

OWNER/GUARANTOR #2

By \_\_\_\_\_  
Name

\_\_\_\_\_

Sign Here

MERCHANT CASH ADVANCE AGREEMENT TERMS AND CONDITIONS

[Payment by ACH Debits]

Section 5. Definitions. Capitalized terms used in this Agreement shall have the respective meanings set forth below in this Section 5:

“ACH Debit” means a direct debit transfer that is transacted through the Automated Clearinghouse (ACH) electronic network for financial transactions in the United States.

“Account Statements” has the meaning set forth in Section 3.1.

“Advisor” has the meaning set forth in Section 9.

“Affiliate” of any Person means any other Person controlling, controlled by or under common control with such Person.

“Agent” means Purchaser, acting in its capacity as the administrative agent for the Syndicate Partners in connection with this Agreement and the transactions contemplated hereby.

“Agreement” has the meaning set forth in the heading to this Agreement and includes all extensions, renewals, amendments and other modifications and restatements thereof. Any reference herein to this “Agreement” or this “Merchant Agreement” includes these Terms.

“Ancillary Document” means the Guaranty, a Confession of Judgment, and any other agreement, document or instrument delivered by Merchant and/or Owner/Guarantor pursuant to or in connection with this Agreement or the transactions contemplated hereby and in each case includes all extensions, renewals, amendments and other modifications and restatements thereof.

“Bankruptcy Case” means any bankruptcy, insolvency, arrangement, reorganization, liquidation or other debt-relief Proceeding under Federal or State law.

“Business Day” means any day on which commercial banks in New York, New York, or in the principal place of business of Financial Institution, are not authorized to be open or are required to be closed for commercial transactions under applicable law, rule or regulation.

“Event of Default” has the meaning set forth in Section 7.1.

“Fees” has the meaning set forth in Section 4.2.

“Financial Institution” has the meaning set forth in Section 1.2(a).

“Guaranty” means the guaranty at the end of this Agreement executed by Owner/Guarantor and includes all extensions, renewals, amendments and other modifications and restatements thereof.

“Liens” has the meaning set forth in Section 6.3.

“Merchant” has the meaning set forth in the heading to this Agreement.

“Merchant Agreement” has the meaning set forth in the heading to this Agreement.

“Merchant Confidential Information” has the meaning set forth in Section 9.

“Merchant Obligations” means the Purchased Amount Balance, together with any and all Fees and all other payment obligations of Merchant to Purchaser pursuant to this Agreement and any other Ancillary Document, including all fees, costs and expenses of investigation, court costs and fees and expenses of attorneys and other professionals.

“Owner/Guarantor” means the member, shareholder or other owner of Merchant who has executed this Agreement and/or the Guaranty.

“Party” and “Parties” have the respective meanings set forth in the heading to this Agreement, except that in Section 10, the

terms “Party and “Parties” shall also include any Owner/Guarantor that has executed this Agreement or any Ancillary Document.

“Person” means any individual, corporation, limited or general partnership, limited liability company, limited liability partnership, joint venture, trust, association or other entity.

“Proceeding” means any claim, demand, action, suit or proceeding at law, in equity or otherwise, including any arbitration.

“Purchase Price” has the meaning set forth in Section 1.1.

“Purchased Amount” has the meaning set forth in Section 1.1.

“Purchased Amount Balance” has the meaning set forth in Section 4.1.

“Purchased Receipts” has the meaning set forth in Section 1.1.

“Purchaser” has the meaning set forth in the heading to this Agreement.

“Purchaser Advisor” has the meaning set forth in Section 9.

“Purchaser Confidential Information” has the meaning set forth in Section 9.

“Receipt” means any and all payments Merchant receives for the sale of goods or services in the ordinary course of business from, on account of or in connection with any and all invoices, accounts, contract rights and other payment obligations arising after the date of this Agreement with or by any customer or client of Merchant or other third parties having a business relationship with Merchant, whether such payment is made in cash or by check, money order, wire transfer or any in other form.

“Reconciliation Request” has the meaning set forth in Section 3.1.

“Reconciliation Statement” has the meaning set forth in Section 3.2.

“Security Agreement” means the security agreement set forth in Section 11.13.

“Specific Amount” means the Specific Daily Amount or the Specific Weekly Amount, as applicable.

“Specific Daily Amount” has the meaning set forth in Section 1.2 (b).

“Specific Weekly Amount” has the meaning set forth in Section 1.2(a).

“Specified Account” has the meaning set forth in Section 1.2(a).

“Specified Percentage” has the meaning set forth Section 1.2(a).

“Syndicate Partners” means those Persons that have acquired a participation interest in the transactions contemplated by this Agreement

“Terms” has the meaning set forth in the heading to this Agreement.

“UCC” means the Uniform Commercial Code as in effect in the jurisdiction in which the Merchant is organized.

Section 6. Representations, Warranties and Covenants of Merchant. By executing and delivering this Agreement, Merchant acknowledges, represents, warrants, covenants and agrees to and with Purchaser as follows:

6.1 Organization and Good Standing. Merchant is the type of entity specified on the first page of this Agreement

and is duly organized and in good standing in its jurisdiction of organization specified on the first page of this Agreement. Merchant is duly qualified or licensed to do business in each jurisdiction in which the operation of its business or the location of its properties or assets requires such qualification or licensing. Merchant is a valid business and Merchant is entering into this Agreement for business purposes only and not as a consumer for personal, family or household purposes. Merchant understands, acknowledges and agrees it is not entitled to the rights and protections that are afforded to consumers under federal and state law with respect to consumer loans.

6.2 Authorization. Merchant has full power and authority to execute and deliver this Agreement and any Ancillary Document to which it is a party, and to incur and perform its obligations under this Agreement and each such Ancillary Document. Owner/Guarantor has full capacity, power and authority to execute and deliver this Agreement on behalf of Merchant and any Ancillary Document to which it is a party, and to incur and perform its obligations under each such Ancillary Document. Merchant and each such Owner/Guarantor have duly authorized, executed and delivered this Agreement and any such Ancillary Document and each of this Agreement and any such Ancillary Document constitutes their respective legal, valid and binding obligations, enforceable against them in accordance with their respective terms.

6.3 No Conflict. Neither the execution, delivery nor performance of this Agreement or any Ancillary Document by Merchant or any Owner/Guarantor does or will, with or without the giving of notice or the passage of time, or both, (a) conflict with, violate, breach, cause a default or give rise to a right of acceleration in favor of any third Person under (i) the constituent documents of Merchant or any such Owner/Guarantor; (ii) any law, rule or regulation binding on Merchant or any such Owner/Guarantor; or (iii) any contract, agreement, trust or other understanding, commitment or arrangement, whether written or oral, to which Merchant or any such Owner/Guarantor is a party or by which any of them, or their respective properties or assets, is bound; (b) require the consent, authorization or approval of, or the giving of notice to, any governmental agency or authority under any applicable law, rule or regulation; or (c) result in the creation of any claim, charge, restriction, condition, option, right, mortgage, security interest, equity, pledge, lien or other encumbrance of any kind or nature whatsoever (collectively, "Liens") upon any or all of the properties or assets of Merchant or Owner/Guarantor.

#### 6.4 Financial Condition and Financial Information.

(a) All of the information and statements made in Merchant's application for the purchase and sale transaction provided for in this Agreement are true, correct and complete. Merchant will promptly notify Purchaser if any of such information or statement is no longer true, correct or complete. Merchant's financial statements, true, complete and correct copies of which have been furnished to Purchaser, fairly present in all material respect the financial condition and results of operations of Merchant at their respective dates, and for the periods then ended, and since those dates there has been no material adverse change, financial or otherwise, in the business, operations, financial condition, results of operations, assets or liabilities, prospects or ownership of Merchant. Any financial statements delivered by Merchant to Purchaser pursuant to this Agreement will be true, correct and complete and will fairly present in all material respects the financial condition and results of operations of Merchant as of their respective dates and for the respective periods then ending. Merchant shall promptly advise Purchaser of any material adverse change in its business, operations, financial condition, results of operations, assets, liabilities, prospects or ownership. Merchant shall provide to Purchaser within five (5) Business Days after Purchaser's request therefor, true, correct and complete copies of all such other financial statements, bank statements or other documents relating to Merchant's financial condition or results of operations, all of which shall be true, correct and complete.

(b) Merchant authorizes Purchaser and its agents to investigate Merchant's financial responsibility, credit worthiness and financial history, and will provide to Purchaser any bank or financial statements, tax returns, etc., as Purchaser deems necessary in its sole discretion prior to or at any time after the execution of this Agreement. A photocopy of this Agreement shall be deemed as acceptable for release of such information by the various credit services and financial institutions. Purchaser is authorized to request updates with respect to such information from time to time as it deems appropriate in its sole discretion. Merchant shall authorize its bank(s) to provide to Purchaser Merchant's banking and/or credit card processing history to assist Purchaser in evaluating the transactions contemplated by this Agreement.

(c) Merchant and each Person signing this Agreement on behalf of Merchant and/or as Owner/Guarantor, in respect of himself personally, authorizes Purchaser to disclose information concerning Merchant's and each Owner/Guarantor's credit standing (including credit bureau reports that Purchaser obtains) and business conduct to agents, Affiliates, subsidiaries, Syndicate Partners, Purchaser's funding sources and credit reporting bureaus. Merchant and each Owner/Guarantor hereby waives and releases to the maximum extent permitted by law any claim for damages against Purchaser or any of its Affiliates relating to any (i) investigation undertaken by or on behalf of Purchaser permitted by this Agreement, or (ii) disclosure of information permitted by this Agreement.

6.5 Title to Assets; No Liens. Merchant has good, complete and marketable title to all of the properties and assets used in its business, free and clear of any and all Liens or any other rights or interests that may be inconsistent with the transactions contemplated hereby, or adverse to the interests of Purchaser. Merchant will not incur, permit or suffer to exist any Lien on the Purchased Receipts.

6.6 Conduct of Business; Compliance with Laws. Merchant shall conduct its business in the ordinary course, consistent with past practice, and shall use its best efforts to continue its business at least at the same level as on the date of this Agreement. Merchant has no current plans to close its business for any reason, and agrees that until all Merchant Obligations have irrevocably been satisfied in full, Merchant will not close its business on a temporary basis for renovation, repairs or other similar purposes without the express prior written consent of Purchaser, which consent Purchaser may give or not give in its sole discretion. Merchant shall use the proceeds of the Purchase Price solely in connection with the operation of its business. Merchant will not incur any debts outside the ordinary course of business, will not make any loans, advances or other extension of credit to any Person or guarantee or otherwise become liable for the debts or obligations of any other Person, except for the endorsement of negotiable instruments in the ordinary course of business. Merchant is currently in compliance and shall continue to comply with all laws, rules and regulations applicable to its business, operations, properties and assets and it has valid and in full force and effect, and will continue to maintain in full force and effect and operate its business in compliance with, all necessary or advisable permits, authorizations and licenses to own, operate and lease its properties and assets as and where they are located and to conduct the business in which it is presently engaged. Without limiting the foregoing, Merchant shall pay all required taxes on a timely basis, including employment taxes and withholdings, sales and use taxes and, if applicable, real estate taxes. For the avoidance of doubt, this Section 6.6 does not constitute a covenant or agreement by Merchant that it will not cease conducting its business should circumstances in the Merchant's business beyond its control so require.

6.7 Certain Matters as to the Receipts and Payments. The Purchase Price is in full payment for the purchase, at an agreed-upon discount, of the Future Receipts pursuant to this Agreement and equals the fair market value of the Purchased Receipts. Purchaser has purchased and upon the funding under this Agreement, without any other action or the delivery of any other document or instrument by Merchant, shall have good, complete and marketable title to all the Purchased Receipts as and when the Purchased Receipts arise, free and clear of any and all Liens. If, notwithstanding Section 1.3, a court re-characterizes the purchase and sale transaction provided for in this Agreement as a loan transaction, determines that any collections by Purchaser pursuant to this Agreement constitute interest, determines that such payments are in excess of the highest rate permitted by applicable law or otherwise determines that the transactions provided for in this Agreement are subject to the usury laws of any jurisdiction, the Purchase Price or the Purchased Amount shall automatically be adjusted to a payment amount that will equal the maximum amount permitted by applicable law. Purchaser shall promptly refund to Merchant any payments received by Purchaser in excess of the maximum lawful amount, it being intended that Merchant not contract to pay or pay, and that Purchaser not contract to receive or receive, directly or indirectly in any manner whatsoever, any payment in excess of that which may be paid by Merchant under applicable law.

6.8 No Bankruptcy Pending. During the six (6) months ending on the date of this Agreement, neither Merchant nor Owner/Guarantor has contemplated (or contemplates) or has commenced (a) any Bankruptcy Case; (b) any petition or other Proceeding seeking the appointment of a receiver, administrator, liquidator or other person for the marshalling, sale or liquidation of its properties or assets; or (c) an assignment for the benefit of its creditors, and there has been no involuntary petition or Proceeding brought or is pending against Merchant or Owner/Guarantor for any of the foregoing purposes. Neither Merchant nor Owner/Guarantor is insolvent or has admitted in writing its inability to pay its debts as they mature. Merchant does not anticipate commencing any such Bankruptcy Case, petition or other Proceeding and it does not anticipate that any such involuntary petition or Proceeding will be filed against it during the next twelve (12) months. For the avoidance of doubt, this Section 6.8 does not constitute a covenant or agreement by Merchant that it will not commence or become subject to a Bankruptcy Case in the next twelve (12) months should circumstances in the Merchant's business beyond its control so require.

6.9 Working Capital Funding. Merchant has not and shall not enter into any arrangement, agreement or commitment that relates to or involves the Purchased Receipts, whether in the form of a purchase of, a loan against, collateral against or the sale, assignment, transfer, factoring or purchase of credits against, Receipts, cash deposits or receipts or future sales with any Person other than Purchaser without Purchaser's prior express written consent, which Purchaser may or may not give in its sole discretion. Purchaser may share information regarding this Agreement with any third person in order to determine whether Merchant is in compliance with the provisions of this Section 6.9. Upon the irrevocable satisfaction in full of all Merchant Obligations, the restrictions contained in this Section 6.9 shall terminate.

6.10 Insurance. Merchant will maintain in full force and effect liability, property and casualty and business-interruption insurance policies in such amounts and against such risks as are satisfactory to Purchaser and shall provide Purchaser proof of such insurance upon request.

6.11 Change of Name or Location. Merchant will not conduct its business(es) under any name other than as set forth in the heading to this Agreement or change its name or the location of its incorporation or other organization or any of its places of business without providing Purchaser express written notification at least twenty (20) Business Days in advance of any such change.

6.12 Notice of Certain Events. Merchant shall give Purchaser written notice of its intention to file a Bankruptcy Case at least five (5) Business Days prior to the filing of any Bankruptcy Case. Merchant shall give Purchaser written notice of its intention to enter into or consummate any transaction described in Section 7.1(c) or Section 7.1(d) at least ten (10) Business Days prior to the closing of any such transaction. Merchant shall give Purchaser advance notice of at least one (1) Business Day in the event that sufficient funds will not be available in the Specified Account to permit Purchaser to effect ACH Debits in accordance with the terms of this Agreement.

6.13 Estoppel Certificate. Merchant will at any time, and from time to time, upon at least one (1) Business Day's prior notice from Purchaser, execute, acknowledge and deliver to Purchaser and/or to any other Person specified by Purchaser, a statement certifying that this Agreement is unmodified and in full force and effect (or, if there has been any modification, that the same is in full force and effect as modified and stating the modification) and stating the dates on which the Purchased Amount or any portion thereof has been collected.

6.14 Publicity. Purchaser may include Merchant's name in a listing of its clients and in its advertising and marketing materials. Purchaser may in its discretion disclose to Syndicate Partners information about this Agreement and the transactions contemplated hereby.

6.15 D/B/A's. Purchaser may be using "doing business as" or "dba" names in connection with various matters relating to this Agreement and the transactions contemplated hereby, including the filing of UCC-1 financing statements and other notices or filings.

MERCHANT ACKNOWLEDGES AND AGREES THAT EACH OF ITS ACKNOWLEDGEMENTS, REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS SET FORTH IN THIS SECTION 6 OR ELSEWHERE IN THIS AGREEMENT IS MATERIAL, THAT PURCHASER HAS RELIED THEREON IN ENTERING INTO THIS AGREEMENT AND THAT A BREACH OR VIOLATION OF ANY OF THEM SHALL CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT. ALL SUCH REPRESENTATIONS AND WARRANTIES SHALL BE CONTINUING REPRESENTATIONS AND WARRANTIES AND SHALL SURVIVE THE EXECUTION, DELIVERY, PERFORMANCE AND THE TERMINATION OF THIS AGREEMENT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT.

## Section 7. Events of Default and Remedies.

7.1 Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" hereunder:

(a) Merchant breaches or violates any covenant, agreement or other obligation contained in this Agreement (including any breach or violation of Section 2.1, Section 2.2 or Section 2.3 or any failure to provide a timely notice of certain events pursuant to Section 6.12) or any Person other than Purchaser that is a party to an Ancillary Document breaches or violates any covenant, agreement or other obligation of such other Person contained in such Ancillary Document;

(b) Any representation or warranty of Merchant contained in this Agreement, or any representation or warranty of any Person other than Purchaser in any Ancillary Document, shall prove to be incorrect, incomplete, false or misleading in any material respect when made or at any time thereafter until all Merchant Obligations shall have been irrevocably satisfied in full;

(c) Merchant sells, assigns, conveys or otherwise transfers all or substantially all of its assets or makes or sends any notice of an intended bulk sale of its properties and assets without, in any such case, (i) the prior express written consent of Purchaser, which Purchaser may give or withhold in its sole discretion, and (ii) the written agreement of any purchaser or transferee to the assumption of all of Merchant's obligations (including all Merchant Obligations) under this Agreement pursuant to documentation satisfactory to Purchaser in its sole discretion;

(d) Merchant reorganizes, merges or consolidates with, or otherwise effects a business combination with, any Person, as a result of which the ownership of Merchant after such transaction is materially different than such ownership immediately prior to such transaction, without, in any such case, (i) the prior express written consent of Purchaser, which Purchaser may give or withhold in its sole discretion, and (ii) the written agreement of the surviving Person in such reorganization, merger, consolidation or other business combination, as the case may be, to the assumption of all of Merchant's obligations (including all Merchant Obligations) under this Agreement pursuant to documentation satisfactory to Purchaser in its sole discretion;

(e) Merchant takes any action, or fails to take any action, that could have the effect of encumbering the cash flow of its business or unduly straining the viability of its operations; or

(f) Any Owner/Guarantor revokes or otherwise terminates its Guaranty, or such Guaranty otherwise becomes invalid or unenforceable.

7.2 Remedies. In case any Event of Default occurs and is not expressly waived pursuant to Section 11.3, Purchaser may, without any demand, protest, notice of protest or other notice of any kind, all of which Merchant hereby waives, proceed to protect and enforce its rights or remedies set forth below in this Section 7.2 and such other rights and remedies available to it under applicable law, whether by suit for specific performance or other equitable relief or by action at law, or both, or otherwise, including an action for breach of this Agreement and monetary damages as a result thereof:

(a) Purchaser may enforce the provisions of the Guaranty against the Owner/Guarantor;

(b) If requested by Purchaser upon execution of this Agreement, and Merchant has executed and delivered to Purchaser a Confession of Judgment in favor of Purchaser, Purchaser may enter such Confession of Judgment as a judgment with the Clerk of the Court and executethereon;

(c) Purchaser may enforce its rights under Section 11.13 and pursue any and all remedies available to it under the UCC; or

(d) Purchaser may debit Merchant's depository accounts wherever situated by means of ACH debit or facsimile signature on a computer-generated check drawn on Merchant's bank account or otherwise for an amount equal to the Merchant Obligations.

7.3 Remedies Cumulative; Costs. All rights and remedies of Purchaser under this Agreement or applicable law are cumulative and not exclusive. The exercise by Purchaser of any one or more of such rights or remedies on any occasion or with respect to any Event of Default shall not preclude or be deemed to waive the exercise of any other such right or remedy on the same or any other occasion or with respect to the same or any other Event of Default. Merchant shall pay to Purchaser all costs and expenses Purchaser incurs as result of or in connection with (a) a breach by Merchant of any of its obligations under this Agreement, and (b) enforcement of Purchaser's rights and remedies under this Agreement or applicable law, including fees, costs and expenses of investigation, court costs and fees and expenses of attorneys and other professionals.

#### Section 8. Exculpation and Indemnification.

8.1 Exculpation. In no event will Purchaser, as principal or Agent, or any Syndicate Partner, or any of their respective officers, directors, managers, members, shareholders, employees, agents or consultants, be liable for any claim asserted by Merchant or any Owner/Guarantor under any legal theory (a) as a result of any action taken or omitted to be taken by Purchaser in accordance with and pursuant to this Agreement or any Ancillary Document or (b) for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is waived by Merchant and Owner/Guarantor.

8.2 Indemnification of Purchaser. Merchant shall indemnify and hold harmless Purchaser, as principal and as Agent, and the Syndicate Partners, and their respective officers, directors, managers, members, shareholders, employees, agents and consultants, and the successors, assigns, executors, personal representatives and heirs of each of the foregoing, from and against any and all direct and indirect losses, damages, claims, liabilities, costs and expenses (including fees, costs and expenses of investigation, court costs and fees and expenses of attorney's and other professionals) incurred or suffered as a result of or in connection with (a) Merchant and Owner(s)/Guarantor(s) entering into this Agreement and the Ancillary Documents with Purchaser or performing or failing to perform their respective obligations pursuant to this Agreement and the Ancillary Documents ; (b) actions taken by the Financial Institution in reliance upon information or instructions provided by Purchaser; (c) actions taken by any other third Person as a result of Purchaser exercising its rights or remedies under this Agreement or any Ancillary Document; and (d) any fees, costs or other expenses described in the last sentence of Section 2.2.

8.3 Indemnification of Financial Institution. Merchant shall indemnify and hold harmless Financial Institution and its successors and assigns from and against any and all direct and indirect losses, damages, claims, liabilities, costs and expenses (including fees, costs and expenses of investigation, court costs and fees and expenses of attorney's and other professionals) incurred or suffered by Financial Institution as a result of or in connection with (a) Merchant and Owner(s)/Guarantor(s) entering into this Agreement and the Ancillary Documents with Purchaser or performing or failing to perform their respective obligations pursuant to this Agreement and the Ancillary Documents ; and (b) actions taken by Financial Institution in reliance upon information or instructions provided by Purchaser.

Section 9. Confidentiality.

Merchant understands and agrees that the terms and conditions of the products and services offered by Purchaser, including without limitation this Agreement, the Ancillary Documents and any other documentation produced or provided by Purchaser in connection with the transactions contemplated by this Agreement (collectively, "Purchaser Confidential Information"), are the proprietary and confidential information of Purchaser. Accordingly, unless disclosure is required by law or court order, Merchant shall not disclose Confidential Information to any Person other than an attorney, accountant, financial advisor or employee of Merchant who needs to know such information for the purpose of advising Merchant ("Advisor"), provided such Advisor uses such information solely for the purpose of advising Merchant and first agrees in writing to be bound by the terms of this Section 9. Purchaser understands and agrees that the documentation and information it received from Merchant upon evaluating and reviewing Merchant's eligibility for a funding and all subsequent confidential information of Merchant (collectively, "Merchant Confidential Information"), are the proprietary and confidential information of Merchant. Accordingly, unless disclosure is required by law or court order, Purchaser shall not disclose Merchant Confidential Information to any Person other than an attorney, accountant, financial advisor or employee of Purchaser who needs to know such information for the purpose of advising Purchaser ("Purchaser Advisor") or a Syndicate Partner, provided the Purchaser Advisor uses such information solely for the purpose of advising Purchaser, and the Syndicate Partner uses such information solely for the purpose of evaluating its participation in the transactions contemplated by this Agreement, and is bound by a confidentiality obligation to Purchaser with respect to the Merchant Confidential Information. Notwithstanding anything contained in this Section 9, Purchaser may aggregate Merchant Confidential Information with other similar information Purchaser obtains in the ordinary course of its business in order to compile statistical and other information for the purpose of monitoring its business, analyzing, improving and marketing its products and services and providing such aggregated information to third parties which are interested in evaluating market trends or the performance of Purchaser's business or marketing their own services and products.

Section 10. Power of Attorney.

Merchant irrevocably appoints Purchaser as its agent and attorney-in-fact with full authority to take any action and execute any instrument or document to settle all obligations due to Purchaser from Merchant or Financial Institution or, in the case of an Event of Default, from Merchant under this Agreement, including (a) to obtain and adjust insurance; (b) to collect monies due or to become due under or in respect of any of the Merchant Obligations (c) to receive, endorse and collect any checks, notes, drafts, instruments, documents or chattel paper in connection with clause (a) or clause (b) of this Section 10; (d) to sign Merchant's name on any invoice, bill of lading or assignment directing customers or account debtors to make payment directly to Purchaser; and (e) to file any claims or take any action or institute any Proceeding which Purchaser may deem necessary to satisfy the Merchant Obligations in full, or otherwise to enforce its rights and remedies under this Agreement.

Section 11. Miscellaneous.

11.1 Entire Agreement. This Agreement (including the Terms), together with each Ancillary Document, constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof and thereof and supersede any and all prior or contemporaneous representations, statements, understandings, undertakings, commitments or agreements, whether written or oral, by or between or among the Parties with respect to such subject matter. For the avoidance of doubt, this Agreement does not contemplate any purchase of Merchant's Receipts by Purchaser in addition to the Purchased Receipts and Purchaser has no obligation, express or implied, to make any such purchase. Any such purchase will be in the sole discretion of Purchaser and will only occur upon the execution and delivery by Merchant and Purchaser of appropriate documents satisfactory to Purchaser in its sole discretion.

11.2 Assignment; Binding Nature; No Third-Party Beneficiaries; Survival. Neither Merchant nor Owner/Guarantor may assign its rights, or delegate the performance of its duties, under this Agreement or any Ancillary Document without the express prior written consent of Purchaser, which Purchaser may give or not give in its sole discretion. Purchaser may assign, transfer or sell its rights to receive all or any portion of the Merchant Obligations, or delegate the performance of its duties hereunder, either in whole or in part, and shall give notice of any such assignment, transfer, sale or delegation to Merchant and Owner/Guarantor, provided that no such notice shall be necessary with respect to any assignment, transfer or sale to a Syndicate Partner or to an Affiliate of Purchaser. Upon any such assignment, the assignee shall have all of the rights, remedies, powers and privileges of Purchaser under this Agreement. For the avoidance of doubt, no assignment, transfer or sale of this Agreement or Purchaser's rights hereunder by Purchaser or any such Affiliate as collateral security shall constitute, or be deemed or construed to constitute, an assignment, transfer or sale for purposes of this Section 11.2. This Agreement and each Ancillary Document shall be binding upon and inure to the benefit of the Parties and their respective successors, permitted assigns, executors, personal representatives and heirs. No Person, other than the Parties and their respective successors, permitted assigns, executors, personal representatives and heirs, is entitled to the benefit of this Agreement or any Ancillary Document, or any provision hereof or thereof, provided that Purchaser, both as a principal and as Agent, each Syndicate Partner, and the respective officers, directors, managers, members, stockholders and other owners, employees and consultants of Purchaser and each Syndicate Partner, and the Financial Institution, and the successors, permitted assigns, executors, personal representatives and heirs of each of the foregoing, shall be third party beneficiaries of this Agreement and the Ancillary Documents and may rely upon the terms of this Agreement and the Ancillary Documents and raise them as a defense in any Proceeding. The provisions of Sections 6.14, 7, 8 and 9 and this Section 11 shall survive the satisfaction in full of the Merchant Obligations, and the provisions of Sections 2, 6.14, 7, 8, 9, 10 and this Section 11, and any other provision of this Agreement that by its terms or intention should survive, shall survive any other termination or expiration of this Agreement.

11.3 Amendment and Waiver. Neither this Agreement or any Ancillary Document, nor any provisions hereof or thereof, may be amended, changed, otherwise modified or discharged or terminated unless such amendment, change, modification, discharge or termination is expressly set forth in a written instrument that is duly executed by the Parties that executed this Agreement or such Ancillary Document, as applicable. No waiver of any provision of this Agreement or of any Ancillary Document and no waiver of any breach or default under this Agreement or any Ancillary Document shall be valid or effective unless such waiver is expressly set forth in a written instrument that is duly executed by the Parties that executed this Agreement or such Ancillary Document, as applicable. Any such waiver shall be effective only to the extent set forth therein and shall not be effective with respect to any provision, breach or default not expressly set forth therein, whether or not similar to the provision, breach or default set forth therein, nor with respect to the same or any similar breach or default on a future occasion. Neither the failure to exercise, nor any delay in exercising, any right, remedy or power under this Agreement, any Ancillary Document or applicable law shall impair or constitute a waiver of such right, remedy or power. No course of conduct by any Party or between or among the Parties shall constitute or be deemed to constitute a waiver of any provision of or any breach of or default under this Agreement or any Ancillary Document.

11.4 Choice of Law; Submission to New York Courts; Waiver of Jury Trial. This Agreement and the Ancillary Documents shall be governed by, construed and enforced in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely in the State of New York, without reference to the principles of conflict of laws of such State. Any controversy or claim arising out of or relating to this Agreement or any Ancillary Document or the transactions contemplated hereby or thereby, or any breach hereof or thereof or default hereunder or thereunder, shall be submitted for resolution to a State or federal court sitting in the City, County and State of New York, which courts shall have exclusive jurisdiction with respect to any such controversy or claim. Each of the Parties agrees not to assert in any forum that such courts are not a convenient forum, or that there is a more convenient forum, for the resolution of any such controversy or claim, and waives any and all objections to jurisdiction or venue. Service of process and any other papers or documents with respect to any such controversy or claim may be made in accordance with the provisions of Section 11.12 for the giving of notices under this Agreement. For the avoidance of doubt, Purchaser or its assigns or agents may serve any summons, complaint or other process to commence or prosecute any Proceeding against Merchant and/or Owner/Guarantor by mailing the same by registered or certified mail, return receipt requested, to the respective mailing addresses set forth in Section 11.12 and any such mailing shall constitute proper service thereof for all purposes.

THE PARTIES HEREBY IRREVOCABLY WAIVE TRIAL BY JURY IN ANY COURT IN ANY PROCEEDING ON ANY MATTER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR ANY ANCILLARY DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR ANY BREACH HEREOF OR THEREOF OR DEFAULT HEREUNDER OR THEREUNDER OR ANY ENFORCEMENT HEREOF OR THEREOF. THE PARTIES HEREBY ACKNOWLEDGE THAT EACH MAKES THIS WAIVER KNOWINGLY, WILLINGLY, VOLUNTARILY AND WITHOUT DURESS, AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH ITS ATTORNEYS.

11.5 Class Action Waiver.

PURCHASER AND MERCHANT ACKNOWLEDGE AND AGREE THAT THE AMOUNT AT ISSUE IN THIS TRANSACTION AND ANY DISPUTES THAT ARISE BETWEEN THEM ARE LARGE ENOUGH TO JUSTIFY DISPUTE RESOLUTION ON AN INDIVIDUAL BASIS. EACH PARTY HEREBY KNOWINGLY AND IRREVOCABLY WAIVES ANY RIGHT TO ASSERT ANY CLAIMS AGAINST THE OTHER PARTY AS A REPRESENTATIVE OR MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW OR DEEMED BY A COURT OF LAW TO BE AGAINST PUBLIC POLICY. TO THE EXTENT EITHER PARTY IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST THE OTHER, THE PARTIES AGREE THAT: (A) THE PREVAILING PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS OR REPRESENTATIVE ACTION (NOT WITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT); AND (B) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS OR REPRESENTATIVE ACTION.

11.6 Equitable Relief. Merchant and each Owner/Guarantor acknowledge and agree that in the event it breaches or threatens to breach any provision of Section 9, Purchaser may suffer irreparable damage for which monetary relief will not be an adequate remedy. Therefore, Merchant and each Owner/Guarantor agree that upon any such breach or threatened breach, Purchaser shall be entitled to seek specific performance and/or preliminary and permanent injunctive or other appropriate equitable relief to remedy such breach or to prevent such threatened breach without posting any bond or other security and without proving that monetary damages would be an inadequate remedy.

11.7 Further Acts; Solicitations.

(a) Merchant and each Owner/Guarantor agree to do such further acts and things and to execute and deliver such additional agreements, powers of attorney, documents and instruments as Purchaser may reasonably request to carry into effect the terms, provisions and purposes of this Agreement and any Ancillary Document or to better assure and confirm unto Purchaser its title to the Purchased Receipts, as well as its rights and remedies hereunder or thereunder.

(b) Merchant agrees that any call between Purchaser and Merchant, and their respective employees or agents, and Owner/Guarantor agrees that any call between Purchaser or its employees and agents and Owner/Guarantor, may be recorded or monitored. Merchant and Owner/Guarantor also agree that there is an established business relationship between and among them and Purchaser and therefore Purchaser may contact Merchant and its employees and agents and/or Owner/Guarantor from time to time regarding the transactions contemplated by this Agreement or other business matters. Merchant and Owner/Guarantor each agree that such contacts shall not be regarded as unsolicited or inconvenient and may be made by way of any phone number, including cell phone, e-mail address or facsimile number provided by Merchant, or its employees or agents, or Owner/Guarantor to Purchaser or its employees or agents. Merchant and each Owner/Guarantor waive, to the fullest extent permissible under applicable law, the provisions of, and shall indemnify Purchaser, its Affiliates and such third Persons and hold each of them harmless from and against any and all claims under, the US Can-Spam Act of 2003, the Telephone Consumer Protection Act and any and all other state or federal laws relating to transmissions or solicitations by any of the methods described above in this sentence.

11.8 Headings. The headings contained in this Agreement are for convenience of reference only and shall not alter or otherwise affect the meaning or interpretation of any provision of this Agreement.

11.9 Severability. If any provision of this Agreement or any Ancillary Document or the application of any such provision to any Party or circumstance shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement or such Ancillary Document or the application of such provision to such Party or circumstance other than those to which it is so determined to be invalid or unenforceable, shall not be affected by such determination, and each other provision of this Agreement and any Ancillary Document, as the case may be, shall be enforced to the fullest extent permitted by applicable law. If the final judgment of a court of competent jurisdiction determines that any provision of this Agreement or any Ancillary Document is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to, and shall, reduce the duration or scope of such invalid or unenforceable provision, or to delete specific words or phrases therefrom or add specific words or phrases thereto, and to replace such provision with a provision that is valid and enforceable and that comes closest to expressing the intention of the Parties with respect to the invalid or unenforceable provision, and this Agreement and any such Ancillary Document, as the case may be, shall be enforced as so modified.

11.10 References and Construction. References in this Agreement to “Section” mean and refer to the designated section of this Agreement, unless otherwise indicated. Words such as “herein,” “hereby,” “hereof,” “hereto” and “hereunder” refer to this Agreement as a whole, unless the context otherwise requires. Common nouns and pronouns and any variations thereof shall be deemed to refer to masculine, feminine or neuter, and words in the singular shall refer to the plural, and vice versa, as the identity of the Person, Persons or other reference in the context requires. Whenever used in this Agreement, “or” shall include both the conjunctive and disjunctive, “any” shall mean “one or more” and “including” and “include” shall mean “including” and “includes” “without limitation,” respectively. All references in this Agreement or in any Ancillary Document to “dollars” or “\$” mean and refer to United States dollars. Each Party has been represented by counsel in connection with the drafting, execution and delivery of this Agreement and the Ancillary Documents and the language used in this Agreement and in the Ancillary Documents shall be deemed to be the language chosen by the Parties to express their mutual intent. No rule of strict construction shall be applied against a Party and each Party agrees that if an ambiguity exists with respect to any provision of this Agreement, or any Ancillary Document, such provision shall not be construed against a Party because such Party or its representative drafted such provision.

11.11 Counterparts; Delivery by Electronic Means. This Agreement and each Ancillary Document may be executed in counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same instrument. The Parties may execute and deliver a counterpart of this Agreement or any Ancillary Document by facsimile or email transmission. Each Party agrees that the delivery of a counterpart of this Agreement or any Ancillary Document by facsimile or email shall have the same force and effect as delivery of original signatures and that each Party may use such facsimile signatures as evidence of the execution and delivery of this Agreement or any Ancillary Document by all Parties to the same extent that an original signature could be used.

11.12 Notices. Unless otherwise expressly provided for in this Agreement, any notice authorized or required by this Agreement to be given to a Party shall be given in a writing addressed to such Party and delivered via (a) United States postal service, registered mail, return receipt requested, (b) nationally recognized overnight courier service, (c) email or facsimile, if a copy thereof is provided by any other means set forth in this Section 11.12, or (d) hand delivery with signature acknowledging receipt to such Party at its office at the address (and person’s attention) set forth below, or at such other address (or to such other person’s attention) as may be specified by a written notice given in accordance with this Section 11.12. Notices given by registered mail shall be effective five (5) Business Days after mailing, notices given by overnight courier service shall be effective on the next Business Day and notices given by email or facsimile shall be given when received. Notwithstanding the foregoing, Merchant may not give any notice to Purchaser via email or facsimile unless Purchaser expressly consents thereto in its sole discretion.

11.13 Acknowledgment of Security Interest and Security Agreement; Financing Statements.

(a) The Receipts sold by Merchant to Purchaser pursuant to this Agreement are “accounts” or “payment intangibles” as those terms are defined in the UCC and such sale shall constitute and shall be construed and treated for all purposes as a true and complete sale, conveying good title to the Purchased Receipts free and clear of any Liens, by Merchant to Purchaser. To the extent that the Purchased Receipts are “accounts” or “payment intangibles” then (i) the sale of the Purchased Receipts creates a security interest (as defined in the UCC); (ii) this Agreement constitutes a “security agreement” under the UCC; and (iii) Purchaser has all the rights of a secured party under the UCC with respect to the Purchased Receipts. Purchaser further agrees that, with or without an Event of Default, Purchaser may notify account debtors, or other persons obligated on the Purchased Receipts, of Merchant’s sale of the Purchased Receipts and may instruct them to make payment or otherwise render performance to or for the benefit of Purchaser.

(b) Merchant authorizes Purchaser to file one or more UCC-1 forms under the UCC to give notice that the Purchased Amount of Receipts is the sole property of Purchaser. The UCC filing may state that such sale is intended to be a sale and not an assignment for security and may state that the Merchant is prohibited from obtaining any financing that impairs the value of the Receipts or Purchaser’s right to collect same. Merchant authorizes Purchaser to effect an ACH Debit to the Specified Account for all costs incurred by Purchaser in connection with the filing, amendment or termination of any UCC filings.



BizFund, LLC

GUARANTY

Merchant's Legal Name:

ONE FAT FROG, INCORPORATED

D/B/A:

ONE FAT FROG

State of Incorporation:

Type of entity

Corporation

Limited Liability Company

Limited Partnership

Limited Liability Partnership

Sole Proprietor

General Partnership

Physical Address: 2416 SAND LAKE ROAD City: ORLANDO State: FL Zip: 32809

Mailing Address: SAME AS ABOVE City: State: Zip:

Date business started (mm/yy): 05/2005 Federal ID# 42-1668173

GUARANTY

Personal Guaranty of Performance. The undersigned Guarantor(s) hereby irrevocably and unconditionally guarantees to Purchaser Merchant's performance when due and in full of all of the representations, warranties, covenants and agreements made by Merchant in that certain Merchant Cash Advance Agreement between BizFund, LLC, as Purchaser, and the Merchant named above to which this Guaranty is attached (as the same may be extended, renewed, amended, modified or restated from time to time, the "Merchant Agreement"). Such representations, warranties, covenants and agreements are referred to herein as the "Guaranteed Obligations." The Guaranteed Obligations are immediately due and payable upon the occurrence of any Event of Default under the Merchant Agreement. For the avoidance of doubt, this Guaranty does not constitute a guaranty of payment by the undersigned Guarantor(s) of any obligation of Merchant under the Merchant Agreement. Guarantor(s) shall pay to Purchaser all costs and expenses Purchaser incurs as result of or in connection with the enforcement of Purchaser's rights and remedies under this Guaranty, including fees, costs and expenses of investigation, court costs and fees and expenses of attorneys and other professionals.

Guarantor Waivers. In the event that Merchant fails to perform any obligation when due under the Merchant Agreement, Purchaser may enforce its rights under this Guaranty without first seeking to obtain payment from Merchant or any other guarantor under this Guaranty or any other security agreement or guaranty. Guarantor(s) also waives any and all defenses, set-offs, counterclaims and cross claims available to him or her in any action by Purchaser to enforce this Guaranty, including any claim or defense of usury.

Purchaser does not have to notify Guarantor of, or obtain Guarantor's consent with respect to, any of the following events and Guarantor will not be released from his or her obligations under this Guaranty as a result of (even if he or she is not notified of or does not consent to): (i) Merchant's failure to perform any obligation under the Merchant Agreement; (ii) any adverse change in Merchant's financial condition or business; (iii) any sale or other disposition of any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations; or (iv) Purchaser's acceptance of this Guaranty. In addition, Purchaser may take any of the following actions without notifying Guarantor, obtaining his or her consent or releasing Guarantor from any of his or her obligations under this Guaranty: (i) extend, renew, amend, modify or restate, in whole or in part, at any time or from time to time, the Merchant Agreement, the Merchant Obligations or Merchant's other obligations to Purchaser; (ii) release of Merchant from all or any part of its obligations to Purchaser (including the Merchant Obligations); (iii) sell, release, impair, waive or otherwise fail to realize upon any other guarantee of the Guaranteed Obligations or any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations; (iv) foreclose on any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations in a manner that impairs or precludes the right of Guarantor to obtain reimbursement for payment under this Guaranty; or (v) any other action or inaction that would, under applicable law or principles of equity, release or discharge a surety. Furthermore, this Guaranty shall be enforceable against Guarantor(s) regardless of whether the Merchant Agreement or any other Ancillary Document is valid or enforceable against Merchant or any other Person and notwithstanding any defense, setoff or counterclaim that Merchant may have or assert against Purchaser or any other Person.

Until all Merchant Obligations have been irrevocably satisfied in full, Guarantor shall not seek reimbursement from Merchant or any other guarantor for any amounts paid by it under this Guaranty. Guarantor irrevocably waives and agrees not to seek to exercise any of the following rights that it may have against Merchant, any other guarantor, or any collateral provided by Merchant or any other guarantor, for any amounts paid by it, or acts performed by it, under this Guaranty: (i) subrogation; (ii) reimbursement; (iii) performance; (iv) indemnification; (v) contribution; and (vi) any and all rights of set-off, counterclaim or cross claim. In the event that Purchaser must return any amount paid by Merchant or any other guarantor of the Guaranteed Obligations because that person has become subject to a Proceeding under the United States Bankruptcy Code or any similar law, Guarantor's obligations under this Guaranty shall include that amount.

Guarantor Acknowledgement. Guarantor acknowledges that: (i) it understands the seriousness of the provisions of this Guaranty; (ii) it has had a full opportunity to consult with counsel of its choice; and (iii) it has consulted with counsel of its choice or has decided not to avail itself of that opportunity.

Joint and Several Liability. The obligations hereunder of the persons or entities constituting Guarantor under this Guaranty are joint and several and shall be binding upon and enforceable against each of them, separately, and their respective executors, personal representatives, heirs, successors and permitted assigns.

Waiver of Trial by Jury.

THE PARTIES HEREBY IRREVOCABLY WAIVE TRIAL BY JURY IN ANY COURT IN ANY PROCEEDING ON ANY MATTER ARISING OUT OF OR IN ANY WAY RELATED TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY BREACH HEREOF OR DEFAULT HEREUNDER OR ANY ENFORCEMENT HEREOF. THE PARTIES HEREBY ACKNOWLEDGE THAT EACH MAKES THIS WAIVER KNOWINGLY, WILLINGLY, VOLUNTARILY AND WITHOUT DURESS, AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH THEIR ATTORNEYS.

Class Action Waiver.

EACH GUARANTOR ACKNOWLEDGES AND AGREES THAT THE AMOUNT AT ISSUE IN THIS TRANSACTION AND ANY DISPUTES THAT ARISE WITH RESPECT THERETO ARE LARGE ENOUGH TO JUSTIFY DISPUTE RESOLUTION ON AN INDIVIDUAL BASIS. THEREFORE, EACH GUARANTOR KNOWINGLY AND IRREVOCABLY WAIVES ANY RIGHT TO ASSERT ANY CLAIMS AGAINST PURCHASER AS A REPRESENTATIVE OR MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW OR DEEMED BY A COURT OF LAW TO BE AGAINST PUBLIC POLICY. TO THE EXTENT A GUARANTOR IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST PURCHASER, SUCH GUARANTOR AGREES THAT: (I) THE PREVAILING PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS OR REPRESENTATIVE ACTION (NOT WITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT); AND (II) SUCH GUARANTOR, AS A MEMBER OF THE CLASS, WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS OR REPRESENTATIVE ACTION.

Security Interest. Guarantor(s) hereby assigns to Purchaser, as collateral security, and grants to Purchaser a security interest in its "accounts" and "payment intangibles" (as those terms are defined in the UCC) now existing or hereafter arising, to secure its obligations under this Guaranty. Guarantor(s) agrees that Purchaser is authorized to and may (a) file one or more UCC-1 forms under the UCC to give notice of the grant of this security interest, and to file appropriate amendments, continuations and termination statements with respect thereto; (b) notify account debtors, or other persons obligated with respect to such accounts and payment obligations, of this security interest and instruct them to make payment or otherwise render performance to or for the benefit of Purchaser; and (c) exercise any and all rights and remedies available to it under the UCC or other applicable law to protect and enforce its rights under this security interest.

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE MERCHANT AGREEMENT, INCLUDING THE TERMS, ARE HEREBY INCORPORATED IN AND MADE A PART OF THIS GUARANTY. CAPITALIZED TERMS NOT DEFINED IN THIS GUARANTY, SHALL HAVE THE RESPECTIVE MEANINGS SET FORTH IN THE MERCHANT AGREEMENT, INCLUDING THE TERMS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, GUARANTOR(S) EXPRESSLY ACKNOWLEDGES, CONFIRMS AND AGREES TO THE PROVISIONS OF SECTION 1.3 AND 6.7 OF THE MERCHANT AGREEMENT

MERCHANT #1

BY: CONNIE BAUGHER  
(Print Name)  
SS# \_\_\_\_\_

  
Connie Baugher (Mar 13, 2023 14:13 EDT)

Driver's License Number: \_\_\_\_\_

Sign Here

MERCHANT #2

By: \_\_\_\_\_  
(Print Name)  
SS# \_\_\_\_\_

\_\_\_\_\_

Driver's License Number: \_\_\_\_\_

Sign Here

OWNER/GUARANTOR #1 SIGNING INDIVIDUALLY AND FOR ANY ADDITIONAL GUARANTORS LISTED BELOW

By: CONNIE BAUGHER  
(Print Name):  
SS# \_\_\_\_\_

  
Connie Baugher (Mar 13, 2023 14:13 EDT)

Driver's License Number: \_\_\_\_\_

Sign Here

OWNER/GUARANTOR #2 SIGNING INDIVIDUALLY AND FOR ANY ADDITIONAL GUARANTORS LISTED BELOW

By: \_\_\_\_\_  
(Print Name):  
SS# \_\_\_\_\_

\_\_\_\_\_

Driver's License Number: \_\_\_\_\_

Sign Here

ADDITIONAL GUARANTOR #1

[ KING RESTAURANT EQUIPMENT, INC ]  
Tax ID: \_\_\_\_\_  
(Print Name): CONNIE BAUGHER

SIGNATURE:   
Connie Baugher (Mar 13, 2023 14:13 EDT)

BIZFUND, LLC



**BIZ FUND**  
 .COM  
 LOYAL TO YOU AND YOUR GROWTH

APPENDIX A: THE FEE STRUCTURE:

- a. ACH Program Fee \$ WAIVED ACH'S ARE LABOR INTENSIVE, NOT AN AUTOMATED PROCESS
  - b. Origination Fee \$ WAIVED
  - c. NSF Fee (Standard) \$ 50 each.
  - d. Rejected ACH - When Merchant directs the bank to Reject ACH Debit
- DAILY ACH PROGRAM
- | <u>AMOUNT FUNDED/REJECT FEE</u> |        |
|---------------------------------|--------|
| Up to \$7,500                   | \$ 30  |
| \$7,501.00-\$50,000             | \$ 50  |
| \$50,001-\$100,000              | \$ 75  |
| \$100,001-\$250,000             | \$ 100 |
| Over \$250,000                  | \$ 150 |
- Weekly ACH Program
- | <u>Amount Funded</u> | <u>Reject Fee</u> |
|----------------------|-------------------|
| Up to \$7,500        | \$ 100            |
| \$7,501-\$50,000     | \$ 150            |
| \$50,001-\$100,000   | \$ 250            |
| \$100,001-\$250,000  | \$ 375            |
| Over \$250,000       | \$ 595            |
- f. Bank Change Fee- \$75 each occurrence When Merchant requires a change of account to be debited requiring us to adjust our system
  - g. Blocked Account- \$2,500 When Merchant BLOCKS account from our Debit ACH for nine (9) Business Days or less which places them in default (a separate fee from a Default Fee)
  - h. No Stacking Fee \$5,000 When Merchant breaches its covenant in Section 6.9 (a separate fee from and in addition to a Default Fee)
  - i. Default Fee \$5,000 In addition to other fees that may be applied, when Merchant changes, closes or blocks the Account for more than ten (10) Business Days without authorization from Purchaser, or upon any Event of Default pursuant to the terms of Merchant Agreement
  - j. Monthly Maintenance Fee- WAIVED On a monthly basis, the merchant will be charged \$299 as an account maintenance fee for the term of the merchants advance.

**Miscellaneous Service Fees.** Merchant shall pay certain fees for services related to the origination and maintenance of accounts which may include but not be limited to: Merchant's funding is transacted electronically to their designated bank account and charged a fee of \$95.00 for a Fed Wire or \$15.00 for an ACH. The fee for the ACH program, origination and associated funds transmission charges are paid by deduction from the funded amount in accordance with the schedule on this page. Any administrative adjustments associated with changes to the Specified Percentage and Specific Daily Amount will incur a fee of \$75 per occurrence. (All fees are subject to change at the sole and exclusive discretion of Purchaser upon notice of not less than 30 calendar days).

Merchant Initials: CB

Sign Here



BIZFUND, LLC

APPENDIX B

**AUTHORIZATION AGREEMENT FOR AUTOMATED CLEARING HOUSE TRANSACTIONS**

[ ONE FAT FROG, INCORPORATED ] (“Merchant”) hereby authorizes BizFund, LLC (“Purchaser”) to present automated clearing house (ACH) debits to the following checking account in the amount of Daily Amount specified below and all fees and other payments due to Purchaser from Merchant under the terms of that certain Merchant Cash Advance Agree- ment for the Purchase and Sale of Future Receipts (the “Agreement”) entered into between Merchant and Purchaser, as it may be extended, renewed, amended, modified or restated in whole or in part at any time or from time to time. Merchant also authorizes Purchaser to initiate additional entries (debits and credits) to correct any erroneous transfers. In addition, if an Event of Default (as defined in the Agreement) occurs, Merchant authorizes Purchaser to debit any and all accounts controlled by Merchant or controlled by any entity with the same Federal Tax Identification Number as Merchant up to the total amount of all Merchant Obligations (as defined in the Agreement), including but not limited to, all fees and charges, due to Purchaser from Merchant under the terms of the Agreement.

Merchant agrees to be bound by the Rules and Operating Guidelines of NACHA and represents and warrants that the designated account is established and used primarily for commercial/business purposes, and not for consumer, family or household purposes. Merchant authorizes Purchaser to contact Merchant’s financial institution to obtain available funds information and/or to verify any information Merchant has provided about the designated checking account and to correct any missing, erroneous or out-of-date information. Merchant understands and agrees that any revocation or attempted revocation of this Authorization will constitute an Event of Default under the Agreement. In the event that Merchant closes the designated checking account, or the designated checking account has insufficient funds for any ACH transaction under this Authorization, Merchant authorizes Purchaser to contact Merchant’s financial institution and obtain information (including account number, routing number and available balance) concerning any other deposit account(s) maintained by Merchant with Merchant’s financial institution, and to initiate ACH transactions under this Authorization to such additional account(s). To the extent necessary, Merchant grants Purchaser a limited Power of Attorney to take action in Merchant’s name to facilitate this authorization.

Weekly Amount: \$ 9,929.00, which is an approximate calculation of a percentage of the weekly dollar value of Merchant’s Receipts pursuant to the Agreement or this Authorization, on all banking days and twice on any banking day prior to a bank holiday.

Transfer Funds To/From: Name of Bank: BANK OF AMERICA

ABA Transit/Routing #: 063000047

Checking Account #: [REDACTED]

This authorization is to remain in full force and effect until all of the Merchant Obligations under the Agreement have been irrevocably satisfied in full, in such time and in such manner as to afford Purchaser a reasonable opportunity to act on it.

Merchant Information: Merchant’s Name: ONE FAT FROG, INCORPORATED

Signature of Authorized Representative:  

Print Name: CONNIE BAUGHER

Print Title: \_\_\_\_\_

Merchant’s Tax ID: 42-1668173

Date: 03-13-2023

[Attached Voided Check Here]



# ONE FAT FROG, INC 03-13-2023

Final Audit Report

2023-03-13

Created:	2023-03-13
By:	Olga A (docs@bizfund.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAARBCtor6GSllsKgpHQnikRShsF8zElwUD

## "ONE FAT FROG, INC 03-13-2023" History

-  Document created by Olga A (docs@bizfund.com)  
2023-03-13 - 3:07:45 PM GMT- IP address: 100.38.104.74
-  Document emailed to connieb@onefatfrog.com for signature  
2023-03-13 - 3:08:59 PM GMT
-  Email sent to Olga A (docs@bizfund.com) bounced and could not be delivered  
2023-03-13 - 3:09:15 PM GMT
-  Email viewed by connieb@onefatfrog.com  
2023-03-13 - 3:55:34 PM GMT- IP address: 104.28.57.243
-  Signer connieb@onefatfrog.com entered name at signing as Connie Baugher  
2023-03-13 - 6:13:08 PM GMT- IP address: 104.28.57.241
-  Document e-signed by Connie Baugher (connieb@onefatfrog.com)  
Signature Date: 2023-03-13 - 6:13:10 PM GMT - Time Source: server- IP address: 104.28.57.241
-  Agreement completed.  
2023-03-13 - 6:13:10 PM GMT



(800) 895-4424 | [underwriting@foxbusinessfunding.com](mailto:underwriting@foxbusinessfunding.com)

# CONGRATULATIONS!

You have been approved by Fox Capital Group in the amount of:

**\$500,000.00**

## CONTRACT CHECKLIST

To ensure a quick and smooth funding process, please review the important items in checklist below:

1. Please verify that your name on the documents is the exact same spelling as your name on your driver's license.
2. Please verify that the legal name and address of your business is correct on the documents.
3. Please ensure that your signatures and initials are filled in on all pages of the documents as prompted by this red arrow .

THANK YOU!

# Fox Capital Group, Inc.

P: (800) 895-4424 | F: 866-557-0455 | underwriting@foxbusinessfunding.com

## FUTURE RECEIVABLES SALE AND PURCHASE AGREEMENT

This Agreement ("Agreement") dated June 15, 2023, is made between Fox Capital Group, Inc. ("FCG") and the following merchant(s) (hereinafter, "Merchant"), owner (s) ("Owner") and guarantor(s) ("Guarantor"):

**Legal Name of Merchant(s):** ONE FAT FROG, INCORPORATED and entities appearing on "Exhibit D"

**D/B/A:** ONE FAT FROG RESTAURANT EQUIPMENT

**Form of Entity:** CORPORATION      **State of Organization:** FL      **EIN #:** 42-1668173

**Physical Address:** 2416 SAND LAKE RD, ORLANDO, FL, 32809

**Mailing Address:** 2416 SAND LAKE RD, ORLANDO, FL, 32809

<u>"Purchase Price"</u>	<u>"Purchased Percentage"</u>	<u>"Purchased Amount"</u>	<u>"Daily Remittance"</u>
\$500,000.00	9.0%	\$695,000.00	\$2,999.80

DocuSigned by:  
  
 AEC52E1D8C8B4F1...  
 Title: **President**  
 Business Phone: 407-480-3409

ORATED

←

DocuSigned by:  
  
 AEC52E1D8C8B4F1...  
 SSN: [REDACTED]  
 Email: connieb@onefatfrog.com  
 Phone: 4076878057  
 Address: 2416 SAND LAKE RD,  
 ORLANDO, FL, 32809-7642

←

Subject to the Terms and Conditions below ("Terms"), Merchant hereby sells, assigns, and transfers to FCG (making FCG the absolute owner) in consideration of the Purchase Price specified above, the Purchased Percentage of all of Merchant's accounts receivable and payment rights arising out of or relating to Merchant's sale or delivery of goods and/or services due to Merchant after the date of this Agreement, whether paid directly by Merchant's customers or paid by others on Merchant's customers' behalfs or as reimbursements (the "Receipts") up to the Purchased Amount, which shall be remitted to FCG in the manner set forth in this Agreement until the entire Purchased Amount has been delivered by Merchant to FCG (except in the case that Merchant ceases to receive Receipts because, for example, it goes out of business or goes bankrupt in the regular course of its business). This sale of Receipts to FCG is made without recourse against Merchant or any Guarantors, except as specifically set forth in this Agreement. In consideration of the sale by Merchant to FCG of the Receipts, FCG agrees to pay to Merchant the Purchase Price (reduced by any applicable fees), which shall be delivered to Merchant following Merchant's execution of this Agreement. FCG's payment of the Purchase Price (minus any applicable fees) shall be deemed the acceptance and performance by FCG of this Agreement.

THIS IS NOT A LOAN. Merchant is selling a portion of a future revenue stream to FCG at a discount, not borrowing money from FCG. There is no interest rate or payment schedule and no time period during which the Purchased Amount must be collected by FCG. In lieu of calculating the value of the Purchased Percentage of the Receipts each day, Merchant shall remit the Daily Remittance, which is a good faith approximation by FCG and Merchant of (a) the Purchased Percentage multiplied by (b) the gross revenues of Merchant during the previous calendar month divided by (c) the number of business days in the previous calendar month. The initial Daily Remittance shall be as described above. Merchant going bankrupt or going out of business, or experiencing a slowdown in business or a delay in collecting its receivables, in and of themselves, do not constitute a breach of this Agreement. Under such circumstances, the Daily Remittance shall be subject to reconciliation or adjustment as set forth in Paragraph 1.4 of the Terms and Conditions provided Merchant is not otherwise in default of this Agreement and makes a reconciliation request. FCG is entering this Agreement knowing the risks that Merchant's business may slow down or fail. FCG assumes these risks based on Merchant's, each Owner's and each Guarantor's representations, warranties, and covenants in this Agreement, which are designed to give FCG a reasonable and fair opportunity to receive the benefit of its bargain. Merchant and each Guarantor are guaranteeing performance of the terms of this Agreement and are not guaranteeing absolute payment of the Purchased Amount. Nothing in this Agreement to the contrary, Merchant shall operate its business in good faith and do nothing to intentionally cause the diminution or diversion of its Receipts.

So long as Merchant is generating Receipts and has not requested a reconciliation, FCG will debit the Daily Remittance each business day from one depositing bank account (the "Account"), into which Merchant and Merchant's customers shall exclusively remit all Receipts (regardless of the method by which Merchant receives them), until such time as FCG receives remittance in full of the Purchased Amount (except in the case that Merchant ceases to receive Receipts because it goes out of business or goes bankrupt in the regular course of its business). Merchant hereby authorizes FCG to ACH debit the Daily Remittance from the Account on each business day (i.e., Monday through Friday but not bank holidays). Merchant understands that it is responsible for ensuring that it is responsible for notifying FCG if it has no Receipts or if there is not an amount sufficient to cover the Daily Remittance to be debited by FCG in the Account. In the event that there will be insufficient funds in the Account such that the debit of the Daily Remittance will not be honored by Merchant's bank, Merchant shall give 24 hours' advanced written notice (or other reasonable notice as necessitated by the circumstances, but no later than two days after Merchant is sent notice of a rejected debit) to FCG such that FCG may be able to cancel any pending debits, and shall promptly provide to FCG bank statements and other financial records to verify Merchant's revenues and account balances. Provided there is no other Event of Default (as defined in Section 3.1 of the Terms), Merchant will not be held in default if timely notice of insufficient funds is provided and Merchant cooperates in providing information requested, even if a Daily Remittance is rejected by Merchant's bank for insufficient funds. Merchant will be held responsible for any fees incurred by FCG resulting from a rejected ACH attempt (unless timely notice of insufficient funds is provided to FCG) or caused by another Event of Default. FCG is not responsible for any overdrafts or rejected transactions that may result from FCG's ACH debiting the Daily Remittance under the terms of this Agreement. Notwithstanding anything to the contrary in this Agreement or any other agreement between FCG and Merchant, upon the occurrence of a default under Sections 1.11 or 3.1 of the Terms, FCG shall be entitled to immediately collect any outstanding amount of the Purchased Amount as damages.

**Fox Capital Group, Inc.**

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**FEE SCHEDULE**

**THE FOLLOWING “FEE SCHEDULE” INCLUDES ALL FEES AND LIQUIDATED DAMAGES APPLICABLE UNDER THIS AGREEMENT (OTHER THAN ATTORNEYS’ FEES AND COLLECTIONS COSTS ASSESSED IN AN EVENT OF DEFAULT):**

**CLOSING COSTS**

- A. Origination Fee: \$0.00 to cover cost of origination and ACH Setup.\*
- B. Underwriting Fee: \$0.00 to cover underwriting and related expenses.\*
- C. Processing Fee: \$0.00 to cover professional service fees.\*
- D. Wire Fee: Each Merchant shall receive their funding electronically to their designated bank account and will be charged \$50 for a federal wire or \$0 for a bank ACH. \*

**APPLICABLE FEES**

- E. Bank Change Fee: \$150 when Merchant requires a change of the Account, which requires changes to FCG’s records and systems.
- F. Not-Sufficient-Funds Fee (Standard): \$50 (each) to cover bank charges for Not Sufficient Funds in Merchant’s bank account unless Merchant provides timely notice. A default may be declared after five (5) or more occurrences.
- G. Return Fee (Standard): \$50 (each) to cover bank charges for any rejected debits other than for Not Sufficient Funds in Merchant’s bank account (such as if Merchant instructs the bank to reject FCG’s debit). This fee may be charged in addition to and without waiver of FCG’s other rights upon Merchant’s default.
- H. Stacking Fee: For each occurrence, \$5,000.00 or 10% of the balance of the undelivered Purchased Amount at the time of breach, whichever is greater, to be charged if Merchant has sold or sells any future receipts to, or has obtained or obtains a loan or advance secured by any future receipts from any person or entity without FCG’s prior written consent, due to increased risk profile.\*\*
- I. Default Fee: \$5,000, to be charged for each Event of Default under Section 3.1.\*\*
- J. Court costs, collection agency fees, attorneys’ fees, expert fees, other related collections costs and costs for indemnification, as provided in the Terms of the Agreement.

All fees and/or liquidated damage amounts (i) may be added to the balance owed to FCG under the Agreement (if not already paid out of the Purchase Price), and (ii) are in addition to FCG’s rights and remedies under the Agreement, including the right to declare Merchant in default.

**Total fees of \$0.00 shall be deducted from the Purchase Price prior to funding. Merchant will receive a net purchase price in the amount of \$500,000.00 at the time of delivery by FCG.**

\* These fees will be paid out of the Purchase Price/funding amount.

\*\* Merchant acknowledges these fees as liquidated damages, and not as penalties, and reasonable estimates of the damages likely to be incurred by FCG in the event of Merchant’s breach of the Agreement.

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Fox Capital Group, Inc.

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TERMS AND CONDITIONS

1. TERMS OF ENROLLMENT IN PROGRAM

1.1 Term of Agreement. This Agreement for the purchase and sale of future Receipts does not have a fixed duration or term, making the term potentially infinite. The term of this Agreement shall commence as of the "Effective Date", which shall be calculated as the later of: (i) the date set forth in the preamble to this Agreement, and (ii) the date when FCG paid the Purchase Price to Merchant. This Agreement shall expire on either (a) the date ("Expiration Date") when the Purchased Amount and all other sums due to FCG are received by FCG in full, as per the terms of this Agreement, or (ii) provided Merchant is not in default under any term of this Agreement, the date of the total failure of Merchant's business and the complete cessation of all Receipts.

1.2 ACH Authorization and Agreement with Processor. Throughout the term of this Agreement, Merchant irrevocably authorizes FCG and/or its agent(s) to deposit the Purchase Price or any amounts owed to Merchant into the Account by electronic check or automated clearing house (ACH), and to debit by electronic check or ACH from the Account any amounts owed to FCG, including without limitation (a) the Daily Remittance or (b) the entire Purchased Amount (together with applicable fees) in the event that Merchant defaults under this Agreement. Merchant shall (a) execute an ACH authorization form in favor of FCG in the form annexed as "Exhibit A" to authorize FCG to obtain electronic fund transfer services to and from the Account, and (b) if applicable, execute an agreement acceptable to FCG with a credit and debit card processor (the "Processor") instructing the Processor to deposit all Receipts into the Account (from which FCG may debit amounts owed to it by Merchant). As of the Effective Date, the Account is as listed on Exhibit A. If Merchant needs to change the designated Account for any reason, Merchant must seek advance written approval from FCG, for which FCG shall not unreasonably withhold consent, and provide a new ACH authorization form with the updated account information. It is Merchant's exclusive responsibility to pay to its banking institution and to compensate FCG in case FCG is charged by its banking institution (in accordance with the Fee Schedule) for any fees, charges and expenses incurred by either FCG or Merchant due to rejected electronic checks or ACH debit attempts, overdrafts or rejections.

1.2.1 Throughout the term of this Agreement, Merchant irrevocably grants access to FCG to view the Account information through the bank's webpage or other electronic access for the purpose of verifying Merchant's receivables, Receipts, deposits, and withdrawals into and from the Account, and shall execute the form annexed as "Exhibit B", providing FCG and/or its authorized agent(s) with all of the information, authorizations and passwords necessary for such purposes. Merchant understands that any attempt to block FCG's access to the Account or refusal to provide FCG with login credentials to the Account constitutes a default under this Agreement.

1.2.2 The authorizations in this Section 1.2 apply not only to the approved Account but also to any subsequent or alternate account used by the Merchant for its Receipts, whether pre-approved or agreed to by FCG or not. This additional authorization is not a waiver of FCG's entitlement to declare this Agreement breached by Merchant as a result of its use of an account which FCG did not first pre-approve in writing prior to Merchant's use thereof. The aforementioned authorizations shall be irrevocable without the written consent of FCG. The purported revocation of such authorizations shall constitute a breach of this Agreement.

1.2.3 In the event the Account or Processor shall become unavailable or shall cease providing services to Merchant during the term of this Agreement, prior to the first date of such unavailability or cessation of services, Merchant shall arrange for another Account or Processor and obtain advance written approval from FCG for the same.

1.3 Acceleration. Merchant may at any time after receipt from FCG of the Purchase Price accelerate delivery to FCG of the then undelivered portion of the Purchased Amount (such amount, the "Outstanding Purchased Amount") in accordance with the following procedures:

1.3.1 Unless otherwise agreed to in writing by FCG, the Outstanding Purchased Amount can only be delivered in full and not partially

1.3.2 Merchant shall request the right to accelerate the delivery of the Outstanding Purchased Amount by notifying FCG to that effect, provided that such notice shall be in writing (by email to underwriting@foxbusinessfunding.com) and must contain information on the source(s) of the funds to be used for delivery of the Outstanding Purchased Amount and the approximate date of such delivery. FCG shall respond to Merchant's request within three business days from the date of its receipt by FCG, in which it will indicate the exact amount of the Outstanding Purchased Amount as of the date of the intended delivery by Merchant. As of the date agreed upon as between FCG and Merchant, Merchant shall deliver or cause to be delivered to FCG the full amount of the Outstanding Purchased Amount.

1.3.3 Merchant shall not suspend or modify, or cause to be suspended or modified, the delivery to FCG of the Daily Remittance prior to the delivery of the Outstanding Purchased Amount to FCG, unless there are insufficient funds in the Account and Merchant has given FCG due notice. Provided Merchant is not in default of this Agreement and no fees are due to FCG, upon delivery of the full Outstanding Purchased Amount to FCG, Merchant's obligations to FCG pursuant to this Agreement shall be fulfilled.

1.3.4 Upon FCG's receipt of the Outstanding Purchased Amount, FCG shall notify its payment processor or the bank at which the Account is located to stop transferring Daily Remittance from the Account. If FCG shall have received one or more Daily Remittances after delivery of the Outstanding Purchased Amount (due to the processor's or bank's delay in processing FCG's request or for any other reason), FCG will return the overage to Merchant. Nevertheless, Merchant acknowledges and agrees that FCG shall have the right to apply the overage toward Merchant's outstanding financial obligations to FCG under any separate agreement between Merchant and FCG (if any) in exchange for, and as an adequate and sufficient consideration for, FCG granting Merchant the right to accelerate the delivery of the Outstanding Purchased Amount.

1.4 Adjustment.

1.4.1 1.4.1. Either party may give notice to the other for an adjustment of the Daily Remittance to more accurately reflect the Purchased Percentage. In the event of such adjustment, the Daily Remittance will either be (i) increased if the amount remitted to FCG was less than the Purchased Percentage of all revenue of Merchant in the prior fourteen (14) days, or (ii) decreased if the amount received by FCG was more than the Purchased Percentage of all revenue of Merchant in the prior fourteen (14) days. In the event Merchant requires an adjustment to decrease the amount of the Daily Remittance, it shall be Merchant's sole responsibility to initiate the process in the manner set forth in Section 1.4.2. If an adjustment is required, FCG shall modify the Daily Remittance such that the modified Daily Remittance amount is a good faith approximation by FCG of the (a) Purchased Percentage multiplied by (b) the gross revenues of Merchant during the prior fourteen (14) days divided by (c) the number of business days in the prior fourteen (14) days. Any adjustment will extend or reduce the duration of the period over which the Purchased Amount is delivered.

1.4.2 In the event that Merchant desires an adjustment of the Daily Remittance, Merchant shall make a formal written request. Requests for adjustment must be made by email and shall include a copy of Merchant's most recent bank statements or credit card processing statements as well as Merchant's account reports showing transactions in the month to date, or other documents or reports available to Merchant for the verification of its revenues. Email requests to FCG must be made to FCG at reconciliation@foxbusinessfunding.com, with the subject line "Request for Adjustment." The adjustment

shall be made by FCG within two business days of notice being given and shall be effective as of the date of the notice (such that any overpayment by Merchant after the date of the notice shall be credited to Merchant). Merchant shall not be in default if it does not have the amount of the higher Daily Remittance on account each day between making its request for adjustment and FCG's reconciliation and adjustment of the debits through its payment processor, provided however that Merchant shall at the time of making the adjustment request notify FCG that it has an insufficient balance and no other Event of Default has occurred. Merchant shall have the right to request an adjustment as many times during the term of this Agreement as it deems proper, and FCG shall comply with each such request provided that: (i) each such request is made in accordance with the terms of Section 1.4; and (ii) if a request for adjustment is made after the expiration of the term of this Agreement and, as the result of such reconciliation, the total amount actually debited by FCG will become less than the Purchased Amount, then and in such event the term of this Agreement shall automatically be extended until the time when the total amount actually debited pursuant to this Agreement shall become equal to the Purchased Amount.

1.5 Reconciliation. As long as there has not been an Event of Default under this Agreement, if there has been a material downward change in the Merchant's Receipts such that it reasonably appears to Merchant that the total amount collected from Merchant by FCG through debits of the Daily Remittances materially exceeds the Purchased Percentage of Merchant's Receipts since the Effective Date of this Agreement, Merchant shall have the right to request a reconciliation so that FCG shall return to Merchant such amounts as may exceed the then currently realized amount of the Purchased Percentage of Receipts. It shall be Merchant's sole responsibility to request a reconciliation, if it is required. Merchant may request an adjustment at any time and for as many times as it desires during the course of the Agreement by sending FCG a request by email to reconciliation@foxbusinessfunding.com, with the subject line "Request for Reconciliation", and include a copy of Seller's bank statements or statements from any credit card payment processor since the Effective Date of this Agreement (which statements shall also include the Merchant's bank account report showing transactions in the month to date), as well as any receivables reports maintained by Merchant. Upon receipt of a written reconciliation request from Merchant, FCG may request any and all financial information of the same nature (i.e., showing the Receipts) from Merchant as is reasonably necessary to accurately reconcile the amount FCG has received from Merchant with the actual total amount of Receipts generated by Merchant since the Effective Date. FCG shall review Merchant's actual Receipts for the entire period between the Effective Date and the date of the request and, in the event the total amount remitted exceeds the total Purchased Percentage of the Receipts actually received by Merchant for such period, FCG shall remit back to Merchant any amount overcollected. The reconciliation shall be made within five (5) business days of Merchant's request and provision of the financial information described in this Section and shall be effective as of the date of the notice. Any reconciliation may substantially extend the duration of this Agreement. FCG shall not be required to reconcile until such time as it has received all such requested information. Nothing set forth in Section 1.5 shall be deemed to prevent Merchant from requesting a stop or reduction to the Daily Remittances in the event of a material reduction or cessation of its Receipts.

1.6 Indemnification. Merchant, each Owner and each Guarantor jointly and severally indemnify and hold harmless the Processor or the Merchant's bank at which the Account is located, or either of their officers, directors and shareholders, against all losses, damages, claims, liabilities and expenses (including reasonable attorneys' fees) incurred by Processor or the bank resulting from (a) claims asserted by FCG for monies owed to FCG from Merchant and (b) actions taken by Processor or the bank in reliance upon any fraudulent, misleading, or deceptive information or instructions provided by Merchant. Processor and the bank are third-party beneficiaries of this provision. Merchant and each Guarantor waive any right to seek indemnification or contribution from FCG for such losses.

1.7 No Liability. In no event will FCG be liable for any claims asserted by Merchant, any Owner or any Guarantor under any legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is waived by both Merchant, each Owner and each Guarantor. In the event that these claims are nonetheless raised, Merchant and each Guarantor will be jointly and severally liable for FCG's attorneys' fees and expenses resulting therefrom in accordance with Section 3.4. Further, the above notwithstanding, in no event will FCG's total liability to the Merchant for any claim or action exceed the amount of the Purchase Price.

1.8 Reliance on Terms. Sections 1.2, 1.3, 1.4, 1.5, 1.6 and 2.5 of this Agreement are agreed to for the benefits of Merchant, FCG, Processor and Merchant's bank, and, notwithstanding the fact that Processor and the bank are not parties to this Agreement, Processor and the bank may rely upon their terms and raise them as a defense in any action.

1.9 Sale of Receipts.

1.9.1 Notwithstanding any other provision of this Agreement, Merchant and FCG acknowledge and agree that the Purchase Price under this Agreement is in exchange for the Purchased Amount of Merchant's Receipts, and that such Purchase Price is not intended to be, nor shall it be construed, as a loan from FCG to Merchant. There is no interest rate or payment schedule in this Agreement. FCG has purchased and shall own all the Receipts described in this Agreement up to the full Purchased Amount as the Receipts are created, and the Receipts shall be held in the Account in trust in favor of FCG, and Merchant shall have no legal or equitable interest in the Purchased Amount of Receipts, except that so long as the Merchant is not in default, Merchant shall only be required to deliver the Daily Remittance each business day until the Purchased Amount is delivered in full. Remittances made to FCG in respect of the full amount of the Receipts shall be conditioned upon Merchant's sale of products and services, and the remittances therefor by or on behalf of Merchant's customers. FCG is a bona fide purchaser of the Purchased Amount for fair value. Merchant agrees that the Purchase Price equals the fair market value for the risk undertaken by FCG in consideration for the Purchased Amount of Merchant's Receipts. The parties intend for the sale of Receipts and not an assignment for security.

1.9.2 FCG agrees to purchase the Receipts knowing the risks that Merchant's business may slow down, go bankrupt or fail, and FCG assumes this risk based exclusively upon the information provided to it by Merchant and Merchant's business operations prior to the date of this Agreement, and upon Merchant's representations, warranties and covenants contained in this Agreement that are designed to give FCG a reasonable and fair opportunity to receive the benefit of its bargain. This sale of Receipts is made without express or implied warranty to FCG of collectability of the Receipts and without recourse against Merchant, any Owner or any Guarantor if Receipts are not generated in the regular course of Merchant's business operations or cannot be collected, except as specifically set forth in this Agreement. Thus, the period of time over which it will take FCG to collect the Purchased Amount is not fixed, is unknown to both parties as of the Effective Date and will depend on how well or poorly Merchant's business performs following the Effective Date. As an extreme example, in the event Merchant's business ceases to exist after FCG's purchase of the Receipts and prior to the delivery of the Purchased Amount as a result of a cessation of revenues for reasons outside Merchant's control, FCG may never collect all or a substantial portion of the Purchased Amount.

1.9.3 In no event shall the Purchased Amount, the aggregate of any amounts or any portion thereof be deemed as interest. It is the express intention of the parties that Merchant not pay or contract to pay, and that FCG not receive or contract to receive, directly or indirectly in any manner whatsoever, any amount deemed to be interest in excess of that which may be paid by Merchant under applicable law. As a result

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thereof, absent a modification agreed to in writing by Merchant, the Purchased Amount can never increase above the amount set forth on the first page of this Agreement.

1.9.4. In the event a court of competent jurisdiction finds this Agreement to be a loan or to require the payment of interest, despite the parties specifically representing that it does not require payment of interest, this Agreement shall be modified such that no sum charged or collected hereunder shall exceed the highest rate permissible by law. The rate in effect hereunder shall automatically be reduced to the maximum rate permitted by applicable law, and FCG shall promptly refund to Merchant any interest received by FCG in excess of the maximum lawful rate.

1.9.5. Merchant agrees that it will treat the Purchase Price and Purchased Amount in a manner consistent with a sale in its accounting records and tax returns and not as a loan. Merchant hereby waives any rights of privacy, confidentiality or taxpayer privilege in any litigation or arbitration arising out of this Agreement in which Merchant asserts that this transaction is anything other than a sale of future receipts.

1.9.6. Because the parties acknowledge and rely upon the lawfulness of this transaction under the laws of the State of Florida and the fairness of its terms, Merchant knowingly and willingly waives and is estopped from asserting any claim or defense of usury in any legal action or proceeding, whether based on Florida law or the law of any other jurisdiction.

1.9.7. FCG may request, and Merchant shall execute, a Deposit Account Control Agreement (DACA) for the Account in a form acceptable to Merchant's bank, by which Merchant shall grant non-invoked control of the Account to FCG, maintaining Merchant's access to the Account unless and until there is an Event of Default, at which FCG may invoke control of the Account.

1.9.8. In the event Merchant notifies that it is unable or unwilling to collect all or some of the Receipts, FCG shall have the right, without waiving any of its other rights and remedies under this Agreement, to notify the Processor, any other credit card or payment processor used by Merchant, or any third party having monies owed to Merchant for its sale or deliver of goods or services (including without limitation Merchant's customers), of the sale of the Specified Percentage of the Receipts under this Agreement, and to direct such credit card, payment processor or other third party to make payment to FCG of all or any portion of the amounts received by such credit card, payment processor or third party on behalf of Merchant. If no Event of Default has occurred, FCG shall remit back to Merchant the excess above the Specified Percentage of the Receipts that it collected pursuant to this paragraph within 2 business days of payment and shall provide a reconciliation in accordance with paragraph 1.4.

**1.10. Financial Condition.**

1.10.1. Merchant, each Owner and each Guarantor authorize FCG and its agents to investigate their financial responsibility and history, and will provide to FCG any authorizations, bank or financial statements, tax returns and other financial records as FCG deems necessary in its sole and absolute discretion prior to or at any time after execution of this Agreement through the Expiration Date. A photocopy of this Agreement and accompanying documents will be deemed as acceptable as an authorization for release of financial and credit information. FCG is authorized to update such information and financial and credit profiles from time to time as it deems appropriate. In addition to the authorizations set forth in Section 1.2 of this Agreement, Merchant authorizes all of its banks, brokers and processors to provide FCG with Merchant's banking, brokerage and/or credit card or other payment processing history to determine qualifications for this merchant cash advance transaction, compliance with this Agreement and for collections purposes. Notwithstanding Merchant's provision of its bank account log-in credentials, upon written request from FCG, Merchant shall provide FCG with copies of any documents related to Merchant's credit card processing activity or financial and banking affairs within five days.

1.10.2. Merchant represents that in entering this Agreement it previously disclosed to FCG (i) any and all bank, depository or other financial accounts currently maintained by Merchant for the purposes of Merchant's business including without limitation the Account, (ii) all current sources of Merchant's Receipts, revenues and receivables (including without limitation credit and debit card processors, electronic check or ACH processors, and customers or other third parties with significant accounts payable to Merchant), and (iii) all current sources of actual or potential financing, including without limitation, other merchant cash advance funders or lenders (all together, "Merchant's Financials"), and further represents that any documentation previously provided to FCG concerning Merchant's Financials is full, complete and accurate and has not omitted any of Merchant's Financials. Merchant acknowledges that FCG has relied upon such disclosures as a material consideration in entering into this Agreement. Following the Effective Date, it shall be a material breach of this Agreement for Merchant to without prior written permission from FCG (i) open another bank or credit card or payment processing account at a financial institution other than the bank at which the Account is located or the Processor, (ii) open another account at the bank at which the Account is located or with the Processor and into which account Merchant diverts its receivables or any portion thereof, or (iii) divert Merchant's receivables or any portion thereof from the Account to another bank account under the control of Merchant or a third-party.

1.11. **Collectability Covenants.** The following covenants are intended to ensure the collectability of the portion of the Receipts purchased by FCG as they are generated and shall not be construed as modifications of the above provisions that FCG has purchased only the Specified Percentage of the Receipts as a contingent purchase of receivables:

1.11.1. Merchant, without written notice to FCG, shall not: (a) take any action to discourage the use of electronic check or credit or debit card processing that is settled through Processor or the Account, or permits any event to occur that could have an adverse effect on the use, acceptance, or authorization of checks or other payments or deposits for the purchase of Merchant's services and products; (b) change its arrangements with Processor or the bank at which the Account is located in any way that is adverse or unacceptable to FCG; (c) change the processor through which the Receipts are settled from Processor to another processor, or permits any event to occur that could cause diversion of any of Merchant's check, credit card, debit card or deposit transactions to another processor.

1.11.2. Merchant without the written consent of FCG, shall not: (a) intentionally interrupt the operation of its business or transfer, move, sell, dispose, divert or otherwise convey its business and/or assets (including its customers or receivables) without (i) the express prior written consent of FCG, and (ii) the written agreement of any purchaser or transferee to assume all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to FCG; (b) take any action, fails to take any action, or offer any incentive (economic or otherwise) the result of which will be to induce any of Merchant's customers to pay for Merchant's goods or services with any means other than payments, checks or deposits that are settled through Processor or deposited in the Account or otherwise violates Section 2.7; (c) fail to remit its receivables into the Account; (d) opens another account at a financial institution other than the bank at which the Account is located, or opens another account at the bank at which the Account is located and into which account Merchant diverts deposit of its receivables or any portion thereof; (e) close the Account, block the Account or make any other material changes to the Account that would prevent FCG from debiting the Account in the manner agreed to in Section 1.2; or (f) purport to revoke the ACH authorization agreed to in Section 1.2.

1.11.3. Merchant shall not (a) block FCG's viewing access to the Account, including by changing its log-in credential or otherwise; (i) Merchant fails to provide financial documents or other information requested by FCG including, without limitation, copies of any documents related to Merchant's credit card or payment processing activity or financial and banking affairs (pursuant to Sections 1.2 and 1.5) within five days after a request from FCG.

1.12. **Protection of Information.** Merchant and each person signing this Agreement on behalf of Merchant and/or as Owner or Guarantor, in respect of himself or herself personally, authorize FCG to disclose information concerning Merchant's and each Owner's and each Guarantor's credit standing (including credit bureau reports that FCG obtains) and business conduct only to agents, affiliates, subsidiaries, funding partners and credit reporting bureaus. Merchant, each Owner and each Guarantor hereby waive to the maximum extent permitted by law any claim for damages against FCG or any of its affiliates relating to any (i) investigation undertaken by or on behalf of FCG as permitted by this Agreement, or (ii) disclosure of information as permitted by this Agreement.

**1.13. [Intentionally Omitted.]**

1.14. **Publicity.** Merchant, each Owner and each Guarantor all hereby authorize FCG to use its, his, or her name and logo in listings of clients and in advertising and marketing materials.

1.15. **D/B/A's.** Merchant hereby acknowledges and agrees that FCG may be using "doing business as" or "d/b/a" names or acting through authorized agents in connection with various matters relating to the transaction between FCG and Merchant, including the filing of UCC-1 financing statements and other notices or filings.

1.16. **Phone Recordings and Contact Authorized.** To the maximum extent permitted by law, Merchant agrees that any call between FCG and Merchant and their agents and employees may be recorded or monitored. Further, Merchant agrees that (i) it has an established business relationship with FCG, its employees and agents and that Merchant may be contacted from time-to-time regarding this or other business transactions; (ii) that such communications and contacts are not unsolicited or inconvenient; and (iii) that any such contact may be made at any phone number, email address or facsimile number given to FCG by the Merchant, its agents or employees, including cellular telephones. Merchant also agrees that FCG may use any other medium not prohibited by law, including but not limited to mail, e-mail, text message and facsimile to contact Merchant. Merchant expressly consents to conduct business by electronic means.

1.17. **Applicable Fees and Closing Costs.** Merchant acknowledges that the applicable fees and closing costs (that is, such costs as are payable at the time of the execution of this Agreement) that may be charged by FCG are set forth in the Fee Schedule in the beginning of this Agreement and were subject to arms-length negotiation between Merchant and FCG. Merchant hereby agrees to pay the closing costs in full from the Purchase Price and authorizes FCG to apply a portion of the Purchase Price due to Merchant toward satisfaction of the closing costs by deducting the amount of the closing costs from the Purchase Price prior to delivering it to Merchant. For avoidance of doubt, the deduction of the closing costs from the Purchase Price shall not be deemed to be a reduction of the Purchase Price. Additionally, to the extent that Merchant has agreed to a broker fee with a third-party broker with respect to this Agreement (which is not a party hereto), Merchant hereby requests and agrees for FCG to withhold from the Purchase Price, and pay to the third-party broker associated with this Agreement, the professional service fee in the Fee Schedule contained at the beginning of this Agreement. Other than the fees listed in this Agreement, FCG is NOT CHARGING ANY ADDITIONAL FEES OR CLOSING COSTS to Merchant and if Merchant is charged by any other party for any fee not listed in this Agreement, such fee is not charged by FCG. Moreover, as since the funds delivered to merchant as part of the Purchase price must be used to ensure Merchant's continued success, Merchant warrants and covenants not to pay any fee and/or commission with regard to this transaction other than as provided for herein.

1.18. **Multiple Merchant Entities.** In the event the term "Merchant" (as used on page 1) is comprised of more than one entity, then the term "Merchant" as used in this Agreement shall mean all such entities, individually and collectively, each of which is an affiliate of all other such entities, that is such entity or any Owner or Guarantor controls, is under the control of, or has direct or indirect common ownership with the other entities, or any Owner or Guarantor. The representations, warranties, covenants, obligations and liabilities of each Merchant entity shall be joint and several under this Agreement. The liability of each Merchant entity under this Agreement shall be direct and immediate and shall not be conditional or contingent upon the pursuance of any remedies against any other person or entity, including any other Merchant entity. The Specified Percentage, Receipts, Daily Remittance, and Purchased Amount shall apply to each of the Merchant entities.

1.19. **Application of Amounts received by FCG.** FCG reserves the right to apply amounts received by it under this Agreement to any fees or other charges due to FCG from Merchant prior to applying such amounts to reduce the amount of any outstanding Purchased Amount.

**2. REPRESENTATIONS, WARRANTIES, AND COVENANTS**

Merchant, each Owner and each Guarantor represent, warrant and covenant that, as of this date and during the term of this Agreement:

2.1. **Financial Condition and Financial Information.** Merchant's, any Owner's or any Guarantor's bank and financial statements (copies of which have been furnished to FCG, and future statements which will be furnished hereafter at the request and discretion of FCG) fairly represent the financial condition of Merchant and each Guarantor at such dates, and since those dates there has been no material adverse changes, financial or otherwise, in such condition, operation, or ownership of Merchant. Merchant and each Guarantor have a continuing, affirmative obligation to advise FCG of any material adverse change in their financial condition, operations, or ownership.

2.2. **Governmental Approvals and Compliance.** Merchant is in compliance and, during the term of this Agreement, shall comply, with all laws and has and will maintain valid permits, authorizations and licenses to own, operate and lease its properties and to conduct the business in which it is presently engaged and/or will engage in hereafter. Merchant is not in default of, and will promptly pay, all necessary federal, state and local taxes, including but not limited to income, employment, sales and use taxes, imposed upon Merchant by law, and will maintain workers compensation insurance required by applicable governmental authorities.

2.3. **Authorization.** Merchant, the person(s) signing this Agreement on behalf of Merchant, and each Guarantor have full power and authority to incur and perform the obligations under this Agreement, all of which have been duly authorized. All organizational and other proceedings required to be taken by Merchant or each Guarantor to authorize the execution, delivery and performance of this Agreement have been taken.

2.4. **Insurance.** Merchant will maintain general liability and business-interruption insurance.

2.5. **Electronic Check Processing Agreement.** Merchant will not change its Processor, add terminals, change its financial institution or bank account(s) or take any other action that could have any adverse effect upon Merchant's obligations under this Agreement without FCG's prior written consent. Any such changes shall be a material breach of this Agreement.

2.6. **Change of Name or Location or Sale or Closing of Business.** Merchant, and any successor in interest of Merchant, will not conduct Merchant's businesses under any name other than as disclosed to FCG, nor shall Merchant change any of its places of business without prior written consent by FCG. Merchant will not sell, dispose, transfer or otherwise convey all or substantially all of its business or assets (including without limitation the Collateral or any portion thereof) without (i) the express prior written consent of FCG, and (ii) the written agreement of any purchaser or transferee assuming all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to FCG. Except as disclosed to FCG in writing, Merchant has no current plans to close its business either temporarily, whether for renovations, repairs or any other purpose, or permanently. Merchant shall not make or send notice of any intended bulk sale or transfer. Merchant agrees that until FCG has received all of the Purchased Amount, Merchant will not voluntarily close its business for renovations, repairs or any other purposes.

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This provision, however, does not prohibit Merchant from closing its business (i) if such closing is required to conduct renovations or repairs that are required by local ordinance or other legal order, such as from a health or fire inspector, or (ii) if otherwise forced to close by circumstances not reasonably in the control of Merchant. Prior to any closure, Merchant will provide FCG written notice as required by Section 3.5. In the event of a closure, Merchant shall cooperate with FCG and provide sufficient documentation to ascertain whether all or any part of the Purchased Amount may still be recovered.

2.7 **No Diversion of Future Receivables.** Merchant shall not cause a diversion of any portion of the Receipts from the Account or Processor without FCG's written permission, which permission shall not be unreasonably withheld. This provision is to ensure collectability of the portion of the Receipts purchased by FCG.

2.8 **Daily Batch Out.** Merchant will clear and settle Merchant's receivables with the Processor on a daily basis.

2.9 **Estoppel Certificate.** Merchant will at every and all times, and from time to time, upon at least one day's prior notice from FCG to Merchant, execute, acknowledge, and deliver to FCG and/or to any other person, firm or corporation specified by FCG, a statement certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and stating the dates which the Purchased Amount or any portion thereof has been delivered.

2.10 **No Pending or Contemplated Bankruptcy.** As of the date of this Agreement, Merchant is not insolvent and does not contemplate filing for bankruptcy in the next six months and has not consulted with a bankruptcy attorney or filed any petition for bankruptcy protection under Title 11 of the United States Code, or any other law for the relief of debtors, and there has been no involuntary petition brought or pending against Merchant. Merchant further warrants that it does not anticipate filing any such bankruptcy petition, and it does not anticipate that an involuntary petition will be filed against it.

2.11 **Unencumbered Receipts.** Merchant has good, complete, unencumbered and marketable title to all of Merchant's receivables, free and clear of any and all liabilities, liens, claims, changes, restrictions, conditions, options, rights, mortgages, security interests, equities, pledges, and encumbrances of any kind or nature whatsoever or any other rights or interests that may be inconsistent with the transactions contemplated with, or adverse to the interests of, FCG, except as provided in "Exhibit C", which contains true and correct information as to the names of all of Merchant's secured creditors and the amounts that Merchant owes of those creditors as of the Effective Date. As of the date hereof, Merchant is not engaged in negotiations either directly or through a broker for any other merchant cash advances or other transactions which would contemplate the sale or encumbrance of Merchant's receivables other than those listed in Exhibit C. To Merchant's, any Owner's or any Guarantor's knowledge, there are no litigations or other proceedings pending or judgments or awards entered against Merchant in any court or tribunal in any jurisdiction concerning Merchant's receivables and there are no outstanding executions or levies concerning Merchant's receivables. In the event Merchant, any Owner or any Guarantor learns that such a proceeding has been filed, it/he/she shall immediately provide notice of the proceeding to FCG, which notice shall include the title, forum and case number of the proceeding. Merchant indemnifies and holds harmless FCG for any and all damages and losses (including without limitation legal fees and expenses) incurred by FCG as the result of the representations in this paragraph being untrue, incorrect or incomplete.

2.12 **Business Purpose.** Merchant is a valid business in good standing under the laws of the jurisdiction(s) in which it/they is/are organized and/or operates. Merchant hereby acknowledges that it fully understands that (i) FCG's ability to collect the Purchased Amount (or any portion thereof) is contingent upon Merchant's continued operation of its business and successful generation of the Receipts until the Purchased Amount is delivered to FCG in full, and (ii) that in the event of decreased efficiency or total failure of Merchant's business, FCG's receipt of the full or any portion of the Purchased Amount may be delayed indefinitely. Based on the foregoing, Merchant is entering into this Agreement for the benefit and advancement of Merchant's business operations, and will use the Purchase Price exclusively for the benefit and advancement of Merchant's business operations and will not use any portion of the Purchase Price for any other purpose, including but not limited to consumer, personal, family or household purposes.

2.13 **Defaults under Other Contracts.** Merchant's execution of, and/or performance under this Agreement, will not cause or create an event of default by Merchant under any contract with another person or entity, including without limitation any other merchant cash advance provider or any other creditor.

2.14 **Good Faith.** Merchant is receiving the Purchase Price and selling FCG the Purchased Amount in good faith and will use the Purchase Price funds to maintain and grow Merchant's business. Merchant is not actively working with or being instructed by any debt relief consultant or debt relief attorneys and will not use the Purchase Price to either pay the fees of such consultants or attorneys or pay down prior loans or receipt purchase transactions. Nothing herein limits Merchant's, any Owner's or any Guarantor's right to seek the advice of an independent attorney or financial consultant to advise them with respect to this Agreement.

2.15 **Stacking Prohibited.** Merchant shall not enter into any merchant cash advance, factoring or loan agreement that relates to or involves Merchant's future receivables with any party other than FCG at any time prior to the Expiration Date without (i) written consent of FCG and (ii) the written agreement of the funder or lender to either deliver the Outstanding Purchased Amount to FCG prior to providing funding to Merchant in accordance with paragraph 1.3, or to guaranty all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to FCG. In the event Merchant violates this provision, in addition to any other rights or remedies under this Agreement, FCG may without prior notice to Merchant or declaring Merchant to be in default: (a) assess against Merchant the stacking fee set forth in Appendix A, and/or (b) receive the benefits granted under such subsequently entered transaction, for example in the event that the daily payment (or, if payments are not made daily, the average amount owed for each business day of the payment term) or buy rate (that is the discount rate of the purchase price from the amount of receivables purchased) under such subsequently entered transaction is higher than the Daily Remittance or buy rate hereunder, FCG may either raise the Daily Remittance to an amount that is equal to the amount of such daily payment or raise the buy rate to be equal to the buy rate by which the other funder purchased Merchant's receivables. The remedies hereunder are cumulative and in addition to other remedies available to FCG under this Agreement. Further, FCG may share information regarding this Agreement with any third party in order to determine whether Merchant is in compliance with this provision.

2.16 **No Confessions of Judgment.** Until the Expiration Date, Merchant shall not enter into any affidavits of confession of judgment, or execute a document containing a confession of judgment, with any party without FCG's prior written consent.

2.17 **Protections.** In the event of a misrepresentation or violation of any provision of this Article 2, in addition to any other remedy under this Agreement, FCG may invoke any of the protections listed in paragraph 1.11 hereof immediately and without notice to Merchant.

3. EVENTS OF DEFAULT AND REMEDIES

3.1 **Events of Default.** Without limitation of any other default provision of this Agreement, the occurrence of any of the following events shall constitute an "Event of Default" hereunder:

- 1) Merchant violates or causes a violation of any of the covenants listed in paragraph 1.11;
2) Merchant violates any term or covenant in this Agreement

3) Any representation or warranty by Merchant, any Owner or any Guarantor in this Agreement was incorrect, false, or misleading in any material respect when made;

4) The sending of notice of termination by Merchant or Merchant giving verbal notification to FCG of its intent to breach this Agreement;

5) On five or more occasions, Merchant fails to give FCG advance notice that there will be insufficient funds in the Account such that the ACH of the Daily Amount will not be honored by Merchant's bank and does not notify FCG within two days of Merchant's bank sending notice to Merchant of the rejected debit, provided Merchant has not requested a reconciliation in accordance with paragraph 1.4 and fails to reasonably respond to FCG's communications seeking to ascertain the circumstances of the insufficient funds;

6) Merchant fails to supply all requested financial documentation and allow for daily monitoring of its bank account;

7) Merchant changes its Processor in violation of the terms of paragraph 2.5;

8) Merchant transfers or sells all or substantially all of its assets without prior notice and written approval from FCG;

9) Merchant makes or sends notice of any intended bulk sale or transfer by Merchant;

10) Merchant's bank returns a code other than Not Sufficient Funds (NSF) when declining FCG's attempts to debit Merchant's account, except if the code indicates that a debit is declined because of an act of the bank or a third-party outside of Merchant's control or through no act of Merchant or if merchant gave timely notice that the Account has or will have insufficient funds such that the ACH of the Daily Amount will not be honored by Merchant's bank and has not requested a reconciliation request in accordance with paragraph 1.4;

11) Merchant defaults under any of the terms, covenants, and conditions of any other agreement with FCG, including without limitation the below Pledge of Security and Guaranty;

12) Any person or entity files a litigation or proceeding or enters a judgment concerning or claiming ownership of Merchant's receivables in any court or tribunal in any jurisdiction (unless Merchant disclosed the same to FCG prior to entering this Agreement and it is listed on Exhibit D); or

13) Merchant applies for, or enters into an agreement for, another form of financing that effects FCG's rights under the Pledge of Security (Section 4 below) without the prior written consent of FCG.

3.2 **Guaranty.** In an Event of Default, FCG may enforce its rights against any Guarantor of this transaction in accordance with the below Guaranty.

3.3 **Remedies.** In case any Event of Default occurs and is not waived pursuant to Section 6.4, hereof, FCG shall have the right to declare the full uncollected Purchased Amount plus any fees due under this Agreement (plus reasonable attorneys' fees and costs incurred in collection) due and payable immediately. FCG may enforce any rights and remedies under this Agreement through the following procedures: (a) FCG may enforce the provisions of the below Pledge of Security (b) FCG may enforce the provisions of the below Guaranty; (c) FCG may debit Merchant's depository accounts wherever situated by means of ACH debit for any amounts owed; (d) FCG may proceed to enforce its rights and remedies under this Agreement by lawsuit or arbitration (and in such action or proceeding will be entitled to an award of attorneys' fees and costs in accordance with Section 3.4), which may be a suit in equity or by action at law, or both, whether for the specific performance of any covenant, agreement or other provision contained herein, or to enforce any obligations in this Agreements (including without limitation the Pledge of Security and Guaranty), or any other legal or equitable right or remedy. All rights, powers, and remedies of FCG in connection with this Agreement may be exercised at any time by FCG after the occurrence of an Event of Default, in any order, and are cumulative and not exclusive, and shall be in addition to any other rights, powers, or remedies provided by law or equity.

3.4 **Attorneys' Fees and Costs.** Merchant and each Guarantor must pay all of FCG's reasonable attorneys' fees and costs associated with (i) any breach by Merchant or any Guarantor of the covenants of this Agreement and enforcement thereof, (ii) any Event of Default, (iii) and exercise by FCG of its rights and remedies under this Agreement, or (iv) any suit, action or proceeding between FCG and Merchant or any Guarantor, arising out of or relating to this Agreement or the transactions contemplated hereby, whether commenced by FCG or by Merchant or any Guarantor, and whether brought in court or in arbitration or in any proceeding to confirm or vacate an arbitration award. FCG shall be entitled, without limitation, to collection agency fees or attorneys' fees (which may include a contingency fee of up to thirty-three percent (33%) of the outstanding Purchased Amount as of the earlier of an Event of Default or the commencement of such proceeding), expert witness fees and costs of suit. FCG shall further be entitled to an award of costs and fees incurred by FCG on any appeal and in making an application for costs and fees (so-called "fees on fees").

3.5 **Equitable Remedies.** Without limitation of any other provision in this Agreement, in the event that Merchant or any Guarantor breach or threaten to breach any of the covenants, representations and warranties in this Agreement, Merchant and each Guarantor hereby consent and agree that FCG shall be entitled to the ex parte (without advanced notice) entry of a preliminary or permanent injunction, temporary restraining order, prejudgment attachment or other equitable relief, including without limitation to protect against such breach or threatened breach, from any court of competent jurisdiction, without the necessity of showing any actual damages or that monetary damages would not afford an adequate remedy, and without the necessity of posting any bond or other security with respect to obtaining or continuing any injunction or temporary restraining order. Further, Merchant and each Guarantor release FCG from, and waive any claim for, damages that may result to Merchant and each Guarantor from FCG obtaining any equitable relief pursuant to this Agreement. If a bond or other security is required, Merchant and each Guarantor consent that its damages would be de minimis and that the amount of the bond or security shall be no more than \$500. Merchant and each Guarantor consent to pay the amount of \$15,000 as liquidated damages, and not as a penalty, for FCG's successful application for injunctive relief under this paragraph, which the parties agree is a reasonable estimate of the costs for such an application (which shall not be a limitation on the overall amount of attorneys' fees and costs FCG shall be entitled to recover in any action). The amount of liquidated damages shall be awarded to FCG upon prevailing on the initial application for injunctive relief, without the need for FCG to prevail in the ultimate judgment in the proceeding, and Merchant and each Guarantor consents to the court or tribunal including the liquidated amount in the total amounts of any assets to be stayed or attached pursuant to its order granting equitable relief. Merchant and each Guarantor agree that the aforementioned equitable relief shall not diminish any other right or remedy that FCG may have at law or in equity to enforce the provisions of this Agreement. Merchant and each Guarantor agree that any such equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages or other available forms of relief.

3.6 **Required Notifications.** Without limitation of any of Merchant's other obligations under this Agreement, Merchant is required to give FCG written notice (a) within 24 hours of any filing under Title 11 of the United States Code or any other law for the protection of debtors, and (b) at a commercially reasonable (but no less than seven days' time) prior to FCG closing or slowing down its business or transferring, moving, selling, disposing, diverting or otherwise conveying its business and/or assets (including its customers or receivables).

3.7 **Waiver of Separate Entity Rule.** Merchant and each Guarantor waive, to the maximum extent permitted by law, the separate entity rule, such that any notice, demand, lien, levy, prejudgment attachment, postjudgment attachment, turnover order, restraining notice or other process served upon any branch, department or unit of Merchant's or any Guarantor's bank, third-party payor, account debtor or other garnishee shall be deemed served regardless of the branch, department or unit served anywhere in

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the world, and will subject to attachment or collection any and all assets or other interests held by or for the benefit of Merchant or any Guarantor, regardless of the location of the assets or other interests anywhere in the world.

4. PLEDGE OF SECURITY

4.1 Security Interest. As security for the performance of any and all liabilities, obligations, covenants or agreements of Merchant under this Agreement (and any future amendments of this Agreement, if any), Merchant hereby pledges to FCG a security interest in and lien ("Pledge") upon: all accounts and proceeds as those terms are defined in the Uniform Commercial Code (the "Collateral"). This Pledge will secure all of FCG's rights under this Agreement and any other agreements now existing or later entered into between Merchant, FCG or an affiliate of FCG. With respect to such Pledge, FCG will have all rights afforded under the UCC, any other applicable law and in equity. Merchant will obtain from FCG written consent prior to granting a security interest of any kind in the Collateral to a third party and/or any such grant of a security interest without FCG's written consent shall be null and void. Merchant acknowledges and agrees that any security interest granted to FCG under any other agreement between Merchant, any Owner or any Guarantor and FCG will secure the obligations under this Agreement. Merchant agrees to execute any documents or take any action in connection with this security interest as FCG deems necessary to perfect or maintain FCG's first priority security interest in the Collateral, including the execution of any account control agreements. Merchant hereby authorizes FCG to file any financing statements deemed necessary or desirable by FCG to perfect or maintain FCG's security interest without prior notice to Merchant. FCG is authorized to execute all such instruments and documents in Merchant's and each Guarantor's name. The UCC filing may state that such sale is intended to be a sale and not an assignment for security and may state that the Merchant is prohibited from obtaining any financing that impairs the value of the Receipts or FCG's right to collect same. Merchant acknowledges and agrees that FCG's rights pursuant to this Pledge of Collateral and/or as set forth in any UCC statements filed by FCG shall survive and be incorporated into any judgment FCG may obtain against the Merchant in connection with this Agreement.

4.2 Remedies. Upon any Event of Default, FCG may pursue any remedy available at law (including those available under the provisions of the UCC), or in equity to collect, enforce or satisfy any obligations then owing to FCG against the Collateral. This Pledge may be exercised by FCG without notice or demand of any kind by making an immediate withdrawal or freezing the Collateral. FCG shall have the right to notify account debtors at any time. Pursuant to Article 9 of the UCC, as amended from time to time, FCG has control over and may direct the disposition of the Collateral without further consent of Merchant. Merchant hereby represents and warrants that no other person or entity has a security interest in the Collateral (unless disclosed in Exhibit C). Merchant and each Guarantor agree not to create, incur, assume, or permit to exist, directly or indirectly, any lien on or with respect to any of the Collateral, as applicable. Merchant shall be liable for, and FCG may charge and collect, all costs and expenses, including but not limited to attorneys' fees, which may be incurred by FCG in protecting, preserving and enforcing FCG's security interest and rights.

4.3 Termination of Pledge. Upon the full performance by Merchant of Merchant's obligations under this Agreement, the security interest in the Collateral shall automatically terminate without any further act of either party being required, and all rights to the Collateral shall revert to Merchant. Upon any such termination, FCG will execute, acknowledge (where applicable) and deliver such satisfactions, releases and termination statements, as Merchant shall reasonably request.

4.4 Representations with Respect to Collateral. Merchant hereby represents and warrants to FCG that the execution, delivery and performance by Merchant of this Pledge and the remedies in respect of the Collateral under this Agreement (i) have been duly authorized; (ii) do not require the approval of any governmental authority or other third party or require any action of, or filing with, any governmental authority or other third party to authorize same (other than the filing of the UCC-1s); and (iii) do not and shall not (a) violate or result in the breach of any provision of law or regulation, any order or decree of any court or other governmental authority, and/or (b) violate, result in the breach of or constitute a default under or conflict with any indenture, mortgage, deed of trust, agreement or any other instrument to which Merchant is a party or by which any of Merchant's assets (including, without limitation, the Collateral) are bound.

4.5 Further Assurances. Upon the request of FCG, Merchant, at Merchant's sole cost and expense, shall execute and deliver all such further UCC-1s, continuation statements, assurances and assignments of the Collateral and consents with respect to the pledge of the Collateral and the execution of this Pledge, and shall execute and deliver such further instruments, agreements and other documents and do such further acts and things, as FCG may request in order to more fully effectuate the purposes of this Pledge and the assignment of the Collateral and obtain the full benefits of this Pledge and the rights and powers herein created, and authorizes FCG to make such filings and do such other acts as it deems necessary or desirable to perfect and maintain its security interest.

4.6 Acknowledgment. For avoidance of doubt, this Pledge is made for the purpose of securing Merchant's performance of its obligations to FCG and shall not (i) permit FCG to collect the Purchased Amount in the event that Merchant itself is not required to remit it, such as for the reasons set forth in Section 1.9.2. of this Agreement, or (ii) otherwise affect the contingent nature of this transaction.

5. GUARANTY OF PERFORMANCE

5.1 Guaranty. As an additional inducement for FCG to enter into this Agreement, each Guarantor hereby provides FCG with this "Guaranty". Each Guarantor hereby irrevocably, absolutely and unconditionally guarantees to FCG prompt, full, faithful and complete performance of Merchant's obligations under this Agreement and each Guarantor unconditionally covenants to FCG that if an Event of Default shall at any time be made by Merchant, each Guarantor shall well and truly perform (or cause to be performed) such obligations and pay all damages and other amounts stipulated in this Agreement with respect to the non-performance of Merchant's obligations, or any of them (collectively, the "Guaranteed Obligations"). The Guaranteed Obligations are due at the time of any breach by Merchant of any representation, warranty, or covenant made by Merchant in this Agreement. For avoidance of doubt, this Guaranty is made for the purpose of securing performance of Merchant's obligations to FCG and, (i) no Guarantor shall be liable to remit the Purchased Amount in the event that Merchant itself is not required to do so, such as for the reasons set forth in Section 1.9.2. of this Agreement, and (ii) this Guaranty does not otherwise affect the contingent nature of this transaction.

5.2 No Notice. FCG does not have to notify Guarantor of any of the following events, and Guarantor will not be released from its obligations under this Guaranty if it is not notified of: (i) Merchant's failure to timely remit any amount required under this Agreement; (ii) any adverse change in Merchant's financial condition or business; (iii) any sale or other disposition of any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations; (iv) FCG's acceptance of this Guaranty; and (v) any renewal, extension, or other modification of this Agreement or Merchant's other obligations to FCG. In addition, FCG may take any of the following actions without releasing Guarantor from any of its obligations under this Guaranty: (i) renew, extend, or otherwise modify this Agreement or Merchant's other obligations to FCG; (ii) release Merchant from its obligations to FCG or settle with Merchant; (iii) sell, release, impair, waive, or otherwise fail to realize upon any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations; and (iv) foreclose on any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations in a manner that impairs or precludes the right of Guarantor to obtain reimbursement for payment under this Guaranty.

5.3 Guarantor's Obligations Severable. In the event of a breach of this Agreement, FCG may seek recovery from each Guarantor for all of FCG's losses and damages (including without limitation any right to recover costs, attorneys' fees or other amounts as set forth in this Agreement) for the enforcement of FCG's rights under this Guaranty without first seeking to obtain payment from Merchant or any other Guarantor. Merchant and any other guarantor are not necessary parties to any litigation brought under this Guaranty.

5.4 Guarantor Waiver of Rights. Until the Purchased Amount and Merchant's other obligations to FCG under this Agreement are paid in full, Guarantor shall not seek reimbursement from Merchant or any other guarantor for any amounts paid by it under this Guaranty. Guarantor permanently waives and shall not seek to exercise any of the following rights that it may have against Merchant, any other guarantor, or any collateral provided by Merchant or any other guarantor, for any amounts paid by it, or acts performed by it, under this Guaranty: (i) subrogation, (ii) reimbursement, (iii) performance, (iv) indemnification or (v) contribution. Each Guarantor knowingly and willingly waive(s) any claims or affirmative defenses that might otherwise be available to Merchant, including without limitation bad faith, unjust enrichment, usury, duress, unconscionability, unfair business practices, consumer protection statutes, champerty, contract of adhesion or fraud (including fraud in the inducement of this Guaranty), except for the defense of payment.

5.5 Multiple Guarantors. In the event "Guarantor" (as defined on page 1 of this Agreement) is comprised of more than one individual, then: (i) the term "Guarantor" shall mean, individually and collectively, all such individuals; (ii) each Guarantor is an affiliate of all other Guarantor(s); (iii) the representations, warranties, covenants, obligations and liabilities of each Guarantor shall be joint and several under this Agreement; (iv) the liability of each Guarantor under this Agreement shall be direct and immediate and shall not be conditional or contingent upon the pursuance of any remedies against any other person or entity; and (v) FCG may pursue its rights and remedies under this Agreement against any one or any number of individuals that constitute Guarantor without obligation to assert, prosecute or exhaust any remedy or claim against any other Guarantor or Merchant.

5.6 Guarantor Acknowledgement. Each Guarantor acknowledges that he/she/it: (i) is an owner, officer or manager of Merchant and/or will benefit from Merchant and FCG entering into this Agreement; (ii) irrevocably, absolutely and unconditionally guarantees to FCG performance of all of the obligations of Merchant under this Agreement; (iii) is bound by the Jury Trial and Class Action Waiver provisions below; (iii) understands the seriousness of the provisions of this Guaranty; (iv) has had a full opportunity to consult with counsel of his/her/ its choice; and (v) has consulted with counsel or has decided not to avail himself/herself/itself of that opportunity.

6. MISCELLANEOUS

6.1 Modifications. No modification, amendment, waiver or consent of any provision of this Agreement shall be effective unless the same shall be in writing and signed by Merchant and FCG. The parties may enter into one or more written addendums to this Agreement (in addition to any exhibits) that modify, clarify or supplement the terms of this Agreement.

6.2 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of Merchant, FCG, and their respective successors and assigns. FCG may assign, transfer or sell its rights to receive the Purchased Amount or delegate its duties hereunder, either in whole or in part, with or without prior written notice to Merchant. Merchant may not assign, transfer or sell its rights or obligations under this Agreement without an express written modification of this Agreement.

6.3 Notices. Except as otherwise provided herein, all notices, requests, consents, demands, and other communications hereunder shall be delivered (i) to FCG, by email to underwriting@foxbusinessfunding.com or fax to 866-557-0455, or (ii) to Merchant or Guarantor, by email, fax or mail at the contact information set forth in this Agreement. Merchant and each Guarantor shall promptly notify FCG of any change to its contact information. Notices to FCG shall become effective only upon receipt by FCG. Notices to Merchant and any Guarantor shall be effective when sent by email or fax, or three days after mailing.

6.4 Waiver of Remedies. No failure on the part of FCG to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided hereunder are cumulative and not exclusive of any remedies provided by law or equity.

6.5 Governing Law, Venue, and Jurisdiction. This Agreement, and any dispute arising out of or relating to this Agreement or the parties' relationship, shall be governed by and construed in accordance with the laws of the State of Florida, without regard to any applicable principles of conflicts of law. Any suit, action, or proceeding arising out of or relating to this Agreement or the transaction contemplated herein or the interpretation, performance, or breach hereof, shall be instituted in any state court sitting in the State of Florida (the "Acceptable Forums"), provided that FCG may institute suit in another forum. Merchant, each Guarantor and each Owner agree that the Acceptable Forums are convenient to them, and submit to the personal jurisdiction of the Acceptable Forums and waive any and all objections to jurisdiction or venue in the Acceptable Forums. Should a proceeding be initiated by Merchant, any Guarantor or any Owner in any other forum, Merchant, each Guarantor and each Owner waives any right to oppose any motion or application made by FCG to dismiss such proceeding, to remove and/or transfer the proceeding to an Acceptable Forum, and for an anti-suit injunction against such proceeding (which FCG may make in the Acceptable Forums). ADDITIONALLY, MERCHANT, EACH OWNER AND EACH GUARANTOR WAIVE PERSONAL SERVICE OF ANY SUMMONS AND/OR COMPLAINT OR OTHER PROCESS TO COMMENCE ANY LITIGATION AND AGREE THAT SERVICE OF SUCH DOCUMENTS SHALL BE EFFECTIVE AND COMPLETE IF SENT BY PRIORITY MAIL OR FIRST CLASS MAIL TO THE MAILING ADDRESS(ES) SET FORTH FOR MERCHANT ABOVE, AND EMAILED TO THE EMAIL ADDRESS, LISTED ON PAGE 1 OF THIS AGREEMENT OR THE UPDATED MAILING AND EMAIL ADDRESS IN ACCORDANCE WITH PARAGRAPH 6.3. SERVICE SHALL BE EFFECTIVE AND COMPLETE 5 DAYS AFTER THE MAILING. MERCHANT WILL THEN HAVE 30 CALENDAR DAYS AFTER SERVICE IS COMPLETE IN WHICH TO APPEAR IN THE ACTION OR PROCEEDING.

6.6 Statute of Limitations. Merchant, Owner and each Guarantor agree that notwithstanding any other statute of limitations or repose or tolling under state or federal law (including any statute permitting equitable recoupment), there shall be shall be a one (1) year statute of limitations from the date of accrual of a cause of action or defense with respect to the filing or interposing of any claim, defense suit, action or proceeding by Merchant, Owner and any Guarantors that arises out of or relates to this Agreement, the transaction contemplated herein, or the interpretation, performance of breach hereof. If such a claim is filed more than one (1) year after accrual it shall be time-barred, regardless of the nature of the cause of action. This provision does not apply to claims by FCG against Merchant, Owner or any Guarantor.

6.7 Survival of Representations. All representations, warranties, and covenants herein shall survive the execution and delivery of this Agreement and shall continue in full force until all obligations under this Agreement shall have been satisfied in full and this Agreement shall have terminated.

6.8 Interpretation. This Agreement embodies the arms-length negotiation and mutual agreement between the parties and shall not be construed against any party as having been drafted by such party. As such, the parties further agree that this Agreement has been jointly drafted, so that in the event any portion, word, clause, phrase, sentence, or paragraph of this Agreement is deemed ambiguous, said ambiguity shall not be construed against any of the parties.

DS  
CBA  
Initial

**Fox Capital Group, Inc.**

P: (800) 895-4424 | F: 866-557-0455 | underwriting@foxbusinessfunding.com

6.9 **Severability.** In case any of the provisions in this Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of any other provision contained herein shall not in any way be affected or impaired. Any provision hereof prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.

6.10 **FCG's Consent.** Merchant agrees that in every instance in which Merchant's rights under this Agreement are contingent upon first obtaining FCG's consent, such consent may be withheld, granted or conditioned at FCG's sole and absolute discretion. For avoidance of doubt, this discretion does not apply to FCG's obligation to provide a reconciliation to Merchant under Section 1.4.1-1.4.2.

6.11 **Consultation.** Merchant represents that it is a business operated by one or more experienced business persons. The person(s) authorized to make management and financial decisions on behalf Merchant with respect to this Agreement either (i) have such knowledge, experience and skill in financial and business matters in general and with respect to transactions of a nature similar to the one contemplated by this Agreement so as to be capable of evaluating the merits and risks of, and making an informed business decision with regard to, Merchant entering into this Agreement, or (b) have consulted with such other persons as are capable of advising Merchant with respect to the transaction. Such person (s): (i) has read and fully understands the content of this Agreement; (ii) has received all information that such persons deemed necessary to make an informed decision with respect to a transaction contemplated by this Agreement; and (iii) has had unrestricted opportunity to make such investigation as such person desired pertaining to the transaction contemplated by this Agreement and to verify any such information furnished to him or her by FCG. In the event such person(s) has not done any of the foregoing, he or she has knowingly and intentionally waived the opportunity to do so.

6.12 **Entire Agreement.** This Agreement (including any exhibits or addendums) embodies the entire agreement between Merchant, each Guarantor and each Owner and FCG and supersedes all prior agreements, understandings or oral or written representations relating to the subject matter hereof. Merchant each Guarantor and each Owner represent that they have no inducements, representations, or promises by FCG, anyone acting on FCG's behalf, or any broker that may have solicited each Guarantor and each Owner to enter into this or any other agreement, other than as expressly set forth herein. No course of performance or other conduct subsequently pursued or acquiesced in, and no oral agreement or representation subsequently made, by FCG, anyone acting on its behalf, or any broker, whether or not relied or acted upon, and no usage of trade, whether or not relied or acted upon, shall amend this Agreement or impair or otherwise affect Merchant's, each Guarantor's and each Owner's obligations pursuant to this Agreement or any rights and remedies of the parties hereto.

6.13 **JURY TRIAL WAIVER.** THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION, OR PROCEEDING ON ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OF THE TRANSACTION CONTEMPLATED HEREIN. THE PARTIES HERETO ACKNOWLEDGE THAT EACH MAKES THIS WAIVER KNOWINGLY, WILLINGLY AND VOLUNTARILY AND WITHOUT DURESS, AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH THEIR ATTORNEYS.

6.14 **CLASS ACTION WAIVER.** TO THE EXTENT PERMITTED BY LAW, THE PARTIES AGREE THAT ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OF THE TRANSACTION CONTEMPLATED (INCLUDING WITHOUT LIMITATION ANY ARBITRATION IN ACCORDANCE WITH SECTION 6.15) MUST BE PURSUED ON AN INDIVIDUAL BASIS ONLY. THE PARTIES WAIVE ANY RIGHT TO COMMENCE OR BE A PARTY TO ANY CLASS, COLLECTIVE, REPRESENTATIVE OR MASS ACTION OR PROCEEDING OR TO BRING JOINTLY OR COLLECTIVELY ANY CLAIM. TO THE EXTENT MERCHANT IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST FCG, THE PARTIES AGREE THAT: (1) MERCHANT SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS, COLLECTIVE OR REPRESENTATIVE ACTION;

AND (2) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS, COLLECTIVE OR REPRESENTATIVE ACTION.

6.15 **ARBITRATION.** FCG HAS THE RIGHT TO REQUEST THAT ANY DISPUTE, CONTROVERSY OR CLAIM BETWEEN FCG AND MERCHANT, ANY GUARANTOR OR ANY OWNER, WHETHER ARISING OUT OF OR RELATING TO THE CONSTRUCTION AND INTERPRETATION OF THIS AGREEMENT OR OTHERWISE (INCLUDING WITHOUT LIMITATION CLAIMS FOR FRAUD, MISREPRESENTATION, INTENTIONAL TORT, NEGLIGENT TORT OR UNDER ANY LOCAL, STATE OR FEDERAL STATUTE OR RULE), BE SUBMITTED TO ARBITRATION BEFORE EITHER (I) THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS COMMERCIAL RULES, OR (II) MEDIATION AND CIVIL ARBITRATION INC. D/B/A RAPIDRULING (WWW.RAPIDRULING.COM) IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES. THE ARBITRATION SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT. THE ARBITRATION SHALL BE DEEMED TO BE LOCATED IN BROWARD COUNTY, FLORIDA, REGARDLESS OF THE LOCATION OF THE PARTIES OR ARBITRATOR. TO THE EXTENT PERMITTED BY THE ARBITRATOR RULES, THE ARBITRATION PROCEEDINGS SHALL PROCEED VIRTUALLY OR REMOTELY AND SHALL NOT REQUIRE THE PARTIES TO APPEAR IN-PERSON. ALL QUESTIONS CONCERNING ARBITRABILITY OF ANY DISPUTE SHALL BE DECIDED BY THE ARBITRATOR. FCG MAY DEMAND THAT SUCH DISPUTE BE SUBMITTED TO ARBITRATION EITHER BY (I) SENDING A WRITTEN NOTICE OF INTENT TO ARBITRATE TO ALL OTHER PARTIES IN ACCORDANCE WITH THE NOTICE PROVISION IN PARAGRAPH 6.5 OF THIS AGREEMENT, OR (II) SENDING A WRITTEN NOTICE OF INTENT TO ARBITRATE TO THE ATTORNEY OF RECORD FOR MERCHANT, ANY GUARANTOR OR ANY OWNER WHO HAS BROUGHT ANY ACTION OR PROCEEDING BEFORE ANY COURT OR TRIBUNAL AGAINST FCG. INITIALLY, THE PARTIES WILL SPLIT THE ARBITRATION FILING FEE, ADMINISTRATION FEE AND ARBITRATOR FEE. IF FCG PREVAILS IN ARBITRATION, THE ARBITRATOR MAY AWARD TO FCG ITS ATTORNEYS' FEES (IN ACCORDANCE WITH PARAGRAPH 4.4 OF THIS AGREEMENT) AND SHARE OF THE ARBITRATION FILING FEE, ADMINISTRATION FEE AND ARBITRATOR FEE. MERCHANT, ANY GUARANTOR AND ANY OWNER MAY OPT OUT OF THIS ARBITRATION PROVISION BY SENDING FCG A NOTICE THAT HE, SHE OR IT DOES NOT WANT THIS PROVISION TO APPLY IN ACCORDANCE WITH PARAGRAPH 6.3 WITHIN 14 DAYS AFTER THE EFFECTIVE DATE OF THIS AGREEMENT.

6.16 **ACKNOWLEDGEMENT.** EACH OF THE PARTIES ACKNOWLEDGES THAT IT: (I) HAS READ THIS AGREEMENT AND FULLY UNDERSTANDS THE CONTENTS AND LEGAL EFFECTS THEREOF; (II) HAS BEEN GIVEN A REASONABLE AMOUNT OF TIME TO CONSIDER THIS AGREEMENT; (III) HAS BEEN ADVISED TO SEEK COUNSEL AS TO THE MEANING AND CONSEQUENCES OF THIS AGREEMENT; (IV) HAS BEEN SO ADVISED BY COUNSEL TO THE MEANING AND CONSEQUENCES OF THIS AGREEMENT OR HAS VOLUNTARILY WAIVED PROCUREMENT OF COUNSEL; (V) DESIRES TO ENTER INTO THIS AGREEMENT AND IS DOING SO KNOWINGLY, VOLUNTARILY AND WITHOUT COERCION OR DURESS; AND (VI) HAS NOT RELIED ON ANY REPRESENTATIONS, PROMISES, OR AGREEMENTS OF ANY KIND MADE TO HIM, HER OR IT IN CONNECTION WITH HIS, HER OR ITS DECISION TO ACCEPT AND SIGN THIS AGREEMENT EXCEPT THOSE EXPRESSLY SET FORTH IN THIS DOCUMENT.

6.17 **Facsimile & Digital Acceptance.** This Agreement can be signed in one or more counterparts, each of which shall constitute an original and all of which when taken together, shall constitute one and the same agreement. Facsimile, email, PDF or digital signatures hereon shall be deemed acceptable for all purposes. This Agreement shall be valid and in force even if it is not initialed.

In witness whereof, the parties have executed this Agreement as of the date first listed above.

FOR ONE ENTERPRISE INCORPORATED

DocuSigned by:  
Connie B Hassanien  
AEC52E1D8C8B4F1...

Title: President

Fox Capital Group, Inc.

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

GUARANTOR #1

DocuSigned by:  
Connie B Hassanien  
AEC52E1D8C8B4F1...

### Fox Capital Group, Inc.

P: (800) 895-4424 | F: 866-557-0455 | [underwriting@foxbusinessfunding.com](mailto:underwriting@foxbusinessfunding.com)

#### EXHIBIT A – AUTHORIZATION FOR DIRECT DEPOSIT (ACH CREDIT) AND DIRECT PAYMENTS (ACH DEBITS)

#### DEFINITIONS

**FCG:** Fox Capital Group, Inc.

**Merchant (Legal Name):** ONE FAT FROG, INCORPORATED and entities appearing on Exhibit “E”

**Merchant Agreement:** Secured Merchant Agreement between FCG and Merchant, dated June 15, 2023

#### Designated Checking Account:

Bank Name: \_\_\_\_\_ Branch: \_\_\_\_\_

ABA: \_\_\_\_\_ Routing: \_\_\_\_\_

Capitalized terms used in this Authorization Form without definition shall have the meanings set forth in the Merchant Agreement.

This Authorization for Direct Deposit (ACH Credit) and Direct Payments (ACH Debits) is part of (and incorporated by reference into) the Merchant Agreement. Merchant should keep a copy of this important legal document for Merchant’s records.

**DISBURSEMENT OF ADVANCE PROCEEDS.** By signing below, Merchant authorizes FCG to disburse the advance proceeds less the amount of any applicable fees upon advance approval by initiating ACH credits to the Designated Checking Account, in the amounts and at the times specified in the Merchant Agreement. **By signing below, Merchant also authorizes FCG to collect amounts due from Merchant under the Merchant Agreement by initiating ACH Debits from the Designated Checking Account. The initial authorized amount is as follows, which may be adjusted by FCG from time to time in accordance with the Merchant Agreement:**

In the amount of: **\$2,999.80**

(Or) percentage of each Banking Deposit: **9.0%**

On the following days: **MONDAY-FRIDAY**

If any payment date falls on a weekend or holiday, Merchant understands and agrees that the payment may be executed on the next business day. If a payment is rejected by Merchant’s financial institution for any reason, including without limitation insufficient funds, Merchant understands that FCG may, at its discretion, attempt to process the payment again as permitted under applicable ACH rules. Merchant also authorizes FCG to initiate ACH entries to correct any erroneous payment transaction.

**MISCELLANEOUS.** FCG is not responsible for any fees charged by Merchant’s bank as the result of credits or debits initiated under this Authorization Agreement. The origination of ACH Debits and Credits to the Designated Checking Account must comply with applicable provisions of state and federal law, and the rules and operating guidelines of NACHA (National Automated Clearing House Association). This Authorization Agreement is to remain in full force and effect until FCG has received written notification from Merchant at the address set forth above at least five banking days prior of its termination to afford FCG a reasonable opportunity to act on it. The individual signing below on behalf of Merchant certifies that he/she is an authorized signer on the Designated Checking Account. Merchant will not dispute any ACH transaction initiated pursuant to this Authorization Agreement, provided the transaction corresponds to the terms of this Authorization Agreement. Merchant requests the financial institution that holds the Designated Checking Account to honor all ACH entries initiated in accordance with this Authorization Agreement.

By signing below, Merchant attests that the Designated Checking Account was established for business purposes and not primarily for personal, family or household purposes.

#### FOR ONE FAT FROG, INCORPORATED

DocuSigned by:  
Signature: Connie B Hassanien ←  
Name: C...  
SSN/EIN: [REDACTED]  
Title: **President**

### Fox Capital Group, Inc.

P: (800) 895-4424 | F: 866-557-0455 | [underwriting@foxbusinessfunding.com](mailto:underwriting@foxbusinessfunding.com)

#### EXHIBIT B – BANK ACCOUNT ACCESS INFORMATION

Dear Merchant,

Thank you for accepting an offer from Fox Capital Group. We look forward to being your funding partner for as long as you need.

Please note that the way your sale of receivables is set up, we will need viewing access to your bank account each business day in order to calculate the amount of your daily payment in accordance with Section 1.2 of your agreement. Please be assured that we will carefully safeguard your confidential information and only essential personnel will have access to it. We will also require viewing access to your bank account, prior to funding, as part of our underwriting process. The requested access is for “look in” or viewing purposes only. We are not requesting any change or modification to your account.

Please fill out the form below with the access information for your account. Be sure to indicate capital or lower case letters.

#### Please fill out the form below with the access information for your account

Bank portal website:

Username:

Password:

Security Question/Answer 1:

Security Question/Answer 2:

Security Question/Answer 3:

#### ACKNOWLEDGED AND AGREED:

DocuSigned by:  
Signature: *Connie B Hassanien* \_\_\_\_\_ ←  
Name: AEC52E1D8C8B4F1...

Title: **President**

Dated: 6/15/2023

Failure to timely establish our our access ability to your account is a breach of your merchant agreement for which we reserve the right to exercise all remedies under the merchant agreement. If you have any questions, please feel free to contact us at (800) 895-4424.

**Fox Capital Group, Inc.**

P: (800) 895-4424 | F: 866-557-0455 | [underwriting@foxbusinessfunding.com](mailto:underwriting@foxbusinessfunding.com)

**EXHIBIT C – MERCHANT’S CURRENT SECURED CREDITORS**

**Secured Creditor Name**

**Balance**

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**Fox Capital Group, Inc.**

P: (800) 895-4424 | F: 866-557-0455 | [underwriting@foxbusinessfunding.com](mailto:underwriting@foxbusinessfunding.com)

**EXHIBIT D**

**List of Additional Entities Included in the Definition of the Term “Merchant” That Have Sold Future Receipts and Granted FCG a Blanket Security Interest**

KING RESTAURANT EQUIPMENT,  
INC.  
2416 SAND LAKE ROAD,  
ORLANDO, FL 32809  
EIN: 27-5034601

FCG may file a UCC-1 financing statement with the appropriate Secretary of State(s) reflecting a blanket security interest in the assets of the above-listed entities.

**ACKNOWLEDGED AND AGREED ON BEHALF OF THE FOREGOING ENTITIES:**

DocuSigned by:  
*Connie B Hassanien* \_\_\_\_\_   
AEC52E1D8C8B4F1...

**Fox Capital Group, Inc.**

P: (800) 895-4424 | F: 866-557-0455 | [underwriting@foxbusinessfunding.com](mailto:underwriting@foxbusinessfunding.com)

**ADDENDUM TO SECURED MERCHANT AGREEMENT FOR WEEKLY REMITTANCE**

WHEREAS Fox Capital Group, Inc. (“FCG”) and ONE FAT FROG, INCORPORATED (“Merchant”) are parties to the Secured Merchant Agreement, dated June 15, 2023 (the “Agreement”); and

WHEREAS, Merchant requested that for Merchant’s convenience FCG make weekly debits toward the Purchased Amount instead of debits of the Daily Remittance each business day, and FCG grants Merchant’s request as a courtesy to Merchant;

NOW, THEREFORE, it is agreed as follows:

- 1. **Definitions.** Except as otherwise defined in this Addendum, all capitalized terms have the same meaning as in the Agreement. The term “**Weekly Remittance**” means the following amount, \$14,999.00, which is a good faith approximation of five times the Daily Remittance. The term “**Payment Day**” means Monday, the day of the week on which payment of the Weekly Remittance is due.
- 2. **Weekly Remittance.** Without modification or waiver of any term of the Agreement and as a courtesy to Merchant, rather than debiting the Daily Remittance each business day, FCG will debit the Weekly Remittance from the Account once each week on every Payment Day that is not a bank holiday until such time as FCG receives payment in full of the Purchased Amount or until FCG elects to revoke or cancel this Addendum. If any Payment Day falls on a bank holiday, FCG will debit the Weekly Remittance on the next business day following that Payment Day. If the next business day falls during the next week, FCG will debit the Weekly Remittance for both weeks during that following week and which will result in FCG debiting twice in a week. By way of example only, if the Payment Day is Friday and the next business day falls the following Monday, FCG will debit the Weekly Remittance on Monday and Friday of that following week. Nothing herein prevents an adjustment of the Daily Remittance under paragraph 1.4 of the Agreement, in which case the Weekly Remittance will be adjusted accordingly.
- 3. **Revocation.** FCG in its sole and absolute discretion may revoke or cancel this Addendum at any time and for any reason upon 24 hours’ notice by email to the Merchant. Upon revocation or cancellation of this Addendum, FCG may resume regular debiting of the Daily Remittance in the manner set forth in the Agreement. If Merchant is aware that there will be insufficient funds in the Account such that the debit of the Daily Remittance will not be honored by Merchant’s bank, Merchant shall notify FCG within 18 hours of receiving FCG’s email notice.

FOR ONE FAT FROG, INCORPORATED

DocuSigned by:  
 Signature: *Connie B Hassanien*  
 Name: C... AEC52E1D8C8B4F1...  
 Title: President



AGREED AND ACCEPTED:

FOR FOX CAPITAL GROUP, INC.

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

### Fox Capital Group, Inc.

P: (800) 895-4424 | F: 866-557-0455 | [underwriting@foxbusinessfunding.com](mailto:underwriting@foxbusinessfunding.com)

#### ADDENDUM TO SECURED MERCHANT AGREEMENT FOR TRANSFER OF PRIOR BALANCE

WHEREAS Fox Capital Group, Inc. ("FCG") and ONE FAT FROG, INCORPORATED and certain listed affiliated entities ("Merchant") are parties to a prior Secured Merchant Agreement, dated March 13, 2023 (the "Prior Agreement"), by which FCG purchased Merchant's Receipts for a Purchased Amount of \$417,000.00 ("Prior Purchased Amount"), of which a balance of \$299,843.11 (the "Balance") has not yet been delivered to FCG;

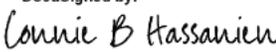
WHEREAS, FCG and Merchant and certain listed entities entered into a new Secured Merchant Agreement, June 15, 2023, (the "New Agreement"), by which FCG purchased additional Receipts of Merchant in the amount of \$695,000.00 ("New Purchased Amount") for a Purchase Price of \$500,000.00 ("New Purchase Price");

WHEREAS, Merchant requested that the Balance be satisfied out of the New Purchased Amount.

NOW, THEREFORE, it is agreed as follows:

- Definitions.** Except as otherwise defined in this Addendum, all capitalized terms have the same meanings as in the Prior Agreement and New Agreement.
- Balance Transfer.** Merchant authorizes FCG to withhold, deduct or debit the amount of the Balance from FCG's payment to Merchant of the New Purchase Price. This shall satisfy Merchant's obligation to deliver to FCG the Prior Purchased Amount under the Prior Agreement. Merchant acknowledges that the amount of the New Purchase Price actually received by Merchant from FCG under the New Agreement will be reduced by the amount of the Balance. Nothing herein shall modify, limit or waive Merchant's obligations under the New Agreement to deliver the New Purchased Amount.
- Net Funding Amount.** Net Funding Amount. The net amount to be deposited by FCG with Merchant, after payment of the Balance and the total amount of fees set forth in Exhibit A to the New Agreement totaling \$0.00, will be \$500,000.00. However, the parties acknowledge that because the amount of the net Balance may decrease as a result of additional payments made under the Prior Agreement between the date of this addendum and the date of actual funding under the New Agreement. For avoidance of doubt, the net deposited amount set forth in this paragraph will be adjusted upward to reflect the lower net balance paid.

#### FOR ONE FAT FROG, INCORPORATED

DocuSigned by:  
  
 AEC52E1D8C8B4F1... IN   
 Title: **President**

#### FOR FOX CAPITAL GROUP, INC.

Signature:  
 \_\_\_\_\_   
 Name:  
 Title:



**BIZFUND**  
COM  
LOYAL TO YOU AND YOUR GROWTH

BizFund, LLC  
2371 McDonald Ave 2nd FL  
Brooklyn, NY 11223

**MERCHANT CASH ADVANCE AGREEMENT**

Agreement (this "Agreement" or "Merchant Agreement") dated 06-15-2023 between, BizFund, LLC, a Delaware limited liability company ("Purchaser"), and the Merchant listed below ("Merchant"). Purchaser and Merchant are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties." Capitalized terms used in this Agreement shall have the respective meanings given to them in Section 5 of the attached Terms and Conditions (the "Terms"). The Terms are hereby incorporated into and made a part of this Agreement as if set forth in this Agreement in full.

**MERCHANT INFORMATION**

Merchant's Legal Name: ONE FAT FROG, INCORPORATED  
D/B/A: ONE FAT FROG State of Incorporation/Organization: FL  
Type of entity (check one): Corporation  Limited Liability Company  Limited Partnership   
Limited Liability Partnership  General Partnership  Sole Proprietor   
Address of Executive Offices: 2416 SAND LAKE ROAD City ORLANDO State FL Zip 32809  
Mailing Address: SAME AS ABOVE City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Date business started (mm/yy): 05/2005 Federal ID# 42-1668173

IN CONSIDERATION OF THE PREMISES and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of Merchant and Purchaser, the Parties, intending to be legally bound, hereby agree as follows:

**Section 1. Purchase and Sale of Future Receipts.**

1.1 Merchant hereby sells, assigns, transfers and delivers to Purchaser absolutely, without recourse, all of its right, title and interest in, to and under its future Receipts in the amount specified below (the "Purchased Amount") for the purchase price specified below (the "Purchase Price"). Purchaser hereby purchases such future Receipts in the amount of the Purchased Amount (the "Purchased Receipts") for the Purchase Price on behalf of itself or on behalf of itself and/or as Agent for certain Syndicate Partners. Merchant hereby agrees that it retains no right, title, ownership or other interest, legal, beneficial or otherwise, in the Purchased Receipts.

1.2 (a) Merchant and Purchaser agree that the Purchased Amount shall be delivered to Purchaser from the proceeds of the collection of the specified percentage (the "Specified Percentage") of Receipts set forth below. Merchant represents that the Specified Percentage of its average weekly receipts during the past three (3) months is approximately equal to the estimated specific weekly amount set forth below (the "Specific Weekly Amount"). Merchant shall establish, and shall maintain at all times during the duration of this Agreement and until all Merchant Obligations have been irrevocably satisfied in full, a depository account (the "Specified Account") at a commercial bank or other financial institution selected by Merchant that is reasonably acceptable to Purchaser (the "Financial Institution"). Merchant hereby irrevocably authorizes Purchaser to effect ACH Debits to the Specified Account in an amount equal to the Specific Weekly Amount until Purchaser irrevocably receives an aggregate amount equal to all Merchant Obligations. Purchaser may affect ACH Debits to the Specified Account on the first Business Day of each calendar week in an amount equal to the Specific Weekly Amount.

(b) In the event that for any reason Purchaser is unable to effect an ACH Debit pursuant to Section 1.2(a) in any calendar week, Merchant hereby agrees that Purchaser shall thereafter be entitled to, and hereby irrevocably authorizes Purchaser to, effect ACH Debits to the Specified Account on each Business Day in an amount equal to the specific daily amount set forth below (the "Specific Daily Amount"), provided that on the Business Day prior to a legal bank holiday occurring during any business week (Monday through Friday), Purchaser may affect an ACH Debit to the Specified Account in an amount equal to twice the Specific Daily Amount. The Specific Daily Amount equals approximately one fifth (1/5<sup>th</sup>) of the Specific Weekly Amount and Merchant represents that the Specific Daily Amount approximates the Specified Percentage of its average daily receipts during the past three (3) months.

1.3 Merchant and Purchaser acknowledge that the Merchant's Receipts will depend upon Merchant's success in selling its products and services and the collection of payment therefor, that Merchant's average daily Receipts from and after the date of this Agreement may be more or less than the average of Merchant's daily Receipts during the three (3) months prior to the date of this Agreement and that there is no assurance that the Specified Percentage of Merchant's Receipts will be sufficient to enable Purchaser to collect Receipts in a total amount equal to the Purchased Amount. There is no time period during which the Purchased Amount of Receipts must be collected by Purchaser and there is no interest rate or required amortization schedule associated therewith. If Receipts arise more slowly than Purchaser anticipates because Merchant's business slows, or if the Purchased Amount is not collected in full because Merchant becomes bankrupt or otherwise ceases operations in the ordinary course of business, Merchant will have no obligation or liability to Purchaser unless Merchant has breached a representation, warranty, covenant or other obligation on its part to be performed under this Agreement. Consequently, Merchant and Purchaser intend and agree that the transactions provided for in this Agreement constitute a purchase and sale of future Receipts at a discount for all purposes and shall in no event constitute, or be deemed or construed to constitute, a loan transaction. This Agreement has no term but shall remain in full force and effect until all Merchant Obligations have been irrevocably satisfied in full.

1.4 This Agreement shall become effective and binding upon Merchant and Owner/Guarantor when it is executed and delivered by Merchant and Purchaser provides funds to pay the Purchase Price, even if Purchaser has not executed and delivered to Merchant a counterpart of this Agreement.

## Section 2. Authorization of ACH Debits.

2.1 Merchant shall irrevocably authorize and instruct the Financial Institution to honor and effect the ACH Debits permitted by this Agreement by properly completing, executing and delivering to the Financial Institution, with a copy to Purchaser, a written authorization substantially in the form attached to this Agreement as Appendix B. Merchant shall not change the Specified Account or the Financial Institution without the express prior written consent of Purchaser, which Purchaser may give or withhold in its sole discretion. Merchant shall ensure that all of its Receipts are deposited in or otherwise credited to the Specified Account; provided that Merchant shall only deposit, or permit to be deposited, Purchased Receipts into the Specified Account. Merchant shall not block or otherwise interfere with Purchaser's access to the Specified Account to effect ACH Debits in accordance with the terms of this Agreement. Notwithstanding the foregoing provisions of this Section 2.1, Merchant may revoke such authorization and change the financial institution at which it maintains a depository account upon the irrevocable satisfaction in full of all Merchant Obligations.

2.2 Merchant shall properly complete, execute and deliver to Purchaser a Bank Login Authorization in the form attached to this Agreement as Appendix C and will provide Purchaser with all such other access codes and other information or documents necessary to enable Purchaser to affect the ACH Debits provided for in Section 1.2 or elsewhere in this Agreement, as well as all monthly bank statements relating to the Specified Account, promptly upon Purchaser's request. Merchant shall be responsible for, and shall pay upon demand, any fees or costs incurred by Purchaser as a result of any dishonor of an ACH Debit permitted by this Agreement. Purchaser shall in no event be responsible or liable to Merchant or the Financial Institution for any fees, costs or other expenses arising or resulting from or in connection with any rejected ACH Debit transaction or overdraft that may result from Purchaser effecting or attempting to effect an ACH Debit permitted by this Agreement.

2.3 Without the express prior written consent of Purchaser, which Purchaser may give or withhold in its sole discretion, Merchant will not (a) permit to occur or suffer to exist any event that could cause the diversion of any of Merchant's Receipts to any account with a financial institution other than the Financial Institution or to any account with the Financial Institution other than the Specified Account; (b) change the arrangements with the Financial Institution or with respect to the Specified Account or the relevant access codes or other information with respect thereto in any way that is adverse to Purchaser; (d) directly or indirectly make any promise or offer with respect to, or provide, any incentive, economic or otherwise, such as, but not limited to, loyalty points for payment by credit card or any other method other than cash, a personal check or other cash equivalent, the effect or result of which could be to (i) discourage the generation of a Receipt that is not deposited in the Specified Account, or induce a customer of Merchant to pay for Merchant's goods or services with any means other than cash, a personal check or other cash equivalent; or (e) take any other action that could have any adverse effect upon Merchant's Obligations or Purchaser's rights or remedies under this Agreement or fail to take any action if such failure could have such adverse effect.

Section 3. Reconciliations.

3.1 Either Party may request a reconciliation of Merchant's account under this Agreement (a "Reconciliation Request") by providing written notice to the other Party. Promptly upon receiving a Reconciliation Request from Purchaser, and together with any a Reconciliation Request made by Merchant, Merchant shall provide to Purchaser, true, correct and complete copies of all bank statements relating to the Specified Account and all monthly statements of any bank or other financial institution at which Merchant or any of its Affiliates maintain or have maintained a depository or other account since the date of this Agreement through the end of the calendar month immediately prior to the calendar month in which the Reconciliation Request is made (collectively, the "Account Statements"). Any Reconciliation Request shall be in writing and given in accordance with the notice provisions set forth in Section 11.12.

3.2 As soon as reasonably practicable after receipt of all Account Statements, Purchaser shall provide to Merchant, without charge, a statement (a "Reconciliation Statement") that sets forth: (a) the total amount of Receipts that Merchant originated after the date of this Agreement, (b) the amount equal to the product of the Specified Percentage and the total amount of Receipts that originated after the date of this Agreement, and (c) the aggregate amount of ACH Debits effected by Purchaser pursuant to Section 1.2. The Reconciliation Statement shall provide the foregoing information as of the last day of the calendar month immediately prior to Purchaser's receipt of the Reconciliation Request.

Each Reconciliation Statement shall be final, binding and conclusive on Merchant, absent manifest error. Within ten (10) Business Days after the delivery of a Reconciliation Statement, Purchaser shall either deposit into the Specified Account the amount, if any, by which the amount described in clause (c) of Section 3.2 as set forth in such Reconciliation Statement exceeds the amount described in clause (b) of Section 3.2 as set forth in such Reconciliation Statement, or shall debit by ACH Debit the Specified Account in the amount, if any, by which the amount described in clause (b) of Section 3.2 as set forth in such Reconciliation Statement exceeds the amount described in clause (c) of Section 3.2 as set forth in such Reconciliation Statement.

3.4 In the event that Merchant fails to deliver all such Account Statements on a timely basis, Purchaser shall have no obligation under this Agreement or otherwise to provide a Reconciliation Statement with respect to such Reconciliation Request. A failure by Merchant to make a Reconciliation Request with respect to any period, or to provide Account Statements pursuant to Section 3.2 with respect to a Reconciliation Request, shall not constitute a waiver by Merchant of its right to make a Reconciliation Request in accordance with this Section 3 on a future occasion.

Section 4. Certain Adjustments; Fees.

4.1 Notwithstanding and in addition to Merchant’s right to make a Reconciliation Request pursuant to Section 3.1, Merchant may request that Purchaser adjust, and Purchaser in its sole discretion may adjust, the Specified Percentage, the Specific Daily Amount, any Fee or any other payment due under this Agreement to a percentage or an amount Purchaser deems appropriate in its sole discretion. Notwithstanding anything to the contrary in this Agreement or any other agreement between Purchaser and Merchant, upon the occurrence of an Event of Default, automatically, without any demand or other notice from Purchaser, the Specified Percentage shall be increased to 100% and the entire remaining uncollected portion of the Purchased Amount (the “Purchased Amount Balance”) shall immediately become due and payable.

4.2 In addition to the foregoing, Merchant shall be responsible for and shall pay when due all fees, costs and expenses provided for in Appendix A attached to this Agreement (collectively “Fees”). Appendix A is hereby incorporated into and made a part of this Agreement as if set forth in this Agreement in full. Subject to applicable law, Purchaser may apply amounts collected hereunder to the Merchant Obligations in such manner as Purchaser chooses in its sole discretion

ANY MISREPRESENTATION MADE BY MERCHANT OR OWNER OR GUARANTOR IN CONNECTION WITH THIS AGREEMENT MAY CONSTITUTE A SEPARATE CAUSE OF ACTION FOR FRAUD, FRAUDULENT INDUCMENT OR INTENTIONAL MISREPRESENTATION.

Purchase Price:	Specified Percentage	Estimated Specific Weekly Amount:	Estimated Specific Daily Amount:	Purchased Amount:
\$ 500,000.00	15%	\$ 14,999.00	\$ 3,000.00	\$ 695,000.00

IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement as of the date first above written:

MERCHANT (#1)

By **CONNIE BAUGHER**  
 (Print Name and Title):

  
 Connie Baugher (Jun 15, 2023 13:37 EDT)  
 (Signature)

Sign Here

FOR MERCHANT (#2)

By \_\_\_\_\_  
 (Print Name and Title):

\_\_\_\_\_  
 (Signature)

Sign Here

OWNER/GUARANTOR #1

By **CONNIE BAUGHER**  
 (Print Name):

  
 Connie Baugher (Jun 15, 2023 13:37 EDT)  
 (Signature)

Sign Here

OWNER/GUARANTOR #2

By \_\_\_\_\_  
 Name

\_\_\_\_\_

Sign Here

MERCHANT CASH ADVANCE AGREEMENT TERMS AND CONDITIONS

[Payment by ACH Debits]

Section 5. Definitions. Capitalized terms used in this Agreement shall have the respective meanings set forth below in this Section 5:

“ACH Debit” means a direct debit transfer that is transacted through the Automated Clearinghouse (ACH) electronic network for financial transactions in the United States.

“Account Statements” has the meaning set forth in Section 3.1.

“Advisor” has the meaning set forth in Section 9.

“Affiliate” of any Person means any other Person controlling, controlled by or under common control with such Person.

“Agent” means Purchaser, acting in its capacity as the administrative agent for the Syndicate Partners in connection with this Agreement and the transactions contemplated hereby.

“Agreement” has the meaning set forth in the heading to this Agreement and includes all extensions, renewals, amendments and other modifications and restatements thereof. Any reference herein to this “Agreement” or this “Merchant Agreement” includes these Terms.

“Ancillary Document” means the Guaranty, a Confession of Judgment, and any other agreement, document or instrument delivered by Merchant and/or Owner/Guarantor pursuant to or in connection with this Agreement or the transactions contemplated hereby and in each case includes all extensions, renewals, amendments and other modifications and restatements thereof.

“Bankruptcy Case” means any bankruptcy, insolvency, arrangement, reorganization, liquidation or other debt-relief Proceeding under Federal or State law.

“Business Day” means any day on which commercial banks in New York, New York, or in the principal place of business of Financial Institution, are not authorized to be open or are required to be closed for commercial transactions under applicable law, rule or regulation.

“Event of Default” has the meaning set forth in Section 7.1.

“Fees” has the meaning set forth in Section 4.2.

“Financial Institution” has the meaning set forth in Section 1.2(a).

“Guaranty” means the guaranty at the end of this Agreement executed by Owner/Guarantor and includes all extensions, renewals, amendments and other modifications and restatements thereof.

“Liens” has the meaning set forth in Section 6.3.

“Merchant” has the meaning set forth in the heading to this Agreement.

“Merchant Agreement” has the meaning set forth in the heading to this Agreement.

“Merchant Confidential Information” has the meaning set forth in Section 9.

“Merchant Obligations” means the Purchased Amount Balance, together with any and all Fees and all other payment obligations of Merchant to Purchaser pursuant to this Agreement and any other Ancillary Document, including all fees, costs and expenses of investigation, court costs and fees and expenses of attorneys and other professionals.

“Owner/Guarantor” means the member, shareholder or other owner of Merchant who has executed this Agreement and/or the Guaranty.

“Party” and “Parties” have the respective meanings set forth in the heading to this Agreement, except that in Section 10, the

terms “Party and “Parties” shall also include any Owner/Guarantor that has executed this Agreement or any Ancillary Document.

“Person” means any individual, corporation, limited or general partnership, limited liability company, limited liability partnership, joint venture, trust, association or other entity.

“Proceeding” means any claim, demand, action, suit or proceeding at law, in equity or otherwise, including any arbitration.

“Purchase Price” has the meaning set forth in Section 1.1.

“Purchased Amount” has the meaning set forth in Section 1.1.

“Purchased Amount Balance” has the meaning set forth in Section 4.1.

“Purchased Receipts” has the meaning set forth in Section 1.1.

“Purchaser” has the meaning set forth in the heading to this Agreement.

“Purchaser Advisor” has the meaning set forth in Section 9.

“Purchaser Confidential Information” has the meaning set forth in Section 9.

“Receipt” means any and all payments Merchant receives for the sale of goods or services in the ordinary course of business from, on account of or in connection with any and all invoices, accounts, contract rights and other payment obligations arising after the date of this Agreement with or by any customer or client of Merchant or other third parties having a business relationship with Merchant, whether such payment is made in cash or by check, money order, wire transfer or any in other form.

“Reconciliation Request” has the meaning set forth in Section 3.1.

“Reconciliation Statement” has the meaning set forth in Section 3.2.

“Security Agreement” means the security agreement set forth in Section 11.13.

“Specific Amount” means the Specific Daily Amount or the Specific Weekly Amount, as applicable.

“Specific Daily Amount” has the meaning set forth in Section 1.2 (b).

“Specific Weekly Amount” has the meaning set forth in Section 1.2(a).

“Specified Account” has the meaning set forth in Section 1.2(a).

“Specified Percentage” has the meaning set forth Section 1.2(a).

“Syndicate Partners” means those Persons that have acquired a participation interest in the transactions contemplated by this Agreement

“Terms” has the meaning set forth in the heading to this Agreement.

“UCC” means the Uniform Commercial Code as in effect in the jurisdiction in which the Merchant is organized.

Section 6. Representations, Warranties and Covenants of Merchant. By executing and delivering this Agreement, Merchant acknowledges, represents, warrants, covenants and agrees to and with Purchaser as follows:

6.1 Organization and Good Standing. Merchant is the type of entity specified on the first page of this Agreement

and is duly organized and in good standing in its jurisdiction of organization specified on the first page of this Agreement. Merchant is duly qualified or licensed to do business in each jurisdiction in which the operation of its business or the location of its properties or assets requires such qualification or licensing. Merchant is a valid business and Merchant is entering into this Agreement for business purposes only and not as a consumer for personal, family or household purposes. Merchant understands, acknowledges and agrees it is not entitled to the rights and protections that are afforded to consumers under federal and state law with respect to consumer loans.

6.2 Authorization. Merchant has full power and authority to execute and deliver this Agreement and any Ancillary Document to which it is a party, and to incur and perform its obligations under this Agreement and each such Ancillary Document. Owner/Guarantor has full capacity, power and authority to execute and deliver this Agreement on behalf of Merchant and any Ancillary Document to which it is a party, and to incur and perform its obligations under each such Ancillary Document. Merchant and each such Owner/Guarantor have duly authorized, executed and delivered this Agreement and any such Ancillary Document and each of this Agreement and any such Ancillary Document constitutes their respective legal, valid and binding obligations, enforceable against them in accordance with their respective terms.

6.3 No Conflict. Neither the execution, delivery nor performance of this Agreement or any Ancillary Document by Merchant or any Owner/Guarantor does or will, with or without the giving of notice or the passage of time, or both, (a) conflict with, violate, breach, cause a default or give rise to a right of acceleration in favor of any third Person under (i) the constituent documents of Merchant or any such Owner/Guarantor; (ii) any law, rule or regulation binding on Merchant or any such Owner/Guarantor; or (iii) any contract, agreement, trust or other understanding, commitment or arrangement, whether written or oral, to which Merchant or any such Owner/Guarantor is a party or by which any of them, or their respective properties or assets, is bound; (b) require the consent, authorization or approval of, or the giving of notice to, any governmental agency or authority under any applicable law, rule or regulation; or (c) result in the creation of any claim, charge, restriction, condition, option, right, mortgage, security interest, equity, pledge, lien or other encumbrance of any kind or nature whatsoever (collectively, "Liens") upon any or all of the properties or assets of Merchant or Owner/Guarantor.

#### 6.4 Financial Condition and Financial Information.

(a) All of the information and statements made in Merchant's application for the purchase and sale transaction provided for in this Agreement are true, correct and complete. Merchant will promptly notify Purchaser if any of such information or statement is no longer true, correct or complete. Merchant's financial statements, true, complete and correct copies of which have been furnished to Purchaser, fairly present in all material respect the financial condition and results of operations of Merchant at their respective dates, and for the periods then ended, and since those dates there has been no material adverse change, financial or otherwise, in the business, operations, financial condition, results of operations, assets or liabilities, prospects or ownership of Merchant. Any financial statements delivered by Merchant to Purchaser pursuant to this Agreement will be true, correct and complete and will fairly present in all material respects the financial condition and results of operations of Merchant as of their respective dates and for the respective periods then ending. Merchant shall promptly advise Purchaser of any material adverse change in its business, operations, financial condition, results of operations, assets, liabilities, prospects or ownership. Merchant shall provide to Purchaser within five (5) Business Days after Purchaser's request therefor, true, correct and complete copies of all such other financial statements, bank statements or other documents relating to Merchant's financial condition or results of operations, all of which shall be true, correct and complete.

(b) Merchant authorizes Purchaser and its agents to investigate Merchant's financial responsibility, credit worthiness and financial history, and will provide to Purchaser any bank or financial statements, tax returns, etc., as Purchaser deems necessary in its sole discretion prior to or at any time after the execution of this Agreement. A photocopy of this Agreement shall be deemed as acceptable for release of such information by the various credit services and financial institutions. Purchaser is authorized to request updates with respect to such information from time to time as it deems appropriate in its sole discretion. Merchant shall authorize its bank(s) to provide to Purchaser Merchant's banking and/or credit card processing history to assist Purchaser in evaluating the transactions contemplated by this Agreement.

(c) Merchant and each Person signing this Agreement on behalf of Merchant and/or as Owner/Guarantor, in respect of himself personally, authorizes Purchaser to disclose information concerning Merchant's and each Owner/Guarantor's credit standing (including credit bureau reports that Purchaser obtains) and business conduct to agents, Affiliates, subsidiaries, Syndicate Partners, Purchaser's funding sources and credit reporting bureaus. Merchant and each Owner/Guarantor hereby waives and releases to the maximum extent permitted by law any claim for damages against Purchaser or any of its Affiliates relating to any (i) investigation undertaken by or on behalf of Purchaser permitted by this Agreement, or (ii) disclosure of information permitted by this Agreement.

6.5 Title to Assets; No Liens. Merchant has good, complete and marketable title to all of the properties and assets used in its business, free and clear of any and all Liens or any other rights or interests that may be inconsistent with the transactions contemplated hereby, or adverse to the interests of Purchaser. Merchant will not incur, permit or suffer to exist any Lien on the Purchased Receipts.

6.6 Conduct of Business; Compliance with Laws. Merchant shall conduct its business in the ordinary course, consistent with past practice, and shall use its best efforts to continue its business at least at the same level as on the date of this Agreement. Merchant has no current plans to close its business for any reason, and agrees that until all Merchant Obligations have irrevocably been satisfied in full, Merchant will not close its business on a temporary basis for renovation, repairs or other similar purposes without the express prior written consent of Purchaser, which consent Purchaser may give or not give in its sole discretion. Merchant shall use the proceeds of the Purchase Price solely in connection with the operation of its business. Merchant will not incur any debts outside the ordinary course of business, will not make any loans, advances or other extension of credit to any Person or guarantee or otherwise become liable for the debts or obligations of any other Person, except for the endorsement of negotiable instruments in the ordinary course of business. Merchant is currently in compliance and shall continue to comply with all laws, rules and regulations applicable to its business, operations, properties and assets and it has valid and in full force and effect, and will continue to maintain in full force and effect and operate its business in compliance with, all necessary or advisable permits, authorizations and licenses to own, operate and lease its properties and assets as and where they are located and to conduct the business in which it is presently engaged. Without limiting the foregoing, Merchant shall pay all required taxes on a timely basis, including employment taxes and withholdings, sales and use taxes and, if applicable, real estate taxes. For the avoidance of doubt, this Section 6.6 does not constitute a covenant or agreement by Merchant that it will not cease conducting its business should circumstances in the Merchant's business beyond its control so require.

6.7 Certain Matters as to the Receipts and Payments. The Purchase Price is in full payment for the purchase, at an agreed-upon discount, of the Future Receipts pursuant to this Agreement and equals the fair market value of the Purchased Receipts. Purchaser has purchased and upon the funding under this Agreement, without any other action or the delivery of any other document or instrument by Merchant, shall have good, complete and marketable title to all the Purchased Receipts as and when the Purchased Receipts arise, free and clear of any and all Liens. If, notwithstanding Section 1.3, a court re-characterizes the purchase and sale transaction provided for in this Agreement as a loan transaction, determines that any collections by Purchaser pursuant to this Agreement constitute interest, determines that such payments are in excess of the highest rate permitted by applicable law or otherwise determines that the transactions provided for in this Agreement are subject to the usury laws of any jurisdiction, the Purchase Price or the Purchased Amount shall automatically be adjusted to a payment amount that will equal the maximum amount permitted by applicable law. Purchaser shall promptly refund to Merchant any payments received by Purchaser in excess of the maximum lawful amount, it being intended that Merchant not contract to pay or pay, and that Purchaser not contract to receive or receive, directly or indirectly in any manner whatsoever, any payment in excess of that which may be paid by Merchant under applicable law.

6.8 No Bankruptcy Pending. During the six (6) months ending on the date of this Agreement, neither Merchant nor Owner/Guarantor has contemplated (or contemplates) or has commenced (a) any Bankruptcy Case; (b) any petition or other Proceeding seeking the appointment of a receiver, administrator, liquidator or other person for the marshalling, sale or liquidation of its properties or assets; or (c) an assignment for the benefit of its creditors, and there has been no involuntary petition or Proceeding brought or is pending against Merchant or Owner/Guarantor for any of the foregoing purposes. Neither Merchant nor Owner/Guarantor is insolvent or has admitted in writing its inability to pay its debts as they mature. Merchant does not anticipate commencing any such Bankruptcy Case, petition or other Proceeding and it does not anticipate that any such involuntary petition or Proceeding will be filed against it during the next twelve (12) months. For the avoidance of doubt, this Section 6.8 does not constitute a covenant or agreement by Merchant that it will not commence or become subject to a Bankruptcy Case in the next twelve (12) months should circumstances in the Merchant's business beyond its control so require.

6.9 Working Capital Funding. Merchant has not and shall not enter into any arrangement, agreement or commitment that relates to or involves the Purchased Receipts, whether in the form of a purchase of, a loan against, collateral against or the sale, assignment, transfer, factoring or purchase of credits against, Receipts, cash deposits or receipts or future sales with any Person other than Purchaser without Purchaser's prior express written consent, which Purchaser may or may not give in its sole discretion. Purchaser may share information regarding this Agreement with any third person in order to determine whether Merchant is in compliance with the provisions of this Section 6.9. Upon the irrevocable satisfaction in full of all Merchant Obligations, the restrictions contained in this Section 6.9 shall terminate.

6.10 Insurance. Merchant will maintain in full force and effect liability, property and casualty and business-interruption insurance policies in such amounts and against such risks as are satisfactory to Purchaser and shall provide Purchaser proof of such insurance upon request.

6.11 Change of Name or Location. Merchant will not conduct its business(es) under any name other than as set forth in the heading to this Agreement or change its name or the location of its incorporation or other organization or any of its places of business without providing Purchaser express written notification at least twenty (20) Business Days in advance of any such change.

6.12 Notice of Certain Events. Merchant shall give Purchaser written notice of its intention to file a Bankruptcy Case at least five (5) Business Days prior to the filing of any Bankruptcy Case. Merchant shall give Purchaser written notice of its intention to enter into or consummate any transaction described in Section 7.1(c) or Section 7.1(d) at least ten (10) Business Days prior to the closing of any such transaction. Merchant shall give Purchaser advance notice of at least one (1) Business Day in the event that sufficient funds will not be available in the Specified Account to permit Purchaser to effect ACH Debits in accordance with the terms of this Agreement.

6.13 Estoppel Certificate. Merchant will at any time, and from time to time, upon at least one (1) Business Day's prior notice from Purchaser, execute, acknowledge and deliver to Purchaser and/or to any other Person specified by Purchaser, a statement certifying that this Agreement is unmodified and in full force and effect (or, if there has been any modification, that the same is in full force and effect as modified and stating the modification) and stating the dates on which the Purchased Amount or any portion thereof has been collected.

6.14 Publicity. Purchaser may include Merchant's name in a listing of its clients and in its advertising and marketing materials. Purchaser may in its discretion disclose to Syndicate Partners information about this Agreement and the transactions contemplated hereby.

6.15 D/B/A's. Purchaser may be using "doing business as" or "dba" names in connection with various matters relating to this Agreement and the transactions contemplated hereby, including the filing of UCC-1 financing statements and other notices or filings.

MERCHANT ACKNOWLEDGES AND AGREES THAT EACH OF ITS ACKNOWLEDGEMENTS, REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS SET FORTH IN THIS SECTION 6 OR ELSEWHERE IN THIS AGREEMENT IS MATERIAL, THAT PURCHASER HAS RELIED THEREON IN ENTERING INTO THIS AGREEMENT AND THAT A BREACH OR VIOLATION OF ANY OF THEM SHALL CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT. ALL SUCH REPRESENTATIONS AND WARRANTIES SHALL BE CONTINUING REPRESENTATIONS AND WARRANTIES AND SHALL SURVIVE THE EXECUTION, DELIVERY, PERFORMANCE AND THE TERMINATION OF THIS AGREEMENT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT.

Section 7. Events of Default and Remedies.

7.1 Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" hereunder:

(a) Merchant breaches or violates any covenant, agreement or other obligation contained in this Agreement (including any breach or violation of Section 2.1, Section 2.2 or Section 2.3 or any failure to provide a timely notice of certain events pursuant to Section 6.12) or any Person other than Purchaser that is a party to an Ancillary Document breaches or violates any covenant, agreement or other obligation of such other Person contained in such Ancillary Document;

(b) Any representation or warranty of Merchant contained in this Agreement, or any representation or warranty of any Person other than Purchaser in any Ancillary Document, shall prove to be incorrect, incomplete, false or misleading in any material respect when made or at any time thereafter until all Merchant Obligations shall have been irrevocably satisfied in full;

(c) Merchant sells, assigns, conveys or otherwise transfers all or substantially all of its assets or makes or sends any notice of an intended bulk sale of its properties and assets without, in any such case, (i) the prior express written consent of Purchaser, which Purchaser may give or withhold in its sole discretion, and (ii) the written agreement of any purchaser or transferee to the assumption of all of Merchant's obligations (including all Merchant Obligations) under this Agreement pursuant to documentation satisfactory to Purchaser in its sole discretion;

(d) Merchant reorganizes, merges or consolidates with, or otherwise effects a business combination with, any Person, as a result of which the ownership of Merchant after such transaction is materially different than such ownership immediately prior to such transaction, without, in any such case, (i) the prior express written consent of Purchaser, which Purchaser may give or withhold in its sole discretion, and (ii) the written agreement of the surviving Person in such reorganization, merger, consolidation or other business combination, as the case may be, to the assumption of all of Merchant's obligations (including all Merchant Obligations) under this Agreement pursuant to documentation satisfactory to Purchaser in its sole discretion;

(e) Merchant takes any action, or fails to take any action, that could have the effect of encumbering the cash flow of its business or unduly straining the viability of its operations; or

(f) Any Owner/Guarantor revokes or otherwise terminates its Guaranty, or such Guaranty otherwise becomes invalid or unenforceable.

7.2 Remedies. In case any Event of Default occurs and is not expressly waived pursuant to Section 11.3, Purchaser may, without any demand, protest, notice of protest or other notice of any kind, all of which Merchant hereby waives, proceed to protect and enforce its rights or remedies set forth below in this Section 7.2 and such other rights and remedies available to it under applicable law, whether by suit for specific performance or other equitable relief or by action at law, or both, or otherwise, including an action for breach of this Agreement and monetary damages as a result thereof:

(a) Purchaser may enforce the provisions of the Guaranty against the Owner/Guarantor;

(b) If requested by Purchaser upon execution of this Agreement, and Merchant has executed and delivered to Purchaser a Confession of Judgment in favor of Purchaser, Purchaser may enter such Confession of Judgment as a judgment with the Clerk of the Court and execute thereon;

(c) Purchaser may enforce its rights under Section 11.13 and pursue any and all remedies available to it under the UCC; or

(d) Purchaser may debit Merchant's depository accounts wherever situated by means of ACH debit or facsimile signature on a computer-generated check drawn on Merchant's bank account or otherwise for an amount equal to the Merchant Obligations.

7.3 Remedies Cumulative; Costs. All rights and remedies of Purchaser under this Agreement or applicable law are cumulative and not exclusive. The exercise by Purchaser of any one or more of such rights or remedies on any occasion or with respect to any Event of Default shall not preclude or be deemed to waive the exercise of any other such right or remedy on the same or any other occasion or with respect to the same or any other Event of Default. Merchant shall pay to Purchaser all costs and expenses Purchaser incurs as result of or in connection with (a) a breach by Merchant of any of its obligations under this Agreement, and (b) enforcement of Purchaser's rights and remedies under this Agreement or applicable law, including fees, costs and expenses of investigation, court costs and fees and expenses of attorneys and other professionals.

#### Section 8. Exculpation and Indemnification.

8.1 Exculpation. In no event will Purchaser, as principal or Agent, or any Syndicate Partner, or any of their respective officers, directors, managers, members, shareholders, employees, agents or consultants, be liable for any claim asserted by Merchant or any Owner/Guarantor under any legal theory (a) as a result of any action taken or omitted to be taken by Purchaser in accordance with and pursuant to this Agreement or any Ancillary Document or (b) for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is waived by Merchant and Owner/Guarantor.

8.2 Indemnification of Purchaser. Merchant shall indemnify and hold harmless Purchaser, as principal and as Agent, and the Syndicate Partners, and their respective officers, directors, managers, members, shareholders, employees, agents and consultants, and the successors, assigns, executors, personal representatives and heirs of each of the foregoing, from and against any and all direct and indirect losses, damages, claims, liabilities, costs and expenses (including fees, costs and expenses of investigation, court costs and fees and expenses of attorney's and other professionals) incurred or suffered as a result of or in connection with (a) Merchant and Owner(s)/Guarantor(s) entering into this Agreement and the Ancillary Documents with Purchaser or performing or failing to perform their respective obligations pursuant to this Agreement and the Ancillary Documents ; (b) actions taken by the Financial Institution in reliance upon information or instructions provided by Purchaser; (c) actions taken by any other third Person as a result of Purchaser exercising its rights or remedies under this Agreement or any Ancillary Document; and (d) any fees, costs or other expenses described in the last sentence of Section 2.2.

8.3 Indemnification of Financial Institution. Merchant shall indemnify and hold harmless Financial Institution and its successors and assigns from and against any and all direct and indirect losses, damages, claims, liabilities, costs and expenses (including fees, costs and expenses of investigation, court costs and fees and expenses of attorney's and other professionals) incurred or suffered by Financial Institution as a result of or in connection with (a) Merchant and Owner(s)/Guarantor(s) entering into this Agreement and the Ancillary Documents with Purchaser or performing or failing to perform their respective obligations pursuant to this Agreement and the Ancillary Documents ; and (b) actions taken by Financial Institution in reliance upon information or instructions provided by Purchaser.

Section 9. Confidentiality.

Merchant understands and agrees that the terms and conditions of the products and services offered by Purchaser, including without limitation this Agreement, the Ancillary Documents and any other documentation produced or provided by Purchaser in connection with the transactions contemplated by this Agreement (collectively, "Purchaser Confidential Information"), are the proprietary and confidential information of Purchaser. Accordingly, unless disclosure is required by law or court order, Merchant shall not disclose Confidential Information to any Person other than an attorney, accountant, financial advisor or employee of Merchant who needs to know such information for the purpose of advising Merchant ("Advisor"), provided such Advisor uses such information solely for the purpose of advising Merchant and first agrees in writing to be bound by the terms of this Section 9. Purchaser understands and agrees that the documentation and information it received from Merchant upon evaluating and reviewing Merchant's eligibility for a funding and all subsequent confidential information of Merchant (collectively, "Merchant Confidential Information"), are the proprietary and confidential information of Merchant. Accordingly, unless disclosure is required by law or court order, Purchaser shall not disclose Merchant Confidential Information to any Person other than an attorney, accountant, financial advisor or employee of Purchaser who needs to know such information for the purpose of advising Purchaser ("Purchaser Advisor") or a Syndicate Partner, provided the Purchaser Advisor uses such information solely for the purpose of advising Purchaser, and the Syndicate Partner uses such information solely for the purpose of evaluating its participation in the transactions contemplated by this Agreement, and is bound by a confidentiality obligation to Purchaser with respect to the Merchant Confidential Information. Notwithstanding anything contained in this Section 9, Purchaser may aggregate Merchant Confidential Information with other similar information Purchaser obtains in the ordinary course of its business in order to compile statistical and other information for the purpose of monitoring its business, analyzing, improving and marketing its products and services and providing such aggregated information to third parties which are interested in evaluating market trends or the performance of Purchaser's business or marketing their own services and products.

Section 10. Power of Attorney.

Merchant irrevocably appoints Purchaser as its agent and attorney-in-fact with full authority to take any action and execute any instrument or document to settle all obligations due to Purchaser from Merchant or Financial Institution or, in the case of an Event of Default, from Merchant under this Agreement, including (a) to obtain and adjust insurance; (b) to collect monies due or to become due under or in respect of any of the Merchant Obligations (c) to receive, endorse and collect any checks, notes, drafts, instruments, documents or chattel paper in connection with clause (a) or clause (b) of this Section 10; (d) to sign Merchant's name on any invoice, bill of lading or assignment directing customers or account debtors to make payment directly to Purchaser; and (e) to file any claims or take any action or institute any Proceeding which Purchaser may deem necessary to satisfy the Merchant Obligations in full, or otherwise to enforce its rights and remedies under this Agreement.

Section 11. Miscellaneous.

11.1 Entire Agreement. This Agreement (including the Terms), together with each Ancillary Document, constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof and thereof and supersede any and all prior or contemporaneous representations, statements, understandings, undertakings, commitments or agreements, whether written or oral, by or between or among the Parties with respect to such subject matter. For the avoidance of doubt, this Agreement does not contemplate any purchase of Merchant's Receipts by Purchaser in addition to the Purchased Receipts and Purchaser has no obligation, express or implied, to make any such purchase. Any such purchase will be in the sole discretion of Purchaser and will only occur upon the execution and delivery by Merchant and Purchaser of appropriate documents satisfactory to Purchaser in its sole discretion.

11.2 Assignment; Binding Nature; No Third-Party Beneficiaries; Survival. Neither Merchant nor Owner/Guarantor may assign its rights, or delegate the performance of its duties, under this Agreement or any Ancillary Document without the express prior written consent of Purchaser, which Purchaser may give or not give in its sole discretion. Purchaser may assign, transfer or sell its rights to receive all or any portion of the Merchant Obligations, or delegate the performance of its duties hereunder, either in whole or in part, and shall give notice of any such assignment, transfer, sale or delegation to Merchant and Owner/Guarantor, provided that no such notice shall be necessary with respect to any assignment, transfer or sale to a Syndicate Partner or to an Affiliate of Purchaser. Upon any such assignment, the assignee shall have all of the rights, remedies, powers and privileges of Purchaser under this Agreement. For the avoidance of doubt, no assignment, transfer or sale of this Agreement or Purchaser's rights hereunder by Purchaser or any such Affiliate as collateral security shall constitute, or be deemed or construed to constitute, an assignment, transfer or sale for purposes of this Section 11.2. This Agreement and each Ancillary Document shall be binding upon and inure to the benefit of the Parties and their respective successors, permitted assigns, executors, personal representatives and heirs. No Person, other than the Parties and their respective successors, permitted assigns, executors, personal representatives and heirs, is entitled to the benefit of this Agreement or any Ancillary Document, or any provision hereof or thereof, provided that Purchaser, both as a principal and as Agent, each Syndicate Partner, and the respective officers, directors, managers, members, stockholders and other owners, employees and consultants of Purchaser and each Syndicate Partner, and the Financial Institution, and the successors, permitted assigns, executors, personal representatives and heirs of each of the foregoing, shall be third party beneficiaries of this Agreement and the Ancillary Documents and may rely upon the terms of this Agreement and the Ancillary Documents and raise them as a defense in any Proceeding. The provisions of Sections 6.14, 7, 8 and 9 and this Section 11 shall survive the satisfaction in full of the Merchant Obligations, and the provisions of Sections 2, 6.14, 7, 8, 9, 10 and this Section 11, and any other provision of this Agreement that by its terms or intention should survive, shall survive any other termination or expiration of this Agreement.

11.3 Amendment and Waiver. Neither this Agreement or any Ancillary Document, nor any provisions hereof or thereof, may be amended, changed, otherwise modified or discharged or terminated unless such amendment, change, modification, discharge or termination is expressly set forth in a written instrument that is duly executed by the Parties that executed this Agreement or such Ancillary Document, as applicable. No waiver of any provision of this Agreement or of any Ancillary Document and no waiver of any breach or default under this Agreement or any Ancillary Document shall be valid or effective unless such waiver is expressly set forth in a written instrument that is duly executed by the Parties that executed this Agreement or such Ancillary Document, as applicable. Any such waiver shall be effective only to the extent set forth therein and shall not be effective with respect to any provision, breach or default not expressly set forth therein, whether or not similar to the provision, breach or default set forth therein, nor with respect to the same or any similar breach or default on a future occasion. Neither the failure to exercise, nor any delay in exercising, any right, remedy or power under this Agreement, any Ancillary Document or applicable law shall impair or constitute a waiver of such right, remedy or power. No course of conduct by any Party or between or among the Parties shall constitute or be deemed to constitute a waiver of any provision of or any breach of or default under this Agreement or any Ancillary Document.

11.4 Choice of Law; Submission to New York Courts; Waiver of Jury Trial. This Agreement and the Ancillary Documents shall be governed by, construed and enforced in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely in the State of New York, without reference to the principles of conflict of laws of such State. Any controversy or claim arising out of or relating to this Agreement or any Ancillary Document or the transactions contemplated hereby or thereby, or any breach hereof or thereof or default hereunder or thereunder, shall be submitted for resolution to a State or federal court sitting in the City, County and State of New York, which courts shall have exclusive jurisdiction with respect to any such controversy or claim. Each of the Parties agrees not to assert in any forum that such courts are not a convenient forum, or that there is a more convenient forum, for the resolution of any such controversy or claim, and waives any and all objections to jurisdiction or venue. Service of process and any other papers or documents with respect to any such controversy or claim may be made in accordance with the provisions of Section 11.12 for the giving of notices under this Agreement. For the avoidance of doubt, Purchaser or its assigns or agents may serve any summons, complaint or other process to commence or prosecute any Proceeding against Merchant and/or Owner/Guarantor by mailing the same by registered or certified mail, return receipt requested, to the respective mailing addresses set forth in Section 11.12 and any such mailing shall constitute proper service thereof for all purposes.

THE PARTIES HEREBY IRREVOCABLY WAIVE TRIAL BY JURY IN ANY COURT IN ANY PROCEEDING ON ANY MATTER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR ANY ANCILLARY DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR ANY BREACH HEREOF OR THEREOF OR DEFAULT HEREUNDER OR THEREUNDER OR ANY ENFORCEMENT HEREOF OR THEREOF. THE PARTIES HEREBY ACKNOWLEDGE THAT EACH MAKES THIS WAIVER KNOWINGLY, WILLINGLY, VOLUNTARILY AND WITHOUT DURESS, AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH ITS ATTORNEYS.

## 11.5 Class Action Waiver.

PURCHASER AND MERCHANT ACKNOWLEDGE AND AGREE THAT THE AMOUNT AT ISSUE IN THIS TRANSACTION AND ANY DISPUTES THAT ARISE BETWEEN THEM ARE LARGE ENOUGH TO JUSTIFY DISPUTE RESOLUTION ON AN INDIVIDUAL BASIS. EACH PARTY HEREBY KNOWINGLY AND IRREVOCABLY WAIVES ANY RIGHT TO ASSERT ANY CLAIMS AGAINST THE OTHER PARTY AS A REPRESENTATIVE OR MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW OR DEEMED BY A COURT OF LAW TO BE AGAINST PUBLIC POLICY. TO THE EXTENT EITHER PARTY IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST THE OTHER, THE PARTIES AGREE THAT: (A) THE PREVAILING PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS OR REPRESENTATIVE ACTION (NOT WITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT); AND (B) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS OR REPRESENTATIVE ACTION.

11.6 Equitable Relief. Merchant and each Owner/Guarantor acknowledge and agree that in the event it breaches or threatens to breach any provision of Section 9, Purchaser may suffer irreparable damage for which monetary relief will not be an adequate remedy. Therefore, Merchant and each Owner/Guarantor agree that upon any such breach or threatened breach, Purchaser shall be entitled to seek specific performance and/or preliminary and permanent injunctive or other appropriate equitable relief to remedy such breach or to prevent such threatened breach without posting any bond or other security and without proving that monetary damages would be an inadequate remedy.

## 11.7 Further Acts; Solicitations.

(a) Merchant and each Owner/Guarantor agree to do such further acts and things and to execute and deliver such additional agreements, powers of attorney, documents and instruments as Purchaser may reasonably request to carry into effect the terms, provisions and purposes of this Agreement and any Ancillary Document or to better assure and confirm unto Purchaser its title to the Purchased Receipts, as well as its rights and remedies hereunder or thereunder.

(b) Merchant agrees that any call between Purchaser and Merchant, and their respective employees or agents, and Owner/Guarantor agrees that any call between Purchaser or its employees and agents and Owner/Guarantor, may be recorded or monitored. Merchant and Owner/Guarantor also agree that there is an established business relationship between and among them and Purchaser and therefore Purchaser may contact Merchant and its employees and agents and/or Owner/Guarantor from time to time regarding the transactions contemplated by this Agreement or other business matters. Merchant and Owner/Guarantor each agree that such contacts shall not be regarded as unsolicited or inconvenient and may be made by way of any phone number, including cell phone, e-mail address or facsimile number provided by Merchant, or its employees or agents, or Owner/Guarantor to Purchaser or its employees or agents. Merchant and each Owner/Guarantor waive, to the fullest extent permissible under applicable law, the provisions of, and shall indemnify Purchaser, its Affiliates and such third Persons and hold each of them harmless from and against any and all claims under, the US Can-Spam Act of 2003, the Telephone Consumer Protection Act and any and all other state or federal laws relating to transmissions or solicitations by any of the methods described above in this sentence.

11.8 Headings. The headings contained in this Agreement are for convenience of reference only and shall not alter or otherwise affect the meaning or interpretation of any provision of this Agreement.

11.9 Severability. If any provision of this Agreement or any Ancillary Document or the application of any such provision to any Party or circumstance shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement or such Ancillary Document or the application of such provision to such Party or circumstance other than those to which it is so determined to be invalid or unenforceable, shall not be affected by such determination, and each other provision of this Agreement and any Ancillary Document, as the case may be, shall be enforced to the fullest extent permitted by applicable law. If the final judgment of a court of competent jurisdiction determines that any provision of this Agreement or any Ancillary Document is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to, and shall, reduce the duration or scope of such invalid or unenforceable provision, or to delete specific words or phrases therefrom or add specific words or phrases thereto, and to replace such provision with a provision that is valid and enforceable and that comes closest to expressing the intention of the Parties with respect to the invalid or unenforceable provision, and this Agreement and any such Ancillary Document, as the case may be, shall be enforced as so modified.

11.10 **References and Construction.** References in this Agreement to “Section” mean and refer to the designated section of this Agreement, unless otherwise indicated. Words such as “herein,” “hereby,” “hereof,” “hereto” and “hereunder” refer to this Agreement as a whole, unless the context otherwise requires. Common nouns and pronouns and any variations thereof shall be deemed to refer to masculine, feminine or neuter, and words in the singular shall refer to the plural, and vice versa, as the identity of the Person, Persons or other reference in the context requires. Whenever used in this Agreement, “or” shall include both the conjunctive and disjunctive, “any” shall mean “one or more” and “including” and “include” shall mean “including” and “includes” “without limitation,” respectively. All references in this Agreement or in any Ancillary Document to “dollars” or “\$” mean and refer to United States dollars. Each Party has been represented by counsel in connection with the drafting, execution and delivery of this Agreement and the Ancillary Documents and the language used in this Agreement and in the Ancillary Documents shall be deemed to be the language chosen by the Parties to express their mutual intent. No rule of strict construction shall be applied against a Party and each Party agrees that if an ambiguity exists with respect to any provision of this Agreement, or any Ancillary Document, such provision shall not be construed against a Party because such Party or its representative drafted such provision.

11.11 **Counterparts; Delivery by Electronic Means.** This Agreement and each Ancillary Document may be executed in counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same instrument. The Parties may execute and deliver a counterpart of this Agreement or any Ancillary Document by facsimile or email transmission. Each Party agrees that the delivery of a counterpart of this Agreement or any Ancillary Document by facsimile or email shall have the same force and effect as delivery of original signatures and that each Party may use such facsimile signatures as evidence of the execution and delivery of this Agreement or any Ancillary Document by all Parties to the same extent that an original signature could be used.

11.12 **Notices.** Unless otherwise expressly provided for in this Agreement, any notice authorized or required by this Agreement to be given to a Party shall be given in a writing addressed to such Party and delivered via (a) United States postal service, registered mail, return receipt requested, (b) nationally recognized overnight courier service, (c) email or facsimile, if a copy thereof is provided by any other means set forth in this Section 11.12, or (d) hand delivery with signature acknowledging receipt to such Party at its office at the address (and person’s attention) set forth below, or at such other address (or to such other person’s attention) as may be specified by a written notice given in accordance with this Section 11.12. Notices given by registered mail shall be effective five (5) Business Days after mailing, notices given by overnight courier service shall be effective on the next Business Day and notices given by email or facsimile shall be given when received. Notwithstanding the foregoing, Merchant may not give any notice to Purchaser via email or facsimile unless Purchaser expressly consents thereto in its sole discretion.

11.13 **Acknowledgment of Security Interest and Security Agreement; Financing Statements.**

(a) The Receipts sold by Merchant to Purchaser pursuant to this Agreement are “accounts” or “payment intangibles” as those terms are defined in the UCC and such sale shall constitute and shall be construed and treated for all purposes as a true and complete sale, conveying good title to the Purchased Receipts free and clear of any Liens, by Merchant to Purchaser. To the extent that the Purchased Receipts are “accounts” or “payment intangibles” then (i) the sale of the Purchased Receipts creates a security interest (as defined in the UCC); (ii) this Agreement constitutes a “security agreement” under the UCC; and (iii) Purchaser has all the rights of a secured party under the UCC with respect to the Purchased Receipts. Purchaser further agrees that, with or without an Event of Default, Purchaser may notify account debtors, or other persons obligated on the Purchased Receipts, of Merchant’s sale of the Purchased Receipts and may instruct them to make payment or otherwise render performance to or for the benefit of Purchaser.

(b) Merchant authorizes Purchaser to file one or more UCC-1 forms under the UCC to give notice that the Purchased Amount of Receipts is the sole property of Purchaser. The UCC filing may state that such sale is intended to be a sale and not an assignment for security and may state that the Merchant is prohibited from obtaining any financing that impairs the value of the Receipts or Purchaser’s right to collect same. Merchant authorizes Purchaser to effect an ACH Debit to the Specified Account for all costs incurred by Purchaser in connection with the filing, amendment or termination of any UCC filings.



BizFund, LLC

GUARANTY

Merchant's Legal Name:

ONE FAT FROG, INCORPORATED

D/B/A:

ONE FAT FROG

State of Incorporation:

Type of entity

Corporation

Limited Liability Company

Limited Partnership

Limited Liability Partnership

Sole Proprietor

General Partnership

Physical Address: 2416 SAND LAKE ROAD

City: ORLANDO

State: FL

Zip: 32809

Mailing Address: SAME AS ABOVE

City:

State:

Zip:

Date business started (mm/yy): 05/2005

Federal ID# 42-1668173

GUARANTY

Personal Guaranty of Performance. The undersigned Guarantor(s) hereby irrevocably and unconditionally guarantees to Purchaser Merchant's performance when due and in full of all of the representations, warranties, covenants and agreements made by Merchant in that certain Merchant Cash Advance Agreement between BizFund, LLC, as Purchaser, and the Merchant named above to which this Guaranty is attached (as the same may be extended, renewed, amended, modified or restated from time to time, the "Merchant Agreement"). Such representations, warranties, covenants and agreements are referred to herein as the "Guaranteed Obligations." The Guaranteed Obligations are immediately due and payable upon the occurrence of any Event of Default under the Merchant Agreement. For the avoidance of doubt, this Guaranty does not constitute a guaranty of payment by the undersigned Guarantor(s) of any obligation of Merchant under the Merchant Agreement. Guarantor(s) shall pay to Purchaser all costs and expenses Purchaser incurs as result of or in connection with the enforcement of Purchaser's rights and remedies under this Guaranty, including fees, costs and expenses of investigation, court costs and fees and expenses of attorneys and other professionals.

Guarantor Waivers. In the event that Merchant fails to perform any obligation when due under the Merchant Agreement, Purchaser may enforce its rights under this Guaranty without first seeking to obtain payment from Merchant or any other guarantor under this Guaranty or any other security agreement or guaranty. Guarantor(s) also waives any and all defenses, set-offs, counterclaims and cross claims available to him or her in any action by Purchaser to enforce this Guaranty, including any claim or defense of usury.

Purchaser does not have to notify Guarantor of, or obtain Guarantor's consent with respect to, any of the following events and Guarantor will not be released from his or her obligations under this Guaranty as a result of (even if he or she is not notified of or does not consent to): (i) Merchant's failure to perform any obligation under the Merchant Agreement; (ii) any adverse change in Merchant's financial condition or business; (iii) any sale or other disposition of any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations; or (iv) Purchaser's acceptance of this Guaranty. In addition, Purchaser may take any of the following actions without notifying Guarantor, obtaining his or her consent or releasing Guarantor from any of his or her obligations under this Guaranty: (i) extend, renew, amend, modify or restate, in whole or in part, at any time or from time to time, the Merchant Agreement, the Merchant Obligations or Merchant's other obligations to Purchaser; (ii) release of Merchant from all or any part of its obligations to Purchaser (including the Merchant Obligations); (iii) sell, release, impair, waive or otherwise fail to realize upon any other guarantee of the Guaranteed Obligations or any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations; (iv) foreclose on any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations in a manner that impairs or precludes the right of Guarantor to obtain reimbursement for payment under this Guaranty; or (v) any other action or inaction that would, under applicable law or principles of equity, release or discharge a surety. Furthermore, this Guaranty shall be enforceable against Guarantor(s) regardless of whether the Merchant Agreement or any other Ancillary Document is valid or enforceable against Merchant or any other Person and notwithstanding any defense, setoff or counterclaim that Merchant may have or assert against Purchaser or any other Person.

Until all Merchant Obligations have been irrevocably satisfied in full, Guarantor shall not seek reimbursement from Merchant or any other guarantor for any amounts paid by it under this Guaranty. Guarantor irrevocably waives and agrees not to seek to exercise any of the following rights that it may have against Merchant, any other guarantor, or any collateral provided by Merchant or any other guarantor, for any amounts paid by it, or acts performed by it, under this Guaranty: (i) subrogation; (ii) reimbursement; (iii) performance; (iv) indemnification; (v) contribution; and (vi) any and all rights of set-off, counterclaim or cross claim. In the event that Purchaser must return any amount paid by Merchant or any other guarantor of the Guaranteed Obligations because that person has become subject to a Proceeding under the United States Bankruptcy Code or any similar law, Guarantor's obligations under this Guaranty shall include that amount.

**Guarantor Acknowledgement.** Guarantor acknowledges that: (i) it understands the seriousness of the provisions of this Guaranty; (ii) it has had a full opportunity to consult with counsel of its choice; and (iii) it has consulted with counsel of its choice or has decided not to avail itself of that opportunity.

**Joint and Several Liability.** The obligations hereunder of the persons or entities constituting Guarantor under this Guaranty are joint and several and shall be binding upon and enforceable against each of them, separately, and their respective executors, personal representatives, heirs, successors and permitted assigns.

**Waiver of Trial by Jury.**

THE PARTIES HEREBY IRREVOCABLY WAIVE TRIAL BY JURY IN ANY COURT IN ANY PROCEEDING ON ANY MATTER ARISING OUT OF OR IN ANY WAY RELATED TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY BREACH HEREOF OR DEFAULT HEREUNDER OR ANY ENFORCEMENT HEREOF. THE PARTIES HEREBY ACKNOWLEDGE THAT EACH MAKES THIS WAIVER KNOWINGLY, WILLINGLY, VOLUNTARILY AND WITHOUT DURESS, AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH THEIR ATTORNEYS.

**Class Action Waiver.**

EACH GUARANTOR ACKNOWLEDGES AND AGREES THAT THE AMOUNT AT ISSUE IN THIS TRANSACTION AND ANY DISPUTES THAT ARISE WITH RESPECT THERETO ARE LARGE ENOUGH TO JUSTIFY DISPUTE RESOLUTION ON AN INDIVIDUAL BASIS. THEREFORE, EACH GUARANTOR KNOWINGLY AND IRREVOCABLY WAIVES ANY RIGHT TO ASSERT ANY CLAIMS AGAINST PURCHASER AS A REPRESENTATIVE OR MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW OR DEEMED BY A COURT OF LAW TO BE AGAINST PUBLIC POLICY. TO THE EXTENT A GUARANTOR IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST PURCHASER, SUCH GUARANTOR AGREES THAT: (I) THE PREVAILING PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS OR REPRESENTATIVE ACTION (NOT WITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT); AND (II) SUCH GUARANTOR, AS A MEMBER OF THE CLASS, WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS OR REPRESENTATIVE ACTION.

**Security Interest.** Guarantor(s) hereby assigns to Purchaser, as collateral security, and grants to Purchaser a security interest in its "accounts" and "payment intangibles" (as those terms are defined in the UCC) now existing or hereafter arising, to secure its obligations under this Guaranty. Guarantor(s) agrees that Purchaser is authorized to and may (a) file one or more UCC-1 forms under the UCC to give notice of the grant of this security interest, and to file appropriate amendments, continuations and termination statements with respect thereto; (b) notify account debtors, or other persons obligated with respect to such accounts and payment obligations, of this security interest and instruct them to make payment or otherwise render performance to or for the benefit of Purchaser; and (c) exercise any and all rights and remedies available to it under the UCC or other applicable law to protect and enforce its rights under this security interest.

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE MERCHANT AGREEMENT, INCLUDING THE TERMS, ARE HEREBY INCORPORATED IN AND MADE A PART OF THIS GUARANTY. CAPITALIZED TERMS NOT DEFINED IN THIS GUARANTY, SHALL HAVE THE RESPECTIVE MEANINGS SET FORTH IN THE MERCHANT AGREEMENT, INCLUDING THE TERMS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, GUARANTOR(S) EXPRESSLY ACKNOWLEDGES, CONFIRMS AND AGREES TO THE PROVISIONS OF SECTION 1.3 AND 6.7 OF THE MERCHANT AGREEMENT

**MERCHANT #1**

BY: CONNIE BAUGHER

(Print Name)

SS# ■■■■

*Connie Baugher*  
Connie Baugher (Jun 15, 2023 13:37 EDT)

Driver's License Number: \_\_\_\_\_

Sign Here

**MERCHANT #2**

By: \_\_\_\_\_  
(Print Name)

SS# \_\_\_\_\_

Driver's License Number: \_\_\_\_\_

Sign Here

**OWNER/GUARANTOR #1** SIGNING INDIVIDUALLY AND FOR ANY ADDITIONAL GUARANTORS LISTED BELOW

By: CONNIE BAUGHER  
(Print Name):

SS# ■■■■

*Connie Baugher*  
Connie Baugher (Jun 15, 2023 13:37 EDT)

Driver's License Number: \_\_\_\_\_

Sign Here

**OWNER/GUARANTOR #2** SIGNING INDIVIDUALLY AND FOR ANY ADDITIONAL GUARANTORS LISTED BELOW

By: \_\_\_\_\_  
(Print Name):

SS# \_\_\_\_\_

Driver's License Number: \_\_\_\_\_

Sign Here

**ADDITIONAL GUARANTOR #1**

[ KING RESTAURANT EQUIPMENT, INC ]

Tax ID: \_\_\_\_\_

(Print Name): CONNIE BAUGHER

SIGNATURE: *Connie Baugher*  
Connie Baugher (Jun 15, 2023 13:37 EDT)

BIZFUND, LLC



**BIZ FUND**  
 .COM  
 LOYAL TO YOU AND YOUR GROWTH

APPENDIX A: THE FEE STRUCTURE:

- a. ACH Program Fee \$ WAIVED ACH'S ARE LABOR INTENSIVE, NOT AN AUTOMATED PROCESS
  - b. Origination Fee \$ WAIVED
  - c. NSF Fee (Standard) \$ 50 each.
  - d. Rejected ACH - When Merchant directs the bank to Reject ACH Debit
- DAILY ACH PROGRAM
- | <u>AMOUNT FUNDED/REJECT FEE</u> |        |
|---------------------------------|--------|
| Up to \$7,500                   | \$ 30  |
| \$7,501.00-\$50,000             | \$ 50  |
| \$50,001-\$100,000              | \$ 75  |
| \$100,001-\$250,000             | \$ 100 |
| Over \$250,000                  | \$150  |
- Weekly ACH Program
- | <u>Amount Funded</u> | <u>Reject Fee</u> |
|----------------------|-------------------|
| Up to \$7,500        | \$ 100            |
| \$7,501-\$50,000     | \$ 150            |
| \$50,001-\$100,000   | \$ 250            |
| \$100,001-\$250,000  | \$ 375            |
| Over \$250,000       | \$ 595            |
- f. Bank Change Fee- \$75 each occurrence When Merchant requires a change of account to be debited requiring us to adjust our system
  - g. Blocked Account- \$2,500 When Merchant BLOCKS account from our Debit ACH for nine (9) Business Days or less which places them in default (a separate fee from a Default Fee)
  - h. No Stacking Fee \$5,000 When Merchant breaches its covenant in Section 6.9 (a separate fee from and in addition to a Default Fee)
  - i. Default Fee \$5,000 In addition to other fees that may be applied, when Merchant changes, closes or blocks the Account for more than ten (10) Business Days without authorization from Purchaser, or upon any Event of Default pursuant to the terms of Merchant Agreement
  - j. Monthly Maintenance Fee- WAIVED On a monthly basis, the merchant will be charged \$299 as an account maintenance fee for the term of the merchants advance.

**Miscellaneous Service Fees.** Merchant shall pay certain fees for services related to the origination and maintenance of accounts which may include but not be limited to: Merchant's funding is transacted electronically to their designated bank account and charged a fee of \$95.00 for a Fed Wire or \$15.00 for an ACH. The fee for the ACH program, origination and associated funds transmission charges are paid by deduction from the funded amount in accordance with the schedule on this page. Any administrative adjustments associated with changes to the Specified Percentage and Specific Daily Amount will incur a fee of \$75 per occurrence. (All fees are subject to change at the sole and exclusive discretion of Purchaser upon notice of not less than 30 calendar days).

Merchant Initials: CB

Sign Here



BIZFUND, LLC

APPENDIX B

**AUTHORIZATION AGREEMENT FOR AUTOMATED CLEARING HOUSE TRANSACTIONS**

[ ONE FAT FROG, INCORPORATED ] (“Merchant”) hereby authorizes BizFund, LLC (“Purchaser”) to present automated clearing house (ACH) debits to the following checking account in the amount of Daily Amount specified below and all fees and other payments due to Purchaser from Merchant under the terms of that certain Merchant Cash Advance Agree- ment for the Purchase and Sale of Future Receipts (the “Agreement”) entered into between Merchant and Purchaser, as it may be extended, renewed, amended, modified or restated in whole or in part at any time or from time to time. Merchant also authorizes Purchaser to initiate additional entries (debits and credits) to correct any erroneous transfers. In addition, if an Event of Default (as defined in the Agreement) occurs, Merchant authorizes Purchaser to debit any and all accounts controlled by Merchant or controlled by any entity with the same Federal Tax Identification Number as Merchant up to the total amount of all Merchant Obligations (as defined in the Agreement), including but not limited to, all fees and charges, due to Purchaser from Merchant under the terms of the Agreement.

Merchant agrees to be bound by the Rules and Operating Guidelines of NACHA and represents and warrants that the designated account is established and used primarily for commercial/business purposes, and not for consumer, family or household purposes. Merchant authorizes Purchaser to contact Merchant’s financial institution to obtain available funds information and/or to verify any information Merchant has provided about the designated checking account and to correct any missing, erroneous or out-of-date information. Merchant understands and agrees that any revocation or attempted revocation of this Authorization will constitute an Event of Default under the Agreement. In the event that Merchant closes the designated checking account, or the designated checking account has insufficient funds for any ACH transaction under this Authorization, Merchant authorizes Purchaser to contact Merchant’s financial institution and obtain information (including account number, routing number and available balance) concerning any other deposit account(s) maintained by Merchant with Merchant’s financial institution, and to initiate ACH transactions under this Authorization to such additional account(s). To the extent necessary, Merchant grants Purchaser a limited Power of Attorney to take action in Merchant’s name to facilitate this authorization.

Weekly Amount: \$ 14,999.00, which is an approximate calculation of a percentage of the weekly dollar value of Merchant’s Receipts pursuant to the Agreement or this Authorization, on all banking days and twice on any banking day prior to a bank holiday.

Transfer Funds To/From: \_\_\_\_\_ Name of Bank: BANK OF AMERICA

ABA Transit/Routing #: 063000047

Checking Account #: ██████████2021

This authorization is to remain in full force and effect until all of the Merchant Obligations under the Agreement have been irrevocably satisfied in full, in such time and in such manner as to afford Purchaser a reasonable opportunity to act on it.

Merchant Information: Merchant’s Name: ONE FAT FROG, INCORPORATED

Signature of Authorized Representative:  

Print Name: CONNIE BAUGHER

Print Title: \_\_\_\_\_

Merchant’s Tax ID: 42-1668173

Date: 06-15-2023

[Attached Voided Check Here]



# ONE FAT FROG, INC 06-15-2023 pdf

Final Audit Report

2023-06-15

Created:	2023-06-15
By:	Olga A (docs@bizfund.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAazg0SgahGo46dIDpDZQ0velFahdyvk4M

## "ONE FAT FROG, INC 06-15-2023 pdf" History

-  Document created by Olga A (docs@bizfund.com)  
2023-06-15 - 3:58:59 PM GMT- IP address: 100.38.104.74
-  Document emailed to Connie Baugher (connieb@onefatfrog.com) for signature  
2023-06-15 - 4:00:33 PM GMT
-  Email sent to Olga A (docs@bizfund.com) bounced and could not be delivered  
2023-06-15 - 4:01:15 PM GMT
-  Email viewed by Connie Baugher (connieb@onefatfrog.com)  
2023-06-15 - 4:06:04 PM GMT- IP address: 104.28.55.235
-  Document e-signed by Connie Baugher (connieb@onefatfrog.com)  
Signature Date: 2023-06-15 - 5:37:45 PM GMT - Time Source: server- IP address: 104.28.57.239
-  Agreement completed.  
2023-06-15 - 5:37:45 PM GMT

# Union

FUNDING SOURCE

888-774-6697 | uw@unionfundingsource.com

## CONGRATULATIONS!

You have been approved by Union Funding Source in the amount of:

**\$175,000.00**

### CONTRACT CHECKLIST

To ensure a quick and smooth funding process, please review the important items in checklist below:

1. Please verify that your name on the documents is the exact same spelling as your name on your driver's license.
2. Please verify that the legal name and address of your business is correct on the documents.
3. Please ensure that your signatures and initials are filled in on all pages of the documents as prompted by this red arrow .

THANK YOU!

**Union Funding Source, Inc**

1835 E. Hallandale Beach Blvd #278, Hallandale Beach, FL 33009

**FUTURE RECEIVABLES SALE AND PURCHASE AGREEMENT**

This Agreement (“Agreement”) dated August 23, 2023, is made between Union Funding Source, Inc (“UFS”) and the following merchant(s) (hereinafter, “Merchant”), owner(s) (“Owner”) and guarantor(s) (“Guarantor”):

**Legal Name of Merchant(s):** ONE FAT FROG, INCORPORATED and entities appearing on “**Exhibit D**”

**D/B/A:** ONE FAT FROG RESTAURANT EQUIPMENT

**Form of Entity:** CORPORATION      **State of Organization:** FL      **EIN #:** 42-1668173

**Physical Address:** 2416 SAND LAKE RD, ORLANDO, FL, 32809

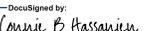
**Mailing Address:** 2416 SAND LAKE RD, ORLANDO, FL, 32809

<u>“Purchase Price”</u>	<u>“Purchased Percentage”</u>	<u>“Purchased Amount”</u>	<u>“Daily Remittance”</u>
\$175,000.00	4.44%	\$243,250.00	\$1,799.80

**FOR ONE FAT FROG, INCORPORATED**

By:  \_\_\_\_\_   
 Name: CONNIE B HASSANIEN  
 Title: **President**  
 Business Phone: 407-480-3409

**OWNER/GUARANTOR #1**

By:  \_\_\_\_\_   
 Name: CONNIE B HASSANIEN  
 SSN: \_\_\_\_\_  
 Email: connieb@onefatfrog.com  
 Phone: 4076878057  
 Address: 2416 SAND LAKE RD,  
 ORLANDO, FL, 32809-7642

Subject to the Terms and Conditions below (“Terms”), Merchant hereby sells, assigns, and transfers to UFS (making UFS the absolute owner) in consideration of the Purchase Price specified above, the Purchased Percentage of all of Merchant’s accounts receivable and payment rights arising out of or relating to Merchant’s sale or delivery of goods and/or services due to Merchant after the date of this Agreement, whether paid directly by Merchant’s customers or paid by others on Merchant’s customers’ behalfs or as reimbursements (the “Receipts”) up to the Purchased Amount, which shall be remitted to UFS in the manner set forth in this Agreement until the entire Purchased Amount has been delivered by Merchant to UFS (except in the case that Merchant ceases to receive Receipts because, for example, it goes out of business or goes bankrupt in the regular course of its business). This sale of Receipts to UFS is made without recourse against Merchant or any Guarantors, except as specifically set forth in this Agreement. In consideration of the sale by Merchant to UFS of the Receipts, UFS agrees to pay to Merchant the Purchase Price (reduced by any applicable fees), which shall be delivered to Merchant following Merchant’s execution of this Agreement. UFS’s payment of the Purchase Price (minus any applicable fees) shall be deemed the acceptance and performance by UFS of this Agreement.

THIS IS NOT A LOAN. Merchant is selling a portion of a future revenue stream to UFS at a discount, not borrowing money from UFS. There is no interest rate or payment schedule and no time period during which the Purchased Amount must be collected by UFS. In lieu of calculating the value of the Purchased Percentage of the Receipts each day, Merchant shall remit the Daily Remittance, which is a good faith approximation by UFS and Merchant of (a) the Purchased Percentage multiplied by (b) the gross revenues of Merchant during the previous calendar month divided by (c) the number of business days in the previous calendar month. The initial Daily Remittance shall be as described above. Merchant going bankrupt or going out of business, or experiencing a slowdown in business or a delay in collecting its receivables, in and of themselves, do not constitute a breach of this Agreement. Under such circumstances, the Daily Remittance shall be subject to reconciliation or adjustment as set forth in Paragraph 1.4 of the Terms and Conditions provided Merchant is not otherwise in default of this Agreement and makes a reconciliation request. UFS is entering this Agreement knowing the risks that Merchant’s business may slow down or fail. UFS assumes these risks based on Merchant’s, each Owner’s and each Guarantor’s representations, warranties, and covenants in this Agreement, which are designed to give UFS a reasonable and fair opportunity to receive the benefit of its bargain. Merchant and each Guarantor are guaranteeing performance of the terms of this Agreement and are not guaranteeing absolute payment of the Purchased Amount. Nothing in this Agreement to the contrary, Merchant shall operate its business in good faith and do nothing to intentionally cause the diminution or diversion of its Receipts.

So long as Merchant is generating Receipts and has not requested a reconciliation, UFS will debit the Daily Remittance each business day from one depositing bank account (the “Account”), into which Merchant and Merchant’s customers shall exclusively remit all Receipts (regardless of the method by which Merchant receives them), until such time as UFS receives remittance in full of the Purchased Amount (except in the case that Merchant ceases to receive Receipts because it goes out of business or goes bankrupt in the regular course of its business). Merchant hereby authorizes UFS to ACH debit the Daily Remittance from the Account on each business day (i.e., Monday through Friday but not bank holidays). Merchant understands that it is responsible for ensuring that it is responsible for notifying UFS if it has no Receipts or if there is not an amount sufficient to cover the Daily Remittance to be debited by UFS in the Account. In the event that there will be insufficient funds in the Account such that the debit of the Daily Remittance will not be honored by Merchant’s bank, Merchant shall give 24 hours’ advanced written notice (or other reasonable notice as necessitated by the circumstances, but no later than two days after Merchant is sent notice of a rejected debit) to UFS such that UFS may be able to cancel any pending debits, and shall promptly provide to UFS bank statements and other financial records to verify Merchant’s revenues and account balances. Provided there is no other Event of Default (as defined in Section 3.1 of the Terms), Merchant will not be held in default if timely notice of insufficient funds is provided and Merchant cooperates in providing information requested, even if a Daily Remittance is rejected by Merchant’s bank for insufficient funds. Merchant will be held responsible for any fees incurred by UFS resulting from a rejected ACH attempt (unless timely notice of insufficient funds is provided to UFS) or caused by another Event of Default. UFS is not responsible for any overdrafts or rejected transactions that may result from UFS’s ACH debiting the Daily Remittance under the terms of this Agreement. Notwithstanding anything to the contrary in this Agreement or any other agreement between UFS and Merchant, upon the occurrence of a default under Sections 1.11 or 3.1 of the Terms, UFS shall be entitled to immediately collect any outstanding amount of the Purchased Amount as damages.

1835 E. Hallandale Beach Blvd #278, Hallandale Beach, FL 33009

**FEE SCHEDULE**

**THE FOLLOWING "FEE SCHEDULE" INCLUDES ALL FEES AND LIQUIDATED DAMAGES APPLICABLE UNDER THIS AGREEMENT (OTHER THAN ATTORNEYS' FEES AND COLLECTIONS COSTS ASSESSED IN AN EVENT OF DEFAULT):**

**CLOSING COSTS**

- A. Origination Fee: \$3,500.00 to cover cost of origination and ACH Setup.\*
- B. Underwriting Fee: \$295.00 to cover underwriting and related expenses.\*
- C. Processing Fee: \$3,500.00 to cover professional service fees.\*
- D. Wire Fee: Each Merchant shall receive their funding electronically to their designated bank account and will be charged \$50 for a federal wire or \$0 for a bank ACH. \*

**APPLICABLE FEES**

- E. Bank Change Fee: \$150 when Merchant requires a change of the Account, which requires changes to UFS's records and systems.
- F. Not-Sufficient-Funds Fee (Standard): \$50 (each) to cover bank charges for Not Sufficient Funds in Merchant's bank account unless Merchant provides timely notice. A default may be declared after five (5) or more occurrences.
- G. Return Fee (Standard): \$50 (each) to cover bank charges for any rejected debits other than for Not Sufficient Funds in Merchant's bank account (such as if Merchant instructs the bank to reject FCG's debit). This fee may be charged in addition to and without waiver of FCG's other rights upon Merchant's default.
- H. Stacking Fee: For each occurrence, \$5,000.00 or 10% of the balance of the undelivered Purchased Amount at the time of breach, whichever is greater, to be charged if Merchant has sold or sells any future receipts to, or has obtained or obtains a loan or advance secured by any future receipts from any person or entity without UFS's prior written consent, due to increased risk profile.\*\*
- I. Default Fee: \$5,000, to be charged for each Event of Default under Section 3.1.\*\*
- J. Court costs, collection agency fees, attorneys' fees, expert fees, other related collections costs and costs for indemnification, as provided in the Terms of the Agreement.

All fees and/or liquidated damage amounts (i) may be added to the balance owed to UFS under the Agreement (if not already paid out of the Purchase Price), and (ii) are in addition to UFS's rights and remedies under the Agreement, including the right to declare Merchant in default.

**Total fees of \$7,295.00 shall be deducted from the Purchase Price prior to funding. Merchant will receive a net purchase price in the amount of \$167,705.00 at the time of delivery by UFS.**

\* These fees will be paid out of the Purchase Price/funding amount.

\*\* Merchant acknowledges these fees as liquidated damages, and not as penalties, and reasonable estimates of the damages likely to be incurred by UFS in the event of Merchant's breach of the Agreement.



**Union Funding Source, Inc**  
1835 E. Hallandale Beach Blvd #278, Hallandale Beach, FL 33009  
**TERMS AND CONDITIONS**

**1. TERMS OF ENROLLMENT IN PROGRAM**

1.1 **Term of Agreement.** This Agreement for the purchase and sale of future Receipts does not have a fixed duration or term, making the term potentially infinite. The term of this Agreement shall commence as of the "Effective Date", which shall be calculated as the later of: (i) the date set forth in the preamble to this Agreement, and (ii) the date when UFS paid the Purchase Price to Merchant. This Agreement shall expire on either (a) the date ("Expiration Date") when the Purchased Amount and all other sums due to UFS are received by UFS in full, as per the terms of this Agreement, or (ii) provided Merchant is not in default under any term of this Agreement, the date of the total failure of Merchant's business and the complete cessation of all Receipts.

1.2 **ACH Authorization and Agreement with Processor.** Throughout the term of this Agreement, Merchant irrevocably authorizes UFS and/or its agent(s) to deposit the Purchase Price or any amounts owed to Merchant into the Account by electronic check or automated clearing house (ACH), and to debit by electronic check or ACH from the Account any amounts owed to UFS, including without limitation (a) the Daily Remittance or (b) the entire Purchased Amount (together with applicable fees) in the event that Merchant defaults under this Agreement. Merchant shall (a) execute an ACH authorization form in favor of UFS in the form annexed as "Exhibit A" to authorize UFS to obtain electronic fund transfer services to and from the Account, and (b) if applicable, execute an agreement acceptable to UFS with a credit and debit card processor (the "Processor") instructing the Processor to deposit all Receipts into the Account (from which UFS may debit amounts owed to it by Merchant). As of the Effective Date, the Account is as listed on Exhibit A. If Merchant needs to change the designated Account for any reason, Merchant must seek advance written approval from UFS, for which UFS shall not unreasonably withhold consent, and provide a new ACH authorization form with the updated account information. It is Merchant's exclusive responsibility to pay to its banking institution and to compensate UFS in case UFS is charged by its banking institution (in accordance with the Fee Schedule) for any fees, charges and expenses incurred by either UFS or Merchant due to rejected electronic checks or ACH debit attempts, overdrafts or rejections.

1.2.1. Throughout the term of this Agreement, Merchant irrevocably grants access to UFS to view the Account information through the bank's webpage or other electronic access for the purpose of verifying Merchant's receivables, Receipts, deposits, and withdrawals into and from the Account, and shall execute the form annexed as "Exhibit B", providing UFS and/or its authorized agent(s) with all of the information, authorizations and passwords necessary for such purposes. Merchant understands that any attempt to block UFS's access to the Account or refusal to provide UFS with login credentials to the Account constitutes a default under this Agreement.

1.2.2. The authorizations in this Section 1.2 apply not only to the approved Account but also to any subsequent or alternate account used by the Merchant for its Receipts, whether pre-approved or agreed to by UFS or not. This additional authorization is not a waiver of UFS's entitlement to declare this Agreement breached by Merchant as a result of its use of an account which UFS did not first pre-approve in writing prior to Merchant's use thereof. The aforementioned authorizations shall be irrevocable without the written consent of UFS. The purported revocation of such authorizations shall constitute a breach of this Agreement.

1.2.3. In the event the Account or Processor shall become unavailable or shall cease providing services to Merchant during the term of this Agreement, prior to the first date of such unavailability or cessation of services, Merchant shall arrange for another Account or Processor and obtain advance written approval from UFS for the same.

1.3 **Acceleration.** Merchant may at any time after receipt from UFS of the Purchase Price accelerate delivery to UFS of the then undelivered portion of the Purchased Amount (such amount, the "Outstanding Purchased Amount") in accordance with the following procedures:

1.3.1. Unless otherwise agreed to in writing by UFS, the Outstanding Purchased Amount can only be delivered in full and not partially

1.3.2. Merchant shall request the right to accelerate the delivery of the Outstanding Purchased Amount by notifying UFS to that effect, provided that such notice shall be in writing (by email to uw@unionfundingsource.com) and must contain information on the source(s) of the funds to be used for delivery of the Outstanding Purchased Amount and the approximate date of such delivery. UFS shall respond to Merchant's request within three business days from the date of its receipt by UFS, in which it will indicate the exact amount of the Outstanding Purchased Amount as of the date of the intended delivery by Merchant. As of the date agreed upon as between UFS and Merchant, Merchant shall deliver or cause to be delivered to UFS the full amount of the Outstanding Purchased Amount.

1.3.3. Merchant shall not suspend or modify, or cause to be suspended or modified, the delivery to UFS of the Daily Remittance prior to the delivery of the Outstanding Purchased Amount to UFS, unless there are insufficient funds in the Account and Merchant has given UFS due notice. Provided Merchant is not in default of this Agreement and no fees are due to UFS, upon delivery of the full Outstanding Purchased Amount to UFS, Merchant's obligations to UFS pursuant to this Agreement shall be fulfilled.

1.3.4. Upon UFS's receipt of the Outstanding Purchased Amount, UFS shall notify its payment processor or the bank at which the Account is located to stop transferring Daily Remittance from the Account. If UFS shall have received one or more Daily Remittances after delivery of the Outstanding Purchased Amount (due to the processor's or bank's delay in processing UFS's request or for any other reason), UFS will return the overage to Merchant. Nevertheless, Merchant acknowledges and agrees that UFS shall have the right to apply the overage toward Merchant's outstanding financial obligations to UFS under any separate agreement between Merchant and UFS (if any) in exchange for, and as an adequate and sufficient consideration for, UFS granting Merchant the right to accelerate the delivery of the Outstanding Purchased Amount.

**1.4 Adjustment.**

1.4.1. 1.4.1. Either party may give notice to the other for an adjustment of the Daily Remittance to more accurately reflect the Purchased Percentage. In the event of such adjustment, the Daily Remittance will either be (i) increased if the amount remitted to UFS was less than the Purchased Percentage of all revenue of Merchant in the prior fourteen (14) days, or (ii) decreased if the amount received by UFS was more than the Purchased Percentage of all revenue of Merchant in the prior fourteen (14) days. In the event Merchant requires an adjustment to decrease the amount of the Daily Remittance, it shall be Merchant's sole responsibility to initiate the process in the manner set forth in Section 1.4.2. If an adjustment is required, UFS shall modify the Daily Remittance such that the modified Daily Remittance amount is a good faith approximation by UFS of the (a) Purchased Percentage multiplied by (b) the gross revenues of Merchant during the prior fourteen (14) days divided by (c) the number of business days in the prior fourteen (14) days. Any adjustment will extend or reduce the duration of the period over which the Purchased Amount is delivered.

1.4.2. In the event that Merchant desires an adjustment of the Daily Remittance, Merchant shall make a formal written request. Requests for adjustment must be made by email and shall include a copy of Merchant's most recent bank statements or credit card processing statements as well as Merchant's account reports showing transactions in the month to date, or other documents or reports available to Merchant for the verification of its revenues. Email requests to UFS must be made to UFS at uw@unionfundingsource.com, with the subject line "Request for Adjustment." The adjustment shall be

made by UFS within two business days of notice being given and shall be effective as of the date of the notice (such that any overpayment by Merchant after the date of the notice shall be credited to Merchant). Merchant shall not be in default if it does not have the amount of the higher Daily Remittance on account each day between making its request for adjustment and UFS's reconciliation and adjustment of the debits through its payment processor, provided however that Merchant shall at the time of making the adjustment request notify UFS that it has an insufficient balance and no other Event of Default has occurred. Merchant shall have the right to request an adjustment as many times during the term of this Agreement as it deems proper, and UFS shall comply with each such request provided that: (i) each such request is made in accordance with the terms of Section 1.4; and (ii) if a request for adjustment is made after the expiration of the term of this Agreement and, as the result of such reconciliation, the total amount actually debited by UFS will become less than the Purchased Amount, then and in such event the term of this Agreement shall automatically be extended until the time when the total amount actually debited pursuant to this Agreement shall become equal to the Purchased Amount.

1.5 **Reconciliation.** As long as there has not been an Event of Default under this Agreement, if there has been a material downward change in the Merchant's Receipts such that it reasonably appears to Merchant that the total amount collected from Merchant by UFS through debits of the Daily Remittances materially exceeds the Purchased Percentage of Merchant's Receipts since the Effective Date of this Agreement, Merchant shall have the right to request a reconciliation so that UFS shall return to Merchant such amounts as may exceed the then currently realized amount of the Purchased Percentage of Receipts. It shall be Merchant's sole responsibility to request a reconciliation, if it is required. Merchant may request an adjustment at any time and for as many times as it desires during the course of the Agreement by sending UFS a request by email to uw@unionfundingsource.com, with the subject line "Request for Reconciliation", and include a copy of Seller's bank statements or statements from any credit card payment processor since the Effective Date of this Agreement (which statements shall also include the Merchant's bank account report showing transactions in the month to date), as well as any receivables reports maintained by Merchant. Upon receipt of a written reconciliation request from Merchant, UFS may request any and all financial information of the same nature (i.e., showing the Receipts) from Merchant as is reasonably necessary to accurately reconcile the amount UFS has received from Merchant with the actual total amount of Receipts generated by Merchant since the Effective Date. UFS shall review Merchant's actual Receipts for the entire period between the Effective Date and the date of the request and, in the event the total amount remitted exceeds the total Purchased Percentage of the Receipts actually received by Merchant for such period, UFS shall remit back to Merchant any amount overcollected. The reconciliation shall be made within five (5) business days of Merchant's request and provision of the financial information described in this Section and shall be effective as of the date of the notice. Any reconciliation may substantially extend the duration of this Agreement. UFS shall not be required to reconcile until such time as it has received all such requested information. Nothing set forth in Section 1.5 shall be deemed to prevent Merchant from requesting a stop or reduction to the Daily Remittances in the event of a material reduction or cessation of its Receipts.

1.6 **Indemnification.** Merchant, each Owner and each Guarantor jointly and severally indemnify and hold harmless the Processor or the Merchant's bank at which the Account is located, or either of their officers, directors and shareholders, against all losses, damages, claims, liabilities and expenses (including reasonable attorneys' fees) incurred by Processor or the bank resulting from (a) claims asserted by UFS for monies owed to UFS from Merchant and (b) actions taken by Processor or the bank in reliance upon any fraudulent, misleading, or deceptive information or instructions provided by Merchant. Processor and the bank are third-party beneficiaries of this provision. Merchant and each Guarantor waive any right to seek indemnification or contribution from UFS for such losses.

1.7 **No Liability.** In no event will UFS be liable for any claims asserted by Merchant, any Owner or any Guarantor under any legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is waived by both Merchant, each Owner and each Guarantor. In the event that these claims are nonetheless raised, Merchant and each Guarantor will be jointly and severally liable for UFS's attorneys' fees and expenses resulting therefrom in accordance with Section 3.4. Further, the above notwithstanding, in no event will UFS's total liability to the Merchant for any claim or action exceed the amount of the Purchase Price.

1.8 **Reliance on Terms.** Sections 1.2, 1.3, 1.4, 1.5, 1.6 and 2.5 of this Agreement are agreed to for the benefits of Merchant, UFS, Processor and Merchant's bank, and, notwithstanding the fact that Processor and the bank are not parties to this Agreement, Processor and the bank may rely upon their terms and raise them as a defense in any action.

**1.9 Sale of Receipts.**

1.9.1. Notwithstanding any other provision of this Agreement, Merchant and UFS acknowledge and agree that the Purchase Price under this Agreement is in exchange for the Purchased Amount of Merchant's Receipts, and that such Purchase Price is not intended to be, nor shall it be construed, as a loan from UFS to Merchant. There is no interest rate or payment schedule in this Agreement. UFS has purchased and shall own all the Receipts described in this Agreement up to the full Purchased Amount as the Receipts are created, and the Receipts shall be held in the Account in trust in favor of UFS, and Merchant shall have no legal or equitable interest in the Purchased Amount of Receipts, except that so long as the Merchant is not in default, Merchant shall only be required to deliver the Daily Remittance each business day until the Purchased Amount is delivered in full. Remittances made to UFS in respect of the full amount of the Receipts shall be conditioned upon Merchant's sale of products and services, and the remittances therefor by or on behalf of Merchant's customers. UFS is a bona fide purchaser of the Purchased Amount for fair value. Merchant agrees that the Purchase Price equals the fair market value for the risk undertaken by UFS in consideration for the Purchased Amount of Merchant's Receipts. The parties intend for the sale of Receipts and not an assignment for security.

1.9.2. UFS agrees to purchase the Receipts knowing the risks that Merchant's business may slow down, go bankrupt or fail, and UFS assumes this risk based exclusively upon the information provided to it by Merchant and Merchant's business operations prior to the date of this Agreement, and upon Merchant's representations, warranties and covenants contained in this Agreement that are designed to give UFS a reasonable and fair opportunity to receive the benefit of its bargain. This sale of Receipts is made without express or implied warranty to UFS of collectability of the Receipts and without recourse against Merchant, any Owner or any Guarantor if Receipts are not generated in the regular course of Merchant's business operations or cannot be collected, except as specifically set forth in this Agreement. Thus, the period of time over which it will take UFS to collect the Purchased Amount is not fixed, is unknown to both parties as of the Effective Date and will depend on how well or poorly Merchant's business performs following the Effective Date. As an extreme example, in the event Merchant's business ceases to exist after UFS's purchase of the Receipts and prior to the delivery of the Purchased Amount as a result of a cessation of revenues for reasons outside Merchant's control, UFS may never collect all or a substantial portion of the Purchased Amount.

1.9.3. In no event shall the Purchased Amount, the aggregate of any amounts or any portion thereof be deemed as interest. It is the express intention of the parties that Merchant not pay or contract to pay, and that UFS not receive or contract to receive, directly or indirectly in any manner whatsoever, any amount deemed to be interest in excess of that which may be paid by Merchant under applicable law. As a result

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thereof, absent a modification agreed to in writing by Merchant, the Purchased Amount can never increase above the amount set forth on the first page of this Agreement.

1.9.4. In the event a court of competent jurisdiction finds this Agreement to be a loan or to require the payment of interest, despite the parties specifically representing that it does not require payment of interest, this Agreement shall be modified such that no sum charged or collected hereunder shall exceed the highest rate permissible by law. The rate in effect hereunder shall automatically be reduced to the maximum rate permitted by applicable law, and UFS shall promptly refund to Merchant any interest received by UFS in excess of the maximum lawful rate.

1.9.5. Merchant agrees that it will treat the Purchase Price and Purchased Amount in a manner consistent with a sale in its accounting records and tax returns and not as a loan. Merchant hereby waives any rights of privacy, confidentiality or taxpayer privilege in any litigation or arbitration arising out of this Agreement in which Merchant asserts that this transaction is anything other than a sale of future receipts.

1.9.6. Because the parties acknowledge and rely upon the lawfulness of this transaction under the laws of the State of Florida and the fairness of its terms, Merchant knowingly and willingly waives and is estopped from asserting any claim or defense of usury in any legal action or proceeding, whether based on Florida law or the law of any other jurisdiction.

1.9.7. UFS may request, and Merchant shall execute, a Deposit Account Control Agreement (DACA) for the Account in a form acceptable to Merchant's bank, by which Merchant shall grant non-invoked control of the Account to UFS, maintaining Merchant's access to the Account unless and until there is an Event of Default, at which UFS may invoke control of the Account.

1.9.8. In the event Merchant notifies that it is unable or unwilling to collect all or some of the Receipts, UFS shall have the right, without waiving any of its other rights and remedies under this Agreement, to notify the Processor, any other credit card or payment processor used by Merchant, or any third party having monies owed to Merchant for its sale or deliver of goods or services (including without limitation Merchant's customers), of the sale of the Specified Percentage of the Receipts under this Agreement, and to direct such credit card, payment processor or other third party to make payment to UFS of all or any portion of the amounts received by such credit card, payment processor or third party on behalf of Merchant. If no Event of Default has occurred, UFS shall remit back to Merchant the excess above the Specified Percentage of the Receipts that it collected pursuant to this paragraph within 2 business days of payment and shall provide a reconciliation in accordance with paragraph 1.4.

### 1.10 Financial Condition.

1.10.1. Merchant, each Owner and each Guarantor authorize UFS and its agents to investigate their financial responsibility and history, and will provide to UFS any authorizations, bank or financial statements, tax returns and other financial records as UFS deems necessary in its sole and absolute discretion prior to or at any time after execution of this Agreement through the Expiration Date. A photocopy of this Agreement and accompanying documents will be deemed as acceptable as an authorization for release of financial and credit information. UFS is authorized to update such information and financial and credit profiles from time to time as it deems appropriate. In addition to the authorizations set forth in Section 1.2 of this Agreement, Merchant authorizes all of its banks, brokers and processors to provide UFS with Merchant's banking, brokerage and/or credit card or other payment processing history to determine qualifications for this merchant cash advance transaction, compliance with this Agreement and for collections purposes. Notwithstanding Merchant's provision of its bank account log-in credentials, upon written request from UFS, Merchant shall provide UFS with copies of any documents related to Merchant's credit card processing activity or financial and banking affairs within five days.

1.10.2. Merchant represents that in entering this Agreement it previously disclosed to UFS (i) any and all bank, depository or other financial accounts currently maintained by Merchant for the purposes of Merchant's business including without limitation the Account, (ii) all current sources of Merchant's Receipts, revenues and receivables (including without limitation credit and debit card processors, electronic check or ACH processors, and customers or other third parties with significant accounts payable to Merchant), and (iii) all current sources of actual or potential financing, including without limitation, other merchant cash advance funders or lenders (all together, "Merchant's Financials"), and further represents that any documentation previously provided to UFS concerning Merchant's Financials is full, complete and accurate and has not omitted any of Merchant's Financials. Merchant acknowledges that UFS has relied upon such disclosures as a material consideration in entering into this Agreement. Following the Effective Date, it shall be a material breach of this Agreement for Merchant to without prior written permission from UFS (i) open another bank or credit card or payment processing account at a financial institution other than the bank at which the Account is located or the Processor, (ii) open another account at the bank at which the Account is located or with the Processor and into which account Merchant diverts its receivables or any portion thereof, or (iii) divert Merchant's receivables or any portion thereof from the Account to another bank account under the control of Merchant or a third-party.

1.11 **Collectability Covenants.** The following covenants are intended to ensure the collectability of the portion of the Receipts purchased by UFS as they are generated and shall not be construed as modifications of the above provisions that UFS has purchased only the Specified Percentage of the Receipts as a contingent purchase of receivables:

1.11.1. Merchant, without written notice to UFS, shall not: (a) take any action to discourage the use of electronic check or credit or debit card processing that is settled through Processor or the Account, or permits any event to occur that could have an adverse effect on the use, acceptance, or authorization of checks or other payments or deposits for the purchase of Merchant's services and products; (b) change its arrangements with Processor or the bank at which the Account is located in any way that is adverse or unacceptable to UFS; (c) change the processor through which the Receipts are settled from Processor to another processor, or permits any event to occur that could cause diversion of any of Merchant's check, credit card, debit card or deposit transactions to another processor.

1.11.2. Merchant without the written consent of UFS, shall not: (a) intentionally interrupt the operation of its business or transfer, move, sell, dispose, divert or otherwise convey its business and/or assets (including its customers or receivables) without (i) the express prior written consent of UFS, and (ii) the written agreement of any purchaser or transferee to assume all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to UFS; (b) take any action, fails to take any action, or offer any incentive (economic or otherwise) the result of which will be to induce any of Merchant's customers to pay for Merchant's goods or services with any means other than payments, checks or deposits that are settled through Processor or deposited in the Account or otherwise violates Section 2.7; (c) fail to remit its receivables into the Account; (d) opens another account at a financial institution other than the bank at which the Account is located, or opens another account at the bank at which the Account is located and into which account Merchant diverts deposit of its receivables or any portion thereof; (e) close the Account, block the Account or make any other material changes to the Account that would prevent UFS from debiting the Account in the manner agreed to in Section 1.2; or (f) purport to revoke the ACH authorization agreed to in Section 1.2.

1.11.3. Merchant shall not (a) block UFS's viewing access to the Account, including by changing its log-in credential or otherwise; (i) Merchant fails to provide financial documents or other information requested by UFS including, without limitation, copies of any documents related to Merchant's credit card or payment processing activity or financial and banking affairs (pursuant to Sections 1.2 and 1.5) within five days after a request from UFS.

1.12 **Protection of Information.** Merchant and each person signing this Agreement on behalf of Merchant and/or as Owner or Guarantor, in respect of himself or herself personally, authorize UFS to disclose information concerning Merchant's and each Owner's and each Guarantor's credit standing (including credit bureau reports that UFS obtains) and business conduct only to agents, affiliates, subsidiaries, funding partners and credit reporting bureaus. Merchant, each Owner and each Guarantor hereby waive to the maximum extent permitted by law any claim for damages against UFS or any of its affiliates relating to any (i) investigation undertaken by or on behalf of UFS as permitted by this Agreement, or (ii) disclosure of information as permitted by this Agreement.

### 1.13 [Intentionally Omitted.]

1.14 **Publicity.** Merchant, each Owner and each Guarantor all hereby authorize UFS to use its, his, or her name and logo in listings of clients and in advertising and marketing materials.

1.15 **D/B/A's.** Merchant hereby acknowledges and agrees that UFS may be using "doing business as" or "d/b/a" names or acting through authorized agents in connection with various matters relating to the transaction between UFS and Merchant, including the filing of UCC-1 financing statements and other notices or filings.

1.16 **Phone Recordings and Contact Authorized.** To the maximum extent permitted by law, Merchant agrees that any call between UFS and Merchant and their agents and employees may be recorded or monitored. Further, Merchant agrees that (i) it has an established business relationship with UFS, its employees and agents and that Merchant may be contacted from time-to-time regarding this or other business transactions; (ii) that such communications and contacts are not unsolicited or inconvenient; and (iii) that any such contact may be made at any phone number, email address or facsimile number given to UFS by the Merchant, its agents or employees, including cellular telephones. Merchant also agrees that UFS may use any other medium not prohibited by law, including but not limited to mail, e-mail, text message and facsimile to contact Merchant. Merchant expressly consents to conduct business by electronic means.

1.17 **Applicable Fees and Closing Costs.** Merchant acknowledges that the applicable fees and closing costs (that is, such costs as are payable at the time of the execution of this Agreement) that may be charged by UFS are set forth in the Fee Schedule in the beginning of this Agreement and were subject to arms-length negotiation between Merchant and UFS. Merchant hereby agrees to pay the closing costs in full from the Purchase Price and authorizes UFS to apply a portion of the Purchase Price due to Merchant toward satisfaction of the closing costs by deducting the amount of the closing costs from the Purchase Price prior to delivering it to Merchant. For avoidance of doubt, the deduction of the closing costs from the Purchase Price shall not be deemed to be a reduction of the Purchase Price. Additionally, to the extent that Merchant has agreed to a broker fee with a third-party broker with respect to this Agreement (which is not a party hereto), Merchant hereby requests and agrees for UFS to withhold from the Purchase Price, and pay to the third-party broker associated with this Agreement, the professional service fee in the Fee Schedule contained at the beginning of this Agreement. Other than the fees listed in this Agreement, UFS is NOT CHARGING ANY ADDITIONAL FEES OR CLOSING COSTS to Merchant and if Merchant is charged by any other party for any fee not listed in this Agreement, such fee is not charged by UFS. Moreover, as since the funds delivered to merchant as part of the Purchase price must be used to ensure Merchant's continued success, Merchant warrants and covenants not to pay any fee and/or commission with regard to this transaction other than as provided for herein.

1.18 **Multiple Merchant Entities.** In the event the term "Merchant" (as used on page 1) is comprised of more than one entity, then the term "Merchant" as used in this Agreement shall mean all such entities, individually and collectively, each of which is an affiliate of all other such entities, that is such entity or any Owner or Guarantor controls, is under the control of, or has direct or indirect common ownership with the other entities, or any Owner or Guarantor. The representations, warranties, covenants, obligations and liabilities of each Merchant entity shall be joint and several under this Agreement. The liability of each Merchant entity under this Agreement shall be direct and immediate and shall not be conditional or contingent upon the pursuit of any remedies against any other person or entity, including any other Merchant entity. The Specified Percentage, Receipts, Daily Remittance, and Purchased Amount shall apply to each of the Merchant entities.

1.19 **Application of Amounts received by UFS.** UFS reserves the right to apply amounts received by it under this Agreement to any fees or other charges due to UFS from Merchant prior to applying such amounts to reduce the amount of any outstanding Purchased Amount.

### 2. REPRESENTATIONS, WARRANTIES, AND COVENANTS

Merchant, each Owner and each Guarantor represent, warrant and covenant that, as of this date and during the term of this Agreement:

2.1 **Financial Condition and Financial Information.** Merchant's, any Owner's or any Guarantor's bank and financial statements (copies of which have been furnished to UFS, and future statements which will be furnished hereafter at the request and discretion of UFS) fairly represent the financial condition of Merchant and each Guarantor at such dates, and since those dates there has been no material adverse changes, financial or otherwise, in such condition, operation, or ownership of Merchant. Merchant and each Guarantor have a continuing, affirmative obligation to advise UFS of any material adverse change in their financial condition, operations, or ownership.

2.2 **Governmental Approvals and Compliance.** Merchant is in compliance and, during the term of this Agreement, shall comply, with all laws and has and will maintain valid permits, authorizations and licenses to own, operate and lease its properties and to conduct the business in which it is presently engaged and/or will engage in hereafter. Merchant is not in default of, and will promptly pay, all necessary federal, state and local taxes, including but not limited to income, employment, sales and use taxes, imposed upon Merchant by law, and will maintain workers compensation insurance required by applicable governmental authorities.

2.3 **Authorization.** Merchant, the person(s) signing this Agreement on behalf of Merchant, and each Guarantor have full power and authority to incur and perform the obligations under this Agreement, all of which have been duly authorized. All organizational and other proceedings required to be taken by Merchant or each Guarantor to authorize the execution, delivery and performance of this Agreement have been taken.

2.4 **Insurance.** Merchant will maintain general liability and business-interruption insurance.

2.5 **Electronic Check Processing Agreement.** Merchant will not change its Processor, add terminals, change its financial institution or bank account(s) or take any other action that could have any adverse effect upon Merchant's obligations under this Agreement without UFS's prior written consent. Any such changes shall be a material breach of this Agreement.

2.6 **Change of Name or Location or Sale or Closing of Business.** Merchant, and any successor in interest of Merchant, will not conduct Merchant's businesses under any name other than as disclosed to UFS, nor shall Merchant change any of its places of business without prior written consent by UFS. Merchant will not sell, dispose, transfer or otherwise convey all or substantially all of its business or assets (including without limitation the Collateral or any portion thereof) without (i) the express prior written consent of UFS, and (ii) the written agreement of any purchaser or transferee assuming all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to UFS. Except as disclosed to UFS in writing, Merchant has no current plans to close its business either temporarily, whether for renovations, repairs or any other purpose, or permanently. Merchant shall not make or send notice of any intended bulk sale or transfer. Merchant agrees that until UFS has received all of the Purchased Amount, Merchant will not voluntarily close its business for renovations, repairs or any other purposes.

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This provision, however, does not prohibit Merchant from closing its business (i) if such closing is required to conduct renovations or repairs that are required by local ordinance or other legal order, such as from a health or fire inspector, or (ii) if otherwise forced to close by circumstances not reasonably in the control of Merchant. Prior to any closure, Merchant will provide UFS written notice as required by Section 3.5. In the event of a closure, Merchant shall cooperate with UFS and provide sufficient documentation to ascertain whether all or any part of the Purchased Amount may still be recovered.

**2.7 No Diversion of Future Receivables.** Merchant shall not cause a diversion of any portion of the Receipts from the Account or Processor without UFS's written permission, which permission shall not be unreasonably withheld. This provision is to ensure collectability of the portion of the Receipts purchased by UFS.

**2.8 Daily Batch Out.** Merchant will clear and settle Merchant's receivables with the Processor on a daily basis.

**2.9 Estoppel Certificate.** Merchant will at every and all times, and from time to time, upon at least one day's prior notice from UFS to Merchant, execute, acknowledge, and deliver to UFS and/or to any other person, firm or corporation specified by UFS, a statement certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and stating the dates which the Purchased Amount or any portion thereof has been delivered.

**2.10 No Pending or Contemplated Bankruptcy.** As of the date of this Agreement, Merchant is not insolvent and does not contemplate filing for bankruptcy in the next six months and has not consulted with a bankruptcy attorney or filed any petition for bankruptcy protection under Title 11 of the United States Code, or any other law for the relief of debtors, and there has been no involuntary petition brought or pending against Merchant. Merchant further warrants that it does not anticipate filing any such bankruptcy petition, and it does not anticipate that an involuntary petition will be filed against it.

**2.11 Unencumbered Receipts.** Merchant has good, complete, unencumbered and marketable title to all of Merchant's receivables, free and clear of any and all liabilities, liens, claims, changes, restrictions, conditions, options, rights, mortgages, security interests, equities, pledges, and encumbrances of any kind or nature whatsoever or any other rights or interests that may be inconsistent with the transactions contemplated with, or adverse to the interests of, UFS, except as provided in "Exhibit C", which contains true and correct information as to the names of all of Merchant's secured creditors and the amounts that Merchant owes of those creditors as of the Effective Date. As of the date hereof, Merchant is not engaged in negotiations either directly or through a broker for any other merchant cash advances or other transactions which would contemplate the sale or encumbrance of Merchant's receivables other than those listed in Exhibit C. To Merchant's, any Owner's or any Guarantor's knowledge, there are no litigations or other proceedings pending or judgments or awards entered against Merchant in any court or tribunal in any jurisdiction concerning Merchant's receivables and there are no outstanding executions or levies concerning Merchant's receivables. In the event Merchant, any Owner or any Guarantor learns that such a proceeding has been filed, it/they/he/she shall immediately provide notice of the proceeding to UFS, which notice shall include the title, forum and case number of the proceeding. Merchant indemnifies and holds harmless UFS for any and all damages and losses (including without limitation legal fees and expenses) incurred by UFS as the result of the representations in this paragraph being untrue, incorrect or incomplete.

**2.12 Business Purpose.** Merchant is a valid business in good standing under the laws of the jurisdiction(s) in which it/they is/are organized and/or operates. Merchant hereby acknowledges that it fully understands that (i) UFS's ability to collect the Purchased Amount (or any portion thereof) is contingent upon Merchant's continued operation of its business and successful generation of the Receipts until the Purchased Amount is delivered to UFS in full, and (ii) that in the event of decreased efficiency or total failure of Merchant's business, UFS's receipt of the full or any portion of the Purchased Amount may be delayed indefinitely. Based on the foregoing, Merchant is entering into this Agreement for the benefit and advancement of Merchant's business operations, and will use the Purchase Price exclusively for the benefit and advancement of Merchant's business operations and will not use any portion of the Purchase Price for any other purpose, including but not limited to consumer, personal, family or household purposes.

**2.13 Defaults under Other Contracts.** Merchant's execution of, and/or performance under this Agreement, will not cause or create an event of default by Merchant under any contract with another person or entity, including without limitation any other merchant cash advance provider or any other creditor.

**2.14 Good Faith.** Merchant is receiving the Purchase Price and selling UFS the Purchased Amount in good faith and will use the Purchase Price funds to maintain and grow Merchant's business. Merchant is not actively working with or being instructed by any debt relief consultant or debt relief attorneys and will not use the Purchase Price to either pay the fees of such consultants or attorneys or pay down prior loans or receipt purchase transactions. Nothing herein limits Merchant's, any Owner's or any Guarantor's right to seek the advice of an independent attorney or financial consultant to advise them with respect to this Agreement.

**2.15 Stacking Prohibited.** Merchant shall not enter into any merchant cash advance, factoring or loan agreement that relates to or involves Merchant's future receivables with any party other than UFS at any time prior to the Expiration Date without (i) written consent of UFS and (ii) the written agreement of the funder or lender to either deliver the Outstanding Purchased Amount to UFS prior to providing funding to Merchant in accordance with paragraph 1.3, or to guaranty all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to UFS. In the event Merchant violates this provision, in addition to any other rights or remedies under this Agreement, UFS may without prior notice to Merchant or declaring Merchant to be in default: (a) assess against Merchant the stacking fee set forth in Appendix A, and/or (b) receive the benefits granted under such subsequently entered transaction, for example in the event that the daily payment (or, if payments are not made daily, the average amount owed for each business day of the payment term) or buy rate (that is the discount rate of the purchase price from the amount of receivables purchased) under such subsequently entered transaction is higher than the Daily Remittance or buy rate hereunder, UFS may either raise the Daily Remittance to an amount that is equal to the amount of such daily payment or raise the buy rate to be equal to the buy rate by which the other funder purchased Merchant's receivables. The remedies hereunder are cumulative and in addition to other remedies available to UFS under this Agreement. Further, UFS may share information regarding this Agreement with any third party in order to determine whether Merchant is in compliance with this provision.

**2.16 No Confessions of Judgment.** Until the Expiration Date, Merchant shall not enter into any affidavits of confession of judgment, or execute a document containing a confession of judgment, with any party without UFS's prior written consent.

**2.17 Protections.** In the event of a misrepresentation or violation of any provision of this Article 2, in addition to any other remedy under this Agreement, UFS may invoke any of the protections listed in paragraph 1.11 hereof immediately and without notice to Merchant.

### EVENTS OF DEFAULT AND REMEDIES

**3. Events of Default.** Without limitation of any other default provision of this Agreement, the occurrence of any of the following events shall constitute an "Event of Default" hereunder:

- 1) Merchant violates or causes a violation of any of the covenants listed in paragraph 1.11;
- 2) Merchant violates any term or covenant in this Agreement

3) Any representation or warranty by Merchant, any Owner or any Guarantor in this Agreement was incorrect, false, or misleading in any material respect when made;

4) The sending of notice of termination by Merchant or Merchant giving verbal notification to UFS of its intent to breach this Agreement;

5) On five or more occasions, Merchant fails to give UFS advance notice that there will be insufficient funds in the Account such that the ACH of the Daily Amount will not be honored by Merchant's bank and does not notify UFS within two days of Merchant's bank sending notice to Merchant of the rejected debit, provided Merchant has not requested a reconciliation in accordance with paragraph 1.4 and fails to reasonably respond to UFS's communications seeking to ascertain the circumstances of the insufficient funds;

6) Merchant fails to supply all requested financial documentation and allow for daily monitoring of its bank account;

7) Merchant changes its Processor in violation of the terms of paragraph 2.5;

8) Merchant transfers or sells all or substantially all of its assets without prior notice and written approval from UFS;

9) Merchant makes or sends notice of any intended bulk sale or transfer by Merchant;

10) Merchant's bank returns a code other than Not Sufficient Funds (NSF) when declining UFS's attempts to debit Merchant's account, except if the code indicates that a debit is declined because of an act of the bank or a third-party outside of Merchant's control or through no act of Merchant or if merchant gave timely notice that the Account has or will have insufficient funds such that the ACH of the Daily Amount will not be honored by Merchant's bank and has not requested a reconciliation request in accordance with paragraph 1.4;

11) Merchant defaults under any of the terms, covenants, and conditions of any other agreement with UFS, including without limitation the below Pledge of Security and Guaranty;

12) Any person or entity files a litigation or proceeding or enters a judgment concerning or claiming ownership of Merchant's receivables in any court or tribunal in any jurisdiction (unless Merchant disclosed the same to UFS prior to entering this Agreement and it is listed on Exhibit D); or

13) Merchant applies for, or enters into an agreement for, another form of financing that effects UFS's rights under the Pledge of Security (Section 4 below) without the prior written consent of UFS.

**3.2 Guaranty.** In an Event of Default, UFS may enforce its rights against any Guarantor of this transaction in accordance with the below Guaranty.

**3.3 Remedies.** In case any Event of Default occurs and is not waived pursuant to Section 6.4, hereof, UFS shall have the right to declare the full uncollected Purchased Amount plus any fees due under this Agreement (plus reasonable attorneys' fees and costs incurred in collection) due and payable immediately. UFS may enforce any rights and remedies under this Agreement through the following procedures: (a) UFS may enforce the provisions of the below Pledge of Security (b) UFS may enforce the provisions of the below Guaranty; (c) UFS may debit Merchant's depository accounts wherever situated by means of ACH debit for any amounts owed; (d) UFS may proceed to enforce its rights and remedies under this Agreement by lawsuit or arbitration (and in such action or proceeding will be entitled to an award of attorneys' fees and costs in accordance with Section 3.4), which may be a suit in equity or by action at law, or both, whether for the specific performance of any covenant, agreement or other provision contained herein, or to enforce any obligations in this Agreements (including without limitation the Pledge of Security and Guaranty), or any other legal or equitable right or remedy. All rights, powers, and remedies of UFS in connection with this Agreement may be exercised at any time by UFS after the occurrence of an Event of Default, in any order, and are cumulative and not exclusive, and shall be in addition to any other rights, powers, or remedies provided by law or equity.

**3.4 Attorneys' Fees and Costs.** Merchant and each Guarantor must pay all of UFS's reasonable attorneys' fees and costs associated with (i) any breach by Merchant or any Guarantor of the covenants of this Agreement and enforcement thereof, (ii) any Event of Default, (iii) and exercise by UFS of its rights and remedies under this Agreement, or (iv) any suit, action or proceeding between UFS and Merchant or any Guarantor, arising out of or relating to this Agreement or the transactions contemplated hereby, whether commenced by UFS or by Merchant or any Guarantor, and whether brought in court or in arbitration or in any proceeding to confirm or vacate an arbitration award. UFS shall be entitled, without limitation, to collection agency fees or attorneys' fees (which may include a contingency fee of up to thirty-three percent (33%) of the outstanding Purchased Amount as of the earlier of an Event of Default or the commencement of such proceeding), expert witness fees and costs of suit. UFS shall further be entitled to an award of costs and fees incurred by UFS on any appeal and in making an application for costs and fees (so-called "fees on fees").

**3.5 Equitable Remedies.** Without limitation of any other provision in this Agreement, in the event that Merchant or any Guarantor breach or threaten to breach any of the covenants, representations and warranties in this Agreement, Merchant and each Guarantor hereby consent and agree that UFS shall be entitled to the ex parte (without advanced notice) entry of a preliminary or permanent injunction, temporary restraining order, prejudgment attachment or other equitable relief, including without limitation to protect against such breach or threatened breach, from any court of competent jurisdiction, without the necessity of showing any actual damages or that monetary damages would not afford an adequate remedy, and without the necessity of posting any bond or other security with respect to obtaining or continuing any injunction or temporary restraining order. Further, Merchant and each Guarantor release UFS from, and waive any claim for, damages that may result to Merchant and each Guarantor from UFS obtaining any equitable relief pursuant to this Agreement. If a bond or other security is required, Merchant and each Guarantor consent that its damages would be de minimis and that the amount of the bond or security shall be no more than \$500. Merchant and each Guarantor consent to pay the amount of \$15,000 as liquidated damages, and not as a penalty, for UFS's successful application for injunctive relief under this paragraph, which the parties agree is a reasonable estimate of the costs for such an application (which shall not be a limitation on the overall amount of attorneys' fees and costs UFS shall be entitled to recover in any action). The amount of liquidated damages shall be awarded to UFS upon prevailing on the initial application for injunctive relief, without the need for UFS to prevail in the ultimate judgment in the proceeding, and Merchant and each Guarantor consents to the court or tribunal including the liquidated amount in the total amounts of any assets to be stayed or attached pursuant to its order granting equitable relief. Merchant and each Guarantor agree that the aforementioned equitable relief shall not diminish any other right or remedy that UFS may have at law or in equity to enforce the provisions of this Agreement. Merchant and each Guarantor agree that any such equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages or other available forms of relief.

**3.6 Required Notifications.** Without limitation of any of Merchant's other obligations under this Agreement, Merchant is required to give UFS written notice (a) within 24 hours of any filing under Title 11 of the United States Code or any other law for the protection of debtors, and (b) at a commercially reasonable (but no less than seven days' time) prior to UFS closing or slowing down its business or transferring, moving, selling, disposing, diverting or otherwise conveying its business and/or assets (including its customers or receivables).

**3.7 Waiver of Separate Entity Rule.** Merchant and each Guarantor waive, to the maximum extent permitted by law, the separate entity rule, such that any notice, demand, lien, levy, prejudgment attachment, postjudgment attachment, turnover order, restraining notice or other process served upon any branch, department or unit of Merchant's or any Guarantor's bank, third-party payor, account debtor or other garnishee shall be deemed served regardless of the branch, department or unit served anywhere in

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## Union Funding Source, Inc

1835 E. Hallandale Beach Blvd #278, Hallandale Beach, FL 33009

the world, and will subject to attachment or collection any and all assets or other interests held by or for the benefit of Merchant or any Guarantor, regardless of the location of the assets or other interests anywhere in the world.

#### 4. PLEDGE OF SECURITY

4.1 **Security Interest.** As security for the performance of any and all liabilities, obligations, covenants or agreements of Merchant under this Agreement (and any future amendments of this Agreement, if any), Merchant hereby pledges to UFS a security interest in and lien ("Pledge") upon: all accounts and proceeds as those terms are defined in the Uniform Commercial Code (the "Collateral"). This Pledge will secure all of UFS's rights under this Agreement and any other agreements now existing or later entered into between Merchant, UFS or an affiliate of UFS. With respect to such Pledge, UFS will have all rights afforded under the UCC, any other applicable law and in equity. Merchant will obtain from UFS written consent prior to granting a security interest of any kind in the Collateral to a third party and any such grant of a security interest without UFS's written consent shall be null and void. Merchant acknowledges and agrees that any security interest granted to UFS under any other agreement between Merchant, any Owner or any Guarantor and UFS will secure the obligations under this Agreement. Merchant agrees to execute any documents or take any action in connection with this security interest as UFS deems necessary to perfect or maintain UFS's first priority security interest in the Collateral, including the execution of any account control agreements. Merchant hereby authorizes UFS to file any financing statements deemed necessary or desirable by UFS to perfect or maintain UFS's security interest without prior notice to Merchant. UFS is authorized to execute all such instruments and documents in Merchant's and each Guarantor's name. The UCC filing may state that such sale is intended to be a sale and not an assignment for security and may state that the Merchant is prohibited from obtaining any financing that impairs the value of the Receipts or UFS's right to collect same. Merchant acknowledges and agrees that UFS's rights pursuant to this Pledge of Collateral and/ or as set forth in any UCC statements filed by UFS shall survive and be incorporated into any judgment UFS may obtain against the Merchant in connection with this Agreement.

4.2 **Remedies.** Upon any Event of Default, UFS may pursue any remedy available at law (including those available under the provisions of the UCC), or in equity to collect, enforce or satisfy any obligations then owing to UFS against the Collateral. This Pledge may be exercised by UFS without notice or demand of any kind by making an immediate withdrawal or freezing the Collateral. UFS shall have the right to notify account debtors at any time. Pursuant to Article 9 of the UCC, as amended from time to time, UFS has control over and may direct the disposition of the Collateral without further consent of Merchant. Merchant hereby represents and warrants that no other person or entity has a security interest in the Collateral (unless disclosed in Exhibit C). Merchant and each Guarantor agree not to create, incur, assume, or permit to exist, directly or indirectly, any lien on or with respect to any of the Collateral, as applicable. Merchant shall be liable for, and UFS may charge and collect, all costs and expenses, including but not limited to attorneys' fees, which may be incurred by UFS in protecting, preserving and enforcing UFS's security interest and rights.

4.3 **Termination of Pledge.** Upon the full performance by Merchant of Merchant's obligations under this Agreement, the security interest in the Collateral shall automatically terminate without any further act of either party being required, and all rights to the Collateral shall revert to Merchant. Upon any such termination, UFS will execute, acknowledge (where applicable) and deliver such satisfactions, releases and termination statements, as Merchant shall reasonably request.

4.4 **Representations with Respect to Collateral.** Merchant hereby represents and warrants to UFS that the execution, delivery and performance by Merchant of this Pledge and the remedies in respect of the Collateral under this Agreement (i) have been duly authorized; (ii) do not require the approval of any governmental authority or other third party or require any action of, or filing with, any governmental authority or other third party to authorize same (other than the filing of the UCC-1s); and (iii) do not and shall not (a) violate or result in the breach of any provision of law or regulation, any order or decree of any court or other governmental authority, and/or (b) violate, result in the breach of or constitute a default under or conflict with any indenture, mortgage, deed of trust, agreement or any other instrument to which Merchant is a party or by which any of Merchant's assets (including, without limitation, the Collateral) are bound.

4.5 **Further Assurances.** Upon the request of UFS, Merchant, at Merchant's sole cost and expense, shall execute and deliver all such further UCC-1s, continuation statements, assurances and assignments of the Collateral and consents with respect to the pledge of the Collateral and the execution of this Pledge, and shall execute and deliver such further instruments, agreements and other documents and do such further acts and things, as UFS may request in order to more fully effectuate the purposes of this Pledge and the assignment of the Collateral and obtain the full benefits of this Pledge and the rights and powers herein created, and authorizes UFS to make such filings and do such other acts as it deems necessary or desirable to perfect and maintain its security interest.

4.6 **Acknowledgment.** For avoidance of doubt, this Pledge is made for the purpose of securing Merchant's performance of its obligations to UFS and shall not (i) permit UFS to collect the Purchased Amount in the event that Merchant itself is not required to remit it, such as for the reasons set forth in Section 1.9.2. of this Agreement, or (ii) otherwise affect the contingent nature of this transaction.

#### 5. GUARANTY OF PERFORMANCE

5.1 **Guaranty.** As an additional inducement for UFS to enter into this Agreement, each Guarantor hereby provides UFS with this "Guaranty". Each Guarantor hereby irrevocably, absolutely and unconditionally guarantees to UFS prompt, full, faithful and complete performance of Merchant's obligations under this Agreement and each Guarantor unconditionally covenants to UFS that if an Event of Default shall at any time be made by Merchant, each Guarantor shall well and truly perform (or cause to be performed) such obligations and pay all damages and other amounts stipulated in this Agreement with respect to the non-performance of Merchant's obligations, or any of them (collectively, the "Guaranteed Obligations"). The Guaranteed Obligations are due at the time of any breach by Merchant of any representation, warranty, or covenant made by Merchant in this Agreement. For avoidance of doubt, this Guaranty is made for the purpose of securing performance of Merchant's obligations to UFS and, (i) no Guarantor shall be liable to remit the Purchased Amount in the event that Merchant itself is not required to do so, such as for the reasons set forth in Section 1.9.2. of this Agreement, and (ii) this Guaranty does not otherwise affect the contingent nature of this transaction.

5.2 **No Notice.** UFS does not have to notify Guarantor of any of the following events, and Guarantor will not be released from its obligations under this Guaranty if it is not notified of: (i) Merchant's failure to timely remit any amount required under this Agreement; (ii) any adverse change in Merchant's financial condition or business; (iii) any sale or other disposition of any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations; (iv) UFS's acceptance of this Guaranty; and (v) any renewal, extension, or other modification of this Agreement or Merchant's other obligations to UFS. In addition, UFS may take any of the following actions without releasing Guarantor from any of its obligations under this Guaranty: (i) renew, extend, or otherwise modify this Agreement or Merchant's other obligations to UFS; (ii) release Merchant from its obligations to UFS or settle with Merchant; (iii) sell, release, impair, waive, or otherwise fail to realize upon any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations; and (iv) foreclose on any collateral securing the Guaranteed Obligations or any other guaranty of the Guaranteed Obligations in a manner that impairs or precludes the right of Guarantor to obtain reimbursement for payment under this Guaranty.

5.3 **Guarantor's Obligations Severable.** In the event of a breach of this Agreement, UFS may seek recovery from each Guarantor for all of UFS's losses and damages (including without limitation any right to recover costs, attorneys' fees or other amounts as set forth in this Agreement) for the enforcement of UFS's rights under this Guaranty without first seeking to obtain payment from Merchant or any other Guarantor. Merchant and any other guarantor are not necessary parties to any litigation brought under this Guaranty.

5.4 **Guarantor Waiver of Rights.** Until the Purchased Amount and Merchant's other obligations to UFS under this Agreement are paid in full, Guarantor shall not seek reimbursement from Merchant or any other guarantor for any amounts paid by it under this Guaranty. Guarantor permanently waives and shall not seek to exercise any of the following rights that it may have against Merchant, any other guarantor, or any collateral provided by Merchant or any other guarantor, for any amounts paid by it, or acts performed by it, under this Guaranty: (i) subrogation, (ii) reimbursement, (iii) performance, (iv) indemnification or (v) contribution. Each Guarantor knowingly and willingly waive(s) any claims or affirmative defenses that might otherwise be available to Merchant, including without limitation bad faith, unjust enrichment, usury, duress, unconscionability, unfair business practices, consumer protection statutes, champerty, contract of adhesion or fraud (including fraud in the inducement of this Guaranty), except for the defense of payment.

5.5 **Multiple Guarantors.** In the event "Guarantor" (as defined on page 1 of this Agreement) is comprised of more than one individual, then: (i) the term "Guarantor" shall mean, individually and collectively, all such individuals; (ii) each Guarantor is an affiliate of all other Guarantor(s); (iii) the representations, warranties, covenants, obligations and liabilities of each Guarantor shall be joint and several under this Agreement; (iv) the liability of each Guarantor under this Agreement shall be direct and immediate and shall not be conditional or contingent upon the pursuance of any remedies against any other person or entity; and (v) UFS may pursue its rights and remedies under this Agreement against any one or any number of individuals that constitute Guarantor without obligation to assert, prosecute or exhaust any remedy or claim against any other Guarantor or Merchant.

5.6 **Guarantor Acknowledgement.** Each Guarantor acknowledges that he/she/it: (i) is an owner, officer or manager of Merchant and/or will benefit from Merchant and UFS entering into this Agreement; (ii) irrevocably, absolutely and unconditionally guarantees to UFS performance of all of the obligations of Merchant under this Agreement; (iii) is bound by the Jury Trial and Class Action Waiver provisions below; (iii) understands the seriousness of the provisions of this Guaranty; (iv) has had a full opportunity to consult with counsel of his/her/ its choice; and (v) has consulted with counsel or has decided not to avail himself/herself/itself of that opportunity.

#### 6. MISCELLANEOUS

6.1 **Modifications.** No modification, amendment, waiver or consent of any provision of this Agreement shall be effective unless the same shall be in writing and signed by Merchant and UFS. The parties may enter into one or more written addendums to this Agreement (in addition to any exhibits) that modify, clarify or supplement the terms of this Agreement.

6.2 **Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of Merchant, UFS, and their respective successors and assigns. UFS may assign, transfer or sell its rights to receive the Purchased Amount or delegate its duties hereunder, either in whole or in part, with or without prior written notice to Merchant. Merchant may not assign, transfer or sell its rights or obligations under this Agreement without an express written modification of this Agreement.

6.3 **Notices.** Except as otherwise provided herein, all notices, requests, consents, demands, and other communications hereunder shall be delivered by certified mail, return receipt requested, to the respective parties to this Agreement at the addresses set forth in this Agreement. Merchant and each Guarantor shall promptly notify UFS of any change of address. Notices to UFS shall become effective only upon receipt by UFS. Notices to Merchant and any Guarantor shall become effective three days after mailing.

6.4 **Waiver of Remedies.** No failure on the part of UFS to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided hereunder are cumulative and not exclusive of any remedies provided by law or equity.

6.5 **Governing Law, Venue, and Jurisdiction.** This Agreement, and any dispute arising out of or relating to this Agreement or the parties' relationship, shall be governed by and construed in accordance with the laws of the State of Florida, without regard to any applicable principles of conflicts of law. Any suit, action, or proceeding arising out of or relating to this Agreement or the transaction contemplated herein or the interpretation, performance, or breach hereof, shall be instituted in any state court sitting in the State of Florida (the "Acceptable Forums"), provided that UFS may institute suit in another forum. Merchant, each Guarantor and each Owner agree that the Acceptable Forums are convenient to them, and submit to the personal jurisdiction of the Acceptable Forums and waive any and all objections to jurisdiction or venue in the Acceptable Forums. Should a proceeding be initiated by Merchant, any Guarantor or any Owner in any other forum, Merchant, each Guarantor and each Owner waives any right to oppose any motion or application made by UFS to dismiss such proceeding, to remove and/or transfer the proceeding to an Acceptable Forum, and for an anti-suit injunction against such proceeding (which UFS may make in the Acceptable Forums). ADDITIONALLY, MERCHANT, EACH OWNER AND EACH GUARANTOR WAIVE PERSONAL SERVICE OF ANY SUMMONS AND/OR COMPLAINT OR OTHER PROCESS TO COMMENCE ANY LITIGATION AND AGREE THAT SERVICE OF SUCH DOCUMENTS SHALL BE EFFECTIVE AND COMPLETE IF SENT BY PRIORITY MAIL OR FIRST CLASS MAIL TO THE MAILING ADDRESS(ES) SET FORTH FOR MERCHANT ABOVE, AND EMAILED TO THE EMAIL ADDRESS, LISTED ON PAGE 1 OF THIS AGREEMENT OR THE UPDATED MAILING AND EMAIL ADDRESS IN ACCORDANCE WITH PARAGRAPH 6.3. SERVICE SHALL BE EFFECTIVE AND COMPLETE 5 DAYS AFTER THE MAILING. MERCHANT WILL THEN HAVE 30 CALENDAR DAYS AFTER SERVICE IS COMPLETE IN WHICH TO APPEAR IN THE ACTION OR PROCEEDING.

6.6 **Statute of Limitations.** Merchant, Owner and each Guarantor agree that notwithstanding any other statute of limitations or repose or tolling under state or federal law (including any statute permitting equitable recoupment), there shall be shall be a one (1) year statute of limitations from the date of accrual of a cause of action or defense with respect to the filing or interposing of any claim, defense suit, action or proceeding by Merchant, Owner and any Guarantors that arises out of or relates to this Agreement, the transaction contemplated herein, or the interpretation, performance of breach hereof. If such a claim is filed more than one (1) year after accrual it shall be time-barred, regardless of the nature of the cause of action. This provision does not apply to claims by UFS against Merchant, Owner or any Guarantor.

6.7 **Survival of Representations.** All representations, warranties, and covenants herein shall survive the execution and delivery of this Agreement and shall continue in full force until all obligations under this Agreement shall have been satisfied in full and this Agreement shall have terminated.

6.8 **Interpretation.** This Agreement embodies the arms-length negotiation and mutual agreement between the parties and shall not be construed against any party as having been drafted by such party. As such, the parties further agree that this Agreement has been jointly drafted, so that in the event any portion, word, clause, phrase, sentence, or paragraph of this Agreement is deemed ambiguous, said ambiguity shall not be construed against any of the parties.

6.9 **Severability.** In case any of the provisions in this Agreement is found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of any other provision contained

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herein shall not in any way be affected or impaired. Any provision hereof prohibited by law shall be ineffective only to the extent of such prohibition without invalidating the remaining provisions hereof.

6.10 **UFS's Consent.** Merchant agrees that in every instance in which Merchant's rights under this Agreement are contingent upon first obtaining UFS's consent, such consent may be withheld, granted or conditioned at UFS's sole and absolute discretion. For avoidance of doubt, this discretion does not apply to UFS's obligation to provide a reconciliation to Merchant under Section 1.4.1-1.4.2.

6.11 **Consultation.** Merchant represents that it is a business operated by one or more experienced business persons. The person(s) authorized to make management and financial decisions on behalf of Merchant with respect to this Agreement either (i) have such knowledge, experience and skill in financial and business matters in general and with respect to transactions of a nature similar to the one contemplated by this Agreement so as to be capable of evaluating the merits and risks of, and making an informed business decision with regard to, Merchant entering into this Agreement, or (b) have consulted with such other persons as are capable of advising Merchant with respect to the transaction. Such person (s): (i) has read and fully understands the content of this Agreement; (ii) has received all information that such persons deemed necessary to make an informed decision with respect to a transaction contemplated by this Agreement; and (iii) has had unrestricted opportunity to make such investigation as such person desired pertaining to the transaction contemplated by this Agreement and to verify any such information furnished to him or her by UFS. In the event such person(s) has not done any of the foregoing, he or she has knowingly and intentionally waived the opportunity to do so.

6.12 **Entire Agreement.** This Agreement (including any exhibits or addendums) embodies the entire agreement between Merchant, each Guarantor and each Owner and UFS and supersedes all prior agreements, understandings or oral or written representations relating to the subject matter hereof. Merchant each Guarantor and each Owner represent that they have no inducements, representations, or promises by UFS, anyone acting on UFS's behalf, or any broker that may have solicited each Guarantor and each Owner to enter into this or any other agreement, other than as expressly set forth herein. No course of performance or other conduct subsequently pursued or acquiesced in, and no oral agreement or representation subsequently made, by UFS, anyone acting on its behalf, or any broker, whether or not relied or acted upon, and no usage of trade, whether or not relied or acted upon, shall amend this Agreement or impair or otherwise affect Merchant's, each Guarantor's and each Owner's obligations pursuant to this Agreement or any rights and remedies of the parties hereto.

6.13 **JURY TRIAL WAIVER.** THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION, OR PROCEEDING ON ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OF THE TRANSACTION CONTEMPLATED HEREIN. THE PARTIES HERETO ACKNOWLEDGE THAT EACH MAKES THIS WAIVER KNOWINGLY, WILLINGLY AND VOLUNTARILY AND WITHOUT DURESS, AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH THEIR ATTORNEYS.

6.14 **CLASS ACTION WAIVER.** TO THE EXTENT PERMITTED BY LAW, THE PARTIES AGREE THAT ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OF THE TRANSACTION CONTEMPLATED (INCLUDING WITHOUT LIMITATION ANY ARBITRATION IN ACCORDANCE WITH SECTION 6.15) MUST BE PURSUED ON AN INDIVIDUAL BASIS ONLY. THE PARTIES WAIVE ANY RIGHT TO COMMENCE OR BE A PARTY TO ANY CLASS, COLLECTIVE, REPRESENTATIVE OR MASS ACTION OR PROCEEDING OR TO BRING JOINTLY OR COLLECTIVELY ANY CLAIM. TO THE EXTENT MERCHANT IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST UFS, THE PARTIES AGREE THAT: (1) MERCHANT SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS, COLLECTIVE OR REPRESENTATIVE ACTION; AND (2) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT

SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS, COLLECTIVE OR REPRESENTATIVE ACTION.

6.15 **ARBITRATION.** UFS HAS THE RIGHT TO REQUEST THAT ANY DISPUTE, CONTROVERSY OR CLAIM BETWEEN UFS AND MERCHANT, ANY GUARANTOR OR ANY OWNER, WHETHER ARISING OUT OF OR RELATING TO THE CONSTRUCTION AND INTERPRETATION OF THIS AGREEMENT OR OTHERWISE (INCLUDING WITHOUT LIMITATION CLAIMS FOR FRAUD, MISREPRESENTATION, INTENTIONAL TORT, NEGLIGENCE TORT OR UNDER ANY LOCAL, STATE OR FEDERAL STATUTE OR RULE), BE SUBMITTED TO ARBITRATION BEFORE EITHER (I) THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS COMMERCIAL RULES, OR (II) MEDIATION AND CIVIL ARBITRATION INC. D/B/A RAPIDRULING (WWW.RAPIDRULING.COM) IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES. THE ARBITRATION SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT. THE ARBITRATION SHALL BE DEEMED TO BE LOCATED IN BROWARD COUNTY, FLORIDA, REGARDLESS OF THE LOCATION OF THE PARTIES OR ARBITRATOR. TO THE EXTENT PERMITTED BY THE ARBITRATOR RULES, THE ARBITRATION PROCEEDINGS SHALL PROCEED VIRTUALLY OR REMOTELY AND SHALL NOT REQUIRE THE PARTIES TO APPEAR IN-PERSON. ALL QUESTIONS CONCERNING ARBITRABILITY OF ANY DISPUTE SHALL BE DECIDED BY THE ARBITRATOR. UFS MAY DEMAND THAT SUCH DISPUTE BE SUBMITTED TO ARBITRATION EITHER BY (I) SENDING A WRITTEN NOTICE OF INTENT TO ARBITRATE TO ALL OTHER PARTIES IN ACCORDANCE WITH THE NOTICE PROVISION IN PARAGRAPH 6.5 OF THIS AGREEMENT, OR (II) SENDING A WRITTEN NOTICE OF INTENT TO ARBITRATE TO THE ATTORNEY OF RECORD FOR MERCHANT, ANY GUARANTOR OR ANY OWNER WHO HAS BROUGHT ANY ACTION OR PROCEEDING BEFORE ANY COURT OR TRIBUNAL AGAINST UFS. INITIALLY, THE PARTIES WILL SPLIT THE ARBITRATION FILING FEE, ADMINISTRATION FEE AND ARBITRATOR FEE. IF UFS PREVAILS IN ARBITRATION, THE ARBITRATOR MAY AWARD TO UFS ITS ATTORNEYS' FEES (IN ACCORDANCE WITH PARAGRAPH 4.4 OF THIS AGREEMENT) AND SHARE OF THE ARBITRATION FILING FEE, ADMINISTRATION FEE AND ARBITRATOR FEE. MERCHANT, ANY GUARANTOR AND ANY OWNER MAY OPT OUT OF THIS ARBITRATION PROVISION BY SENDING UFS A NOTICE THAT HE, SHE OR IT DOES NOT WANT THIS PROVISION TO APPLY IN ACCORDANCE WITH PARAGRAPH 6.3 WITHIN 14 DAYS AFTER THE EFFECTIVE DATE OF THIS AGREEMENT.

6.16 **ACKNOWLEDGEMENT.** EACH OF THE PARTIES ACKNOWLEDGES THAT IT: (I) HAS READ THIS AGREEMENT AND FULLY UNDERSTANDS THE CONTENTS AND LEGAL EFFECTS THEREOF; (II) HAS BEEN GIVEN A REASONABLE AMOUNT OF TIME TO CONSIDER THIS AGREEMENT; (III) HAS BEEN ADVISED TO SEEK COUNSEL AS TO THE MEANING AND CONSEQUENCES OF THIS AGREEMENT; (IV) HAS BEEN SO ADVISED BY COUNSEL TO THE MEANING AND CONSEQUENCES OF THIS AGREEMENT OR HAS VOLUNTARILY WAIVED PROCUREMENT OF COUNSEL; (V) DESIRES TO ENTER INTO THIS AGREEMENT AND IS DOING SO KNOWINGLY, VOLUNTARILY AND WITHOUT COERCION OR DURESS; AND (VI) HAS NOT RELIED ON ANY REPRESENTATIONS, PROMISES, OR AGREEMENTS OF ANY KIND MADE TO HIM, HER OR IT IN CONNECTION WITH HIS, HER OR ITS DECISION TO ACCEPT AND SIGN THIS AGREEMENT EXCEPT THOSE EXPRESSLY SET FORTH IN THIS DOCUMENT.

6.17 **Facsimile & Digital Acceptance.** This Agreement can be signed in one or more counterparts, each of which shall constitute an original and all of which when taken together, shall constitute one and the same agreement. Facsimile, email, PDF or digital signatures hereon shall be deemed acceptable for all purposes. This Agreement shall be valid and in force even if it is not initialed.

In witness whereof, the parties have executed this Agreement as of the date first listed above.

**FOR ONE FAT FROG, INCORPORATED**

By: 

Name: CONNIE B HASSANIEN

Title: President

**Union Funding Source, Inc**

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

Name:

Title:

**OWNER/GUARANTOR #1**

By: 

Name: CONNIE B HASSANIEN

### Union Funding Source, Inc

1835 E. Hallandale Beach Blvd #278, Hallandale Beach, FL 33009

#### EXHIBIT A – AUTHORIZATION FOR DIRECT DEPOSIT (ACH CREDIT) AND DIRECT PAYMENTS (ACH DEBITS)

#### DEFINITIONS

**UFS:** Union Funding Source, Inc

**Merchant (Legal Name):** ONE FAT FROG, INCORPORATED and entities appearing on Exhibit “E”

**Merchant Agreement:** Secured Merchant Agreement between UFS and Merchant, dated August 23, 2023

#### Designated Checking Account:

Bank Name: Fifth Third Bank Branch: \_\_\_\_\_

ABA: \_\_\_\_\_ Routing: \_\_\_\_\_

Capitalized terms used in this Authorization Form without definition shall have the meanings set forth in the Merchant Agreement.

This Authorization for Direct Deposit (ACH Credit) and Direct Payments (ACH Debits) is part of (and incorporated by reference into) the Merchant Agreement. Merchant should keep a copy of this important legal document for Merchant’s records.

**DISBURSEMENT OF ADVANCE PROCEEDS.** By signing below, Merchant authorizes UFS to disburse the advance proceeds less the amount of any applicable fees upon advance approval by initiating ACH credits to the Designated Checking Account, in the amounts and at the times specified in the Merchant Agreement. **By signing below, Merchant also authorizes UFS to collect amounts due from Merchant under the Merchant Agreement by initiating ACH Debits from the Designated Checking Account. The initial authorized amount is as follows, which may be adjusted by UFS from time to time in accordance with the Merchant Agreement:**

In the amount of: **\$1,799.80**

(Or) percentage of each Banking Deposit: **4.44%**

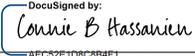
On the following days: **MONDAY-FRIDAY**

If any payment date falls on a weekend or holiday, Merchant understands and agrees that the payment may be executed on the next business day. If a payment is rejected by Merchant’s financial institution for any reason, including without limitation insufficient funds, Merchant understands that UFS may, at its discretion, attempt to process the payment again as permitted under applicable ACH rules. Merchant also authorizes UFS to initiate ACH entries to correct any erroneous payment transaction.

**MISCELLANEOUS.** UFS is not responsible for any fees charged by Merchant’s bank as the result of credits or debits initiated under this Authorization Agreement. The origination of ACH Debits and Credits to the Designated Checking Account must comply with applicable provisions of state and federal law, and the rules and operating guidelines of NACHA (National Automated Clearing House Association). This Authorization Agreement is to remain in full force and effect until UFS has received written notification from Merchant at the address set forth above at least five banking days prior of its termination to afford UFS a reasonable opportunity to act on it. The individual signing below on behalf of Merchant certifies that he/she is an authorized signer on the Designated Checking Account. Merchant will not dispute any ACH transaction initiated pursuant to this Authorization Agreement, provided the transaction corresponds to the terms of this Authorization Agreement. Merchant requests the financial institution that holds the Designated Checking Account to honor all ACH entries initiated in accordance with this Authorization Agreement.

By signing below, Merchant attests that the Designated Checking Account was established for business purposes and not primarily for personal, family or household purposes.

#### FOR ONE FAT FROG, INCORPORATED

Signature:  \_\_\_\_\_ 

Name: CONNIE B HASSANIEN

SSN/EIN:

Title: President

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#### EXHIBIT B – BANK ACCOUNT ACCESS INFORMATION

Dear Merchant,

Thank you for accepting an offer from Union Funding Source. We look forward to being your funding partner for as long as you need.

Please note that the way your sale of receivables is set up, we will need viewing access to your bank account each business day in order to calculate the amount of your daily payment in accordance with Section 1.2 of your agreement. Please be assured that we will carefully safeguard your confidential information and only essential personnel will have access to it. We will also require viewing access to your bank account, prior to funding, as part of our underwriting process. The requested access is for “look in” or viewing purposes only. We are not requesting any change or modification to your account.

Please fill out the form below with the access information for your account. Be sure to indicate capital or lower case letters.

**Please fill out the form below with the access information for your account**

Bank portal website: \_\_\_\_\_

Username: Call Sydney Nguyen  
\_\_\_\_\_

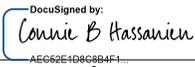
Password: \_\_\_\_\_

Security Question/Answer 1: NA  
\_\_\_\_\_

Security Question/Answer 2: NA  
\_\_\_\_\_

Security Question/Answer 3: NA  
\_\_\_\_\_

**ACKNOWLEDGED AND AGREED:**

Signature:  \_\_\_\_\_ ←

Name: Connie B Hassanien

Title: President

Dated: 8/24/2023

Failure to timely establish our our access ability to your account is a breach of your merchant agreement for which we reserve the right to exercise all remedies under the merchant agreement. If you have any questions, please feel free to contact us at 888-774-6697.

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**EXHIBIT C – MERCHANT’S CURRENT SECURED CREDITORS**

**Secured Creditor Name**

**Balance**

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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**EXHIBIT D**

**List of Additional Entities Included in the Definition of the Term "Merchant" That Have Sold Future Receipts and Granted UFS a Blanket Security Interest**

KING RESTAURANT EQUIPMENT,  
INC.  
2416 SAND LAKE ROAD,  
ORLANDO, FL 32809  
EIN: 27-5034601

UFS may file a UCC-1 financing statement with the appropriate Secretary of State(s) reflecting a blanket security interest in the assets of the above-listed entities.

**ACKNOWLEDGED AND AGREED ON BEHALF OF THE FOREGOING ENTITIES:**

DocuSigned by:  
*Connie B Hassanien*  
By: CONNIE B HASSANIEN 

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#### ADDENDUM TO SECURED MERCHANT AGREEMENT FOR WEEKLY REMITTANCE

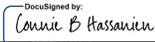
WHEREAS Union Funding Source, Inc (“UFS”) and ONE FAT FROG, INCORPORATED (“Merchant”) are parties to the Secured Merchant Agreement, dated August 23, 2023 (the “Agreement”); and

WHEREAS, Merchant requested that for Merchant’s convenience UFS make weekly debits toward the Purchased Amount instead of debits of the Daily Remittance each business day, and UFS grants Merchant’s request as a courtesy to Merchant;

NOW, THEREFORE, it is agreed as follows:

1. **Definitions.** Except as otherwise defined in this Addendum, all capitalized terms have the same meaning as in the Agreement. The term “**Weekly Remittance**” means the following amount, \$8,999.00, which is a good faith approximation of five times the Daily Remittance. The term “**Payment Day**” means Monday, the day of the week on which payment of the Weekly Remittance is due.
2. **Weekly Remittance.** Without modification or waiver of any term of the Agreement and as a courtesy to Merchant, rather than debiting the Daily Remittance each business day, UFS will debit the Weekly Remittance from the Account once each week on every Payment Day that is not a bank holiday until such time as UFS receives payment in full of the Purchased Amount or until UFS elects to revoke or cancel this Addendum. If any Payment Day falls on a bank holiday, UFS will debit the Weekly Remittance on the next business day following that Payment Day. If the next business day falls during the next week, UFS will debit the Weekly Remittance for both weeks during that following week and which will result in UFS debiting twice in a week. By way of example only, if the Payment Day is Friday and the next business day falls the following Monday, UFS will debit the Weekly Remittance on Monday and Friday of that following week. Nothing herein prevents an adjustment of the Daily Remittance under paragraph 1.4 of the Agreement, in which case the Weekly Remittance will be adjusted accordingly.
3. **Revocation.** UFS in its sole and absolute discretion may revoke or cancel this Addendum at any time and for any reason upon 24 hours’ notice by email to the Merchant. Upon revocation or cancellation of this Addendum, UFS may resume regular debiting of the Daily Remittance in the manner set forth in the Agreement. If Merchant is aware that there will be insufficient funds in the Account such that the debit of the Daily Remittance will not be honored by Merchant’s bank, Merchant shall notify UFS within 18 hours of receiving UFS’s email notice.

FOR ONE FAT FROG, INCORPORATED

Signature:   
 Name: CONNIE B HASSANIEN  
 Title: president

AGREED AND ACCEPTED:

FOR UNION FUNDING SOURCE, INC

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

EN OD CAPITAL  
 1202 Avenue U Ste 1115 Brooklyn NY 11229  
 (347) 946-8768  
 ENODCAPITALLLC@GMAIL.COM

## STANDARD MERCHANT CASH ADVANCE AGREEMENT

This is an Agreement dated 10/24/2023 by and between EN OD Capital ("EOD") and each merchant listed below ("Merchant").

Merchant's Legal Name: ONE FAT FROG INCORPORATED and the entities listed in "EXHIBIT A"  
 D/B/A: ONE FAT FROG RESTAURANT EQUIPMENT Fed ID #: [REDACTED]  
 Type of Entity:  Corporation  Limited Liability Company  Partnership  Sole Proprietorship  
 Business Address: 2416 SAND LAKE RD City: ORLANDO State: FL Zip: 32809  
 Contact Address: 2416 SAND LAKE RD City: ORLANDO State: FL Zip: 32809  
 E-mail Address: [REDACTED] Phone Number: \_\_\_\_\_

<b>Purchase Price</b> <i>This is the amount being paid to Merchant(s) for the Receivables Purchased Amount (defined below). This amount may be paid in installments if there is an Addendum stating that it will be paid in installments.</i>	\$ <u>250,000.00</u>
<b>Receivables Purchased Amount</b> <i>This is the amount of Receivables (defined in Section 1 below) being sold. This amount may be sold in installments if there is an Addendum stating that it will be sold in installments.</i>	\$ <u>350,000.00</u>
<b>Specified Percentage</b> <i>This is the percentage of Receivables (defined below) to be delivered until the Receivables Purchased Amount is paid in full.</i>	<u>6</u> %
<b>Net Funds Provided</b> <i>This is the net amount being paid to or on behalf of Merchant(s) after deduction of applicable fees listed in Section 2 below. This amount may be paid in installments if there is an Addendum stating that it will be paid in installments.</i>	\$ <u>237,500.00</u>
<b>Net Amount to Be Received Directly by Merchant(s)</b> <i>This is the net amount being received directly by Merchant(s) after deduction of applicable fees listed in Section 2 below and the payment of any part of the Purchase Price elsewhere pursuant to any Addendum to this Agreement. This amount may be paid in installments if there is an Addendum stating that it will be paid in installments. If any deduction is being made from the Purchase Price to pay off another obligation by Merchant(s), then the Net Amount to be Received Directly by Merchant(s) is subject to change based on any change in the amount of the other obligation(s) to be paid off.</i>	\$ <u>237,500.00</u>
<b>Initial Estimated Payment</b> <i>This is only applicable if an Addendum for Estimated Payments is being signed. This is the initial amount of periodic payments collected from Merchant(s) as an approximation of no more than the Specified Percentage of the Receivables and is subject to reconciliation as set forth in Section 4 below.</i>	\$ <u>12,500.00</u> per <u>WEEK</u>

I have read and agree to the terms and conditions set forth above:

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Name: CONNIE B HASSANIEN Title: OWNER Date: 10/24/2023

**STANDARD MERCHANT CASH ADVANCE AGREEMENT****TERMS AND CONDITIONS**

**1. Sale of Future Receipts.** Merchant(s) hereby sell, assign, and transfer to EOD (making EOD the absolute owner) in consideration of the funds provided ("Purchase Price") specified above, all of each Merchant's future accounts, contract rights, and other obligations arising from or relating to the payment of monies from each Merchant's customers and/or other third party payors (the "Receivables", defined as all payments made by cash, check, credit or debit card, electronic transfer, or other form of monetary payment in the ordinary course of each merchant's business), for the payment of each Merchant's sale of goods or services until the amount specified above (the "Receivables Purchased Amount") has been delivered by Merchant(s) to EOD. Each Merchant hereby acknowledges that until the Receivables Purchased Amount has been received in full by EOD, each Merchant's Receivables, up to the balance of the Receivables Purchased Amount, are the property of EOD and not the property of any Merchant. Each Merchant agrees that it is a fiduciary for EOD and that each Merchant will hold Receivables in trust for EOD in its capacity as a fiduciary for EOD.

The Receivables Purchased Amount shall be paid to EOD by each Merchant irrevocably authorizing only one depositing account acceptable to EOD (the "Account") to remit the percentage specified above (the "Specified Percentage") of each Merchant's settlement amounts due from each transaction, until such time as EOD receives payment in full of the Receivables Purchased Amount. Each Merchant hereby authorizes EOD to ACH debit the specified remittances and any applicable fees listed in Section 2 from the Account on a daily basis as of the next business day after the date of this Agreement and will provide EOD with all required access codes and monthly bank statements. Each Merchant understands that it will be held responsible for any fees resulting from a rejected ACH attempt or an Event of Default (see Section 2). EOD is not responsible for any overdrafts or rejected transactions that may result from EOD's ACH debiting the Specified Percentage amounts under the terms of this Agreement.

**2. Additional Fees.** In addition to the Receivables Purchased Amount, each Merchant will be held responsible to EOD for the following fees, where applicable:

A. \$ 12,500.00 - to cover underwriting and the ACH debit program, as well as related expenses. This will be deducted from payment of the Purchase Price.

B. Wire Fee - Merchant(s) shall receive funding electronically to the Account and will be charged \$50.00 for a Fed Wire or \$0.00 for a bank ACH. This will be deducted from payment of the Purchase Price.

C. Blocked Account/Default - \$2,500.00 - If EOD considers an Event of Default to have taken place under Section 32.

D. UCC Fee - \$195.00 - to cover EOD filing a UCC-1 financing statement to secure its interest in the Receivables Purchased Amount. A \$195.00 UCC termination fee will be charged if a UCC filing is terminated.

E. Court costs, arbitration fees, collection agency fees, attorney fees, expert fees, and any other expenses incurred in litigation, arbitration, or the enforcement of any of EOD's legal or contractual rights against each Merchant and/or each Guarantor, if required, as explained in other Sections of this Agreement.

**3. Cap on Collection of the Receivables Purchased Amount.** The amount that EOD will collect from Merchant(s) towards the Receivables Purchased Amount during any specific WEEK will be capped at \$ 12,500.00 (the "Cap"). If the Specified Percentage of all Receivables for a specific WEEK is less than the Cap, then in addition to the Specified Percentage of Receivables for that WEEK, EOD will be permitted to collect any Receivables it did not previously collect due to the Cap such that the total amount collected during that WEEK does not exceed the Cap. The Cap is not applicable to make up for a business day on which EOD is closed and does not ACH debit the Account, to subsequent attempts to collect a rejected or blocked ACH payment, to debit any amount due pursuant to a reconciliation as set forth in Section 4, for the collection of any of the fees listed in Section 2, or if any Event of Default listed in Section 32 is considered by EOD to have taken place.

**4. Reconciliations.** Any Merchant may request that EOD conduct a reconciliation in order to ensure that the amount that EOD has collected equals the Specified Percentage of Merchant(s)'s Receivables under this Agreement. A request for a reconciliation by any Merchant must be made by giving written notice of the request to EOD or by sending an e-mail to ENODCAPITALLLC@GMAIL.COM stating that a reconciliation is being requested. In order to effectuate the reconciliation, any Merchant must produce with its request the login and password for the Account and any and all statements covering the period from the date of this Agreement through the date of the request for a reconciliation. EOD will complete each reconciliation requested by any Merchant within two business days after receipt of proper notice of a request for one

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*Connie B Hassaniien*

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Name: CONNIE B HASSANIEN Title: OWNER Date: 10/24/2023

**STANDARD MERCHANT CASH ADVANCE AGREEMENT**

accompanied by the information and documents required for it. EOD may also conduct a reconciliation on its own at any time by reviewing Merchant(s)'s Receivables covering the period from the date of this Agreement until the date of initiation of the reconciliation, each such reconciliation will be completed within two business days after its initiation, and EOD will give each Merchant written notice of the determination made based on the reconciliation within one business day after its completion. If a reconciliation determines that EOD collected more than it was entitled to, then EOD will credit to the Account all amounts to which EOD was not entitled. If a reconciliation determines that EOD collected less than it was entitled to, then EOD will debit from the Account all additional amounts to which EOD was entitled. Nothing herein limits the amount of times that a reconciliation may be requested or conducted.

**5. Prepayments.** Although there is no obligation to do so, any Merchant may prepay any amount towards the Receivables Purchased Amount. There will be no penalty for any prepayment made by any Merchant. Any Merchant may elect to terminate this Agreement by prepaying EOD the amount of the balance of the Receivables Purchased Amount at that time.

**6. Merchant Deposit Agreement.** Merchant(s) shall appoint a bank acceptable to EOD, to obtain electronic fund transfer services and/or "ACH" payments. Merchant(s) shall provide EOD and/or its authorized agent with all of the information, authorizations, and passwords necessary to verify each Merchant's Receivables. Merchant(s) shall authorize EOD and/or its agent(s) to deduct the amounts owed to EOD for the Receivables as specified herein from settlement amounts which would otherwise be due to each Merchant and to pay such amounts to EOD by permitting EOD to withdraw the Specified Percentage by ACH debiting of the account. The authorization shall be irrevocable absent EOD's written consent.

**7. Term of Agreement.** The term of this Agreement is indefinite and shall continue until EOD receives the full Receivables Purchased Amount, or earlier if terminated pursuant to any provision of this Agreement. The provisions of Sections 4, 6, 7, 8, 10, 11, 13, 14, 15, 17, 18, 19, 22, 23, 27, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, and 55 shall survive any termination of this Agreement.

**8. Ordinary Course of Business.** Each Merchant acknowledges that it is entering into this Agreement in the ordinary course of its business and that the payments to be made from each Merchant to EOD under this Agreement are being made in the ordinary course of each Merchant's business.

**9. Financial Condition.** Each Merchant and each Guarantor (Guarantor being defined as each signatory to the Guarantee of this Agreement) authorizes EOD and its agent(s) to investigate each Merchant's financial responsibility and history, and will provide to EOD any bank or financial statements, tax returns, and other documents and records, as EOD deems necessary prior to or at any time after execution of this Agreement. A photocopy of this authorization will be deemed as acceptable for release of financial information. EOD is authorized to update such information and financial profiles from time to time as it deems appropriate.

**10. Monitoring, Recording, and Electronic Communications.** EOD may choose to monitor and/or record telephone calls with any Merchant and its owners, employees, and agents. By signing this Agreement, each Merchant agrees that any call between EOD and any Merchant or its representatives may be monitored and/or recorded. Each Merchant and each Guarantor grants access for EOD to enter any Merchant's premises and to observe any Merchant's premises without any prior notice to any Merchant at any time after execution of this Agreement.

EOD may use automated telephone dialing, text messaging systems, and e-mail to provide messages to Merchant(s), Owner(s) (Owner being defined as each person who signs this Agreement on behalf of a Merchant), and Guarantor(s) about Merchant(s)'s account. Telephone messages may be played by a machine automatically when the telephone is answered, whether answered by an Owner, a Guarantor, or someone else. These messages may also be recorded by the recipient's answering machine or voice mail. Each Merchant, each Owner, and each Guarantor gives EOD permission to call or send a text message to any telephone number given to EOD in connection with this Agreement and to play pre-recorded messages and/or send text messages with information about this Agreement and/or any Merchant's account over the phone. Each Merchant, each Owner, and each Guarantor also gives EOD permission to communicate such information to them by e-mail. Each Merchant, each Owner, and each Guarantor agree that EOD will not be liable to any of them for any such calls or electronic communications, even if information is communicated to an unintended recipient. Each Merchant, each Owner, and each Guarantor acknowledge that when they receive such calls or electronic

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*Connie B Hassani*

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Name: CONNIE B HASSANIEN Title: OWNER Date: 10/24/2023

**STANDARD MERCHANT CASH ADVANCE AGREEMENT**

communications, they may incur a charge from the company that provides them with telecommunications, wireless, and/or Internet services, and that EOD has no liability for any such charges.

**11. Accuracy of Information Furnished by Merchant and Investigation Thereof.** To the extent set forth herein, each of the parties is obligated upon his, her, or its execution of the Agreement to all terms of the Agreement. Each Merchant and each Owner signing this Agreement represent that he or she is authorized to sign this Agreement for each Merchant, legally binding said Merchant to its obligations under this Agreement and that the information provided herein and in all of EOD's documents, forms, and recorded interview(s) is true, accurate, and complete in all respects. EOD may produce a monthly statement reflecting the delivery of the Specified Percentage of Receivables from Merchant(s) to EOD. An investigative report may be made in connection with the Agreement. Each Merchant and each Owner signing this Agreement authorize EOD, its agents and representatives, and any credit-reporting agency engaged by EOD, to (i) investigate any references given or any other statements obtained from or about each Merchant or any of its Owners for the purpose of this Agreement, and (ii) pull credit report at any time now or for so long as any Merchant and/or Owners(s) continue to have any obligation to EOD under this Agreement or for EOD's ability to determine any Merchant's eligibility to enter into any future agreement with EOD. Any misrepresentation made by any Merchant or Owner in connection with this Agreement may constitute a separate claim for fraud or intentional misrepresentation.

*Authorization for soft pulls:* Each Merchant and each Owner understands that by signing this Agreement, they are providing 'written instructions' to EOD under the Fair Credit Reporting Act, authorizing EOD to obtain information from their personal credit profile or other information from Experian, TransUnion, and Equifax. Each Merchant and each Guarantor authorizes EOD to obtain such information solely to conduct a pre-qualification for credit.

*Authorization for hard pulls:* Each Merchant and each Owner understands that by signing this Agreement, they are providing 'written instructions' to EOD under the Fair Credit Reporting Act, authorizing EOD to obtain information from their personal credit profile or other information from Experian, TransUnion, and Equifax. Each Merchant and each Guarantor authorizes EOD to obtain such information in accordance with a merchant cash advance application.

**12. Transactional History.** Each Merchant authorizes its bank to provide EOD with its banking and/or credit card processing history.

**13. Indemnification.** Each Merchant and each Guarantor jointly and severally indemnify and hold harmless each Merchant's credit card and check processors (collectively, "Processor") and Processor's officers, directors, and shareholders against all losses, damages, claims, liabilities, and expenses (including reasonable attorney and expert fees) incurred by Processor resulting from (a) claims asserted by EOD for monies owed to EOD from any Merchant and (b) actions taken by any Processor in reliance upon information or instructions provided by EOD.

**14. No Liability.** In no event will EOD be liable for any claims asserted by any Merchant under any legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect, or consequential damages, each of which is waived by each Merchant and each Guarantor.

**15. Sale of Receivables.** Each Merchant and EOD agree that the Purchase Price under this Agreement is in exchange for the Receivables Purchased Amount and that such Purchase Price is not intended to be, nor shall it be construed as a loan from EOD to any Merchant. EOD is entering into this Agreement knowing the risks that each Merchant's business may decline or fail, resulting in EOD not receiving the Receivables Purchased Amount. Any Merchant going bankrupt or going out of business or experiencing a slowdown in business or a delay in collecting Receivables will not on its own without anything more be considered a breach of this Agreement. Each Merchant agrees that the Purchase Price in exchange for the Receivables pursuant to this Agreement equals the fair market value of such Receivables. EOD has purchased and shall own all the Receivables described in this Agreement up to the full Receivables Purchased Amount as the Receivables are created. Payments made to EOD in respect to the full amount of the Receivables shall be conditioned upon each Merchant's sale of products and services and the payment therefor by each Merchant's customers in the manner provided in this Agreement. Although certain jurisdictions require the disclosure of an Annual Percentage Rate or APR in connection with this Agreement, those disclosures do not change the fact that the transaction encompassed by this Agreement is not a loan and does not have an interest rate.

**16. Power of Attorney.** Each Merchant irrevocably appoints EOD as its agent and attorney-in-fact with full authority

I have read and agree to the terms and conditions set forth above:

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Connie B Hassanién  
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Name: CONNIE B HASSANIEN Title: OWNER Date: 10/24/2023

**STANDARD MERCHANT CASH ADVANCE AGREEMENT**

to take any action or execute any instrument or document to settle all obligations due to EOD, or, if EOD considers an Event of Default to have taken place under Section 32, to settle all obligations due to EOD from each Merchant, including without limitation (i) to obtain and adjust insurance; (ii) to collect monies due or to become due under or in respect of any of the Collateral (which is defined in Section 31); (iii) to receive, endorse and collect any checks, notes, drafts, instruments, documents, or chattel paper in connection with clause (i) or clause (ii) above; (iv) to sign each Merchant's name on any invoice, bill of lading, or assignment directing customers or account debtors to make payment directly to EOD; and (v) to file any claims or take any action or institute any proceeding which EOD may deem necessary for the collection of any of the unpaid Receivables Purchased Amount from the Collateral, or otherwise to enforce its rights with respect to payment of the Receivables Purchased Amount.

**17. Protections Against Default.** The following Protections 1 through 7 may be invoked by EOD, immediately and without notice to any Merchant in the event EOD considers any Event of Default listed in Section 32 to have taken place. Protection 1: The full uncollected Receivables Purchased Amount plus all fees due under this Agreement may become due and payable in full immediately.

Protection 2. EOD may enforce the provisions of the Guarantee against Guarantor.

Protection 3. EOD may enforce its security interest in the Collateral identified in Section 31.

Protection 4. EOD may proceed to protect and enforce its rights and remedies by litigation or arbitration. Protection

5. If requested by EOD, Merchant shall deliver to EOD an executed assignment of lease of each Merchant's premises in favor of EOD. Upon breach of any provision in this Section 17, EOD may exercise its rights under such assignment of lease.

Protection 6. EOD may debit any Merchant's depository accounts wherever situated by means of ACH debit or electronic or facsimile signature on a computer-generated check drawn on any Merchant's bank account or otherwise, in an amount consistent with the terms of this Agreement.

Protection 7. EOD will have the right, without waiving any of its rights and remedies and without notice to any Merchant and/or Guarantor, to notify each Merchant's credit card and/or check processor of the sale of Receivables hereunder and to direct such credit card processor to make payment to EOD of all or any portion of the amounts received by such credit card processor on behalf of each Merchant. Each Merchant hereby grants to EOD an irrevocable power-of-attorney, which power-of-attorney will be coupled with an interest, and hereby appoints EOD and its representatives as each Merchant's attorney-in-fact to take any and all action necessary to direct such new or additional credit card and/or check processor to make payment to EOD as contemplated by this Section.

**18. Protection of Information.** Each Merchant and each person signing this Agreement on behalf of each Merchant and/or as Owner, in respect of himself or herself personally, authorizes EOD to disclose information concerning each Merchant, Owner and/or Guarantor's credit standing and business conduct to agents, affiliates, subsidiaries, and credit reporting bureaus. Each Merchant, Guarantor, and Owner hereby waives to the maximum extent permitted by law any claim for damages against EOD or any of its affiliates relating to any (i) investigation undertaken by or on behalf of EOD as permitted by this Agreement or (ii) disclosure of information as permitted by this Agreement.

**19. Confidentiality.** Each Merchant understands and agrees that the terms and conditions of the products and services offered by EOD, including this Agreement and any other EOD documents (collectively, "Confidential Information") are proprietary and confidential information of EOD. Accordingly, unless disclosure is required by law or court order, Merchant(s) shall not disclose Confidential Information of EOD to any person other than an attorney, accountant, financial advisor, or employee of any Merchant who needs to know such information for the purpose of advising any Merchant ("Advisor"), provided such Advisor uses such information solely for the purpose of advising any Merchant and first agrees in writing to be bound by the terms of this Section 19.

**20. D/B/As.** Each Merchant hereby acknowledges and agrees that EOD may be using "doing business as" or "d/b/a" names in connection with various matters relating to the transaction between EOD and each Merchant, including the filing of UCC-1 financing statements and other notices or filings.

**21. Financial Condition and Financial Information.** Each Merchant represents, warrants, and covenants that its bank and financial statements, copies of which have been furnished to EOD, and future statements which will be furnished hereafter at the request of EOD, fairly represent the financial condition of each Merchant at such dates, and that since those

**I have read and agree to the terms and conditions set forth above:**

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Connie B Hassanién

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Name: CONNIE B HASSANIEN Title: OWNER Date: 10/24/2023

**STANDARD MERCHANT CASH ADVANCE AGREEMENT**

dates there have been no material adverse changes, financial or otherwise, in such condition, operation, or ownership of any Merchant. Each Merchant has a continuing affirmative obligation to advise EOD of any material adverse change in its financial condition, operation, or ownership.

**22. Governmental Approvals.** Each Merchant represents, warrants, and covenants that it is in compliance and shall comply with all laws and has valid permits, authorizations, and licenses to own, operate, and lease its properties and to conduct the business in which it is presently engaged.

**23. Authorization.** Each Merchant represents, warrants, and covenants that it and each person signing this Agreement on behalf of each Merchant has full power and authority to incur and perform the obligations under this Agreement, all of which have been duly authorized.

**24. Electronic Check Processing Agreement.** Each Merchant represents, warrants, and covenants that it will not, without EOD's prior written consent, change its Processor, add terminals, change its financial institution or bank account, or take any other action that could have any adverse effect upon any Merchant's obligations under this Agreement.

**25. Change of Name or Location.** Each Merchant represents, warrants, and covenants that it will not conduct its business under any name other than as disclosed to EOD or change any place(s) of its business without prior written consent from EOD.

**26. Estoppel Certificate.** Each Merchant represents, warrants, and covenants that it will, at any time, and from time to time, upon at least two day's prior written notice from EOD to that Merchant, execute, acknowledge, and deliver to EOD and/or to any other person or entity specified by EOD, a statement certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and stating the dates which the Receivables Purchased Amount or any portion thereof have been paid.

**27. No Bankruptcy.** Each Merchant represents, warrants, and covenants that as of the date of this Agreement, it does not contemplate and has not filed any petition for bankruptcy protection under Title 11 of the United States Code and there has been no involuntary petition brought or pending against any Merchant. Each Merchant further warrants that it does not anticipate filing any such bankruptcy petition and it does not anticipate that an involuntary petition will be filed against it.

**28. Unencumbered Receivables.** Each Merchant represents, warrants, and covenants that it has good, complete, and marketable title to all Receivables, free and clear of any and all liabilities, liens, claims, changes, restrictions, conditions, options, rights, mortgages, security interests, equities, pledges, and encumbrances of any kind or nature whatsoever or any other rights or interests that may be inconsistent with this Agreement or adverse to the interests of EOD, other than any for which EOD has actual or constructive knowledge as of the date of this Agreement.

**29. Stacking.** Each Merchant represents, warrants, and covenants that it will not enter into with any party other than EOD any arrangement, agreement, or commitment that relates to or involves the Receivables, whether in the form of a purchase of, a loan against, collateral against, or the sale or purchase of credits against Receivables without the prior written consent of EOD.

**30. Business Purpose.** Each Merchant represents, warrants, and covenants that it is a valid business in good standing under the laws of the jurisdictions in which it is organized and/or operates, and each Merchant is entering into this Agreement for business purposes and not as a consumer for personal, family, or household purposes.

**31. Security Interest.** To secure each Merchant's performance obligations to EOD under this Agreement and any future agreement with EOD, each Merchant hereby grants to EOD a security interest in collateral (the "Collateral"), that is defined as collectively: (a) all accounts, including without limitation, all deposit accounts, accounts-receivable, and other receivables, chattel paper, documents, and instruments, as those terms are defined by Article 9 of the Uniform Commercial Code (the "UCC"), now or hereafter owned or acquired by any Merchant; and (b) all proceeds, as that term is defined by Article 9 of the UCC. The parties acknowledge and agree that any security interest granted to EOD under any other

**I have read and agree to the terms and conditions set forth above:**

DocuSigned by:

Connie B Hassanién

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Name: CONNIE B HASSANIEN Title: OWNER Date: 10/24/2023

**STANDARD MERCHANT CASH ADVANCE AGREEMENT**

agreement between any Merchant or Guarantor and EOD (the "Cross-Collateral") will secure the obligations hereunder and under this Agreement. Negative Pledge: Each Merchant agrees not to create, incur, assume, or permit to exist, directly or indirectly, any lien on or with respect to any of the Collateral or the Cross-Collateral, as applicable.

Each Merchant agrees to execute any documents or take any action in connection with this Agreement as EOD deems necessary to perfect or maintain EOD's first priority security interest in the Collateral and the Cross-Collateral, including the execution of any account control agreements. Each Merchant hereby authorizes EOD to file any financing statements deemed necessary by EOD to perfect or maintain EOD's security interest, which financing statements may contain notification that each Merchant has granted a negative pledge to EOD with respect to the Collateral and the Cross-Collateral, and that any subsequent lienor may be tortiously interfering with EOD's rights. Each Merchant shall be liable for and EOD may charge and collect all costs and expenses, including but not limited to attorney fees, which may be incurred by EOD in protecting, preserving, and enforcing EOD's security interest and rights. Each Merchant further acknowledges that EOD may use another legal name and/or D/B/A or an agent when designating the Secured Party when EOD files the above-referenced financing statement(s).

**32. Events of Default.** An "Event of Default" may be considered to have taken place if any of the following occur:

- (1) Any representation or warranty by any Merchant to EOD that proves to have been made intentionally false or misleading in any material respect when made;
- (2) Any Merchant changes the Account without providing written notice to EOD within one business day thereafter;
- (3) EOD is not provided with updated login or password information for the Account within one business day after any such change is made by any Merchant;
- (4) Any Merchant fails to send bank statements, merchant account statements, or bank login information for the Account within two business days after a written request for same is made by EOD;
- (5) Any Merchant causes any ACH debit to the Account by EOD to be blocked or stopped without providing any advance written notice to EOD, which notice may be given by e-mail to ENODCAPITALLLC@GMAIL.COM;
- (6) Any Merchant intentionally prevents EOD from collecting any part of the Receivables Purchased Amount; or
- (7) Any Merchant causes any ACH debit to the Account by any person or entity to be stopped or otherwise returned that would result in an ACH Return Code of R08, R10, or R29 and that Merchant does not within two business days thereafter provide EOD with written notice thereof explaining why that Merchant caused the ACH debit to be stopped or otherwise returned, which notice may be given by e-mail to ENODCAPITALLLC@GMAIL.COM.

**33. Remedies.** In case any Event of Default occurs and is not waived, EOD may proceed to protect and enforce its rights or remedies by suit in equity or by action at law, or both, whether for the specific performance of any covenant, agreement, or other provision contained herein, or to enforce the discharge of each Merchant's obligations hereunder, or any other legal or equitable right or remedy. All rights, powers, and remedies of EOD in connection with this Agreement, including each Protection listed in Section 17, may be exercised at any time by EOD after the occurrence of an Event of Default, are cumulative and not exclusive, and will be in addition to any other rights, powers, or remedies provided by law or equity. In case any Event of Default occurs and is not waived, EOD may elect that Merchant(s) be required to pay to EOD 25% of the unpaid balance of the Receivables Purchased Amount as liquidated damages for any reasonable expenses incurred by EOD in connection with recovering the unpaid balance of the Receivables Purchased Amount ("Reasonable Expenses"), EOD will not be required to itemize or prove its Reasonable Expenses, and all Merchant(s) and all Guarantor(s) agree that the Reasonable Expenses bear a reasonable relationship to EOD's actual expenses incurred in connection with recovering the unpaid balance of the Receivables Purchased Amount.

**34. Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, except that Merchant(s) shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of EOD, which consent may be withheld in EOD's sole discretion. EOD may assign, transfer, or sell its rights under this Agreement, including, without limitation, its rights to receive the Receivables Purchased Amount, and its rights under Section 31 of this Agreement, the Guarantee, and any other agreement, instrument, or document executed in connection with the transactions contemplated by this Agreement (a "Related Agreement"), or delegate its duties hereunder or thereunder, either in whole or in part. From and after the effective date of any such assignment or transfer by EOD, whether or not any Merchant has actual notice thereof, this Agreement and each Related Agreement shall be deemed amended and modified (without the need for any further action on the part of any Merchant or EOD) such that the assignee shall be deemed a party to this Agreement and any such Related Agreement and, to the extent provided in

**I have read and agree to the terms and conditions set forth above:**

DocuSigned by:  
  
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Name: CONNIE B HASSANIEN Title: OWNER Date: 10/24/2023

**STANDARD MERCHANT CASH ADVANCE AGREEMENT**

the assignment document between EOD and such assignee (the "Assignment Agreement"), have the rights and obligations of EOD under this Agreement and such Related Agreements with respect to the portion of the Receivables Purchased Amount set forth in such Assignment Agreement, including but not limited to rights in the Receivables, Collateral and Additional Collateral, the benefit of each Guarantor's guaranty regarding the full and prompt performance of every obligation that is a subject of the Guarantee, EOD's rights under Section 17 of this Agreement (Protections Against Default), and to receive damages from any Merchant following a breach of this Agreement by any Merchant. In connection with such assignment, EOD may disclose all information that EOD has relating to any Merchant or its business. Each Merchant agrees to acknowledge any such assignment in writing upon EOD's request.

**35. Notices.** All notices, requests, consents, demands, and other communications hereunder shall be delivered by certified mail, return receipt requested, or by overnight delivery with signature confirmation to the respective parties to this Agreement at their addresses set forth in this Agreement and shall become effective only upon receipt. Written notice may also be given to any Merchant or Guarantor by e-mail to the E-mail Address listed on the first page of this Agreement or by text message to the Phone Number listed on the first page of this Agreement if that phone number is for a mobile phone. Each Merchant must set its spam or junk mail filter to accept e-mails sent by ENODCAPITALLLC@GMAIL.COM and its domain. This Section is not applicable to service of process or notices in any legal proceedings.

**36. Choice of Law.** Each Merchant acknowledges and agrees that this Agreement was made in the State of New York, that the Purchase Price is being paid by EOD in the State of New York, that the Receivables Purchased Amount is being delivered to EOD in the State of New York, and that the State of New York has a reasonable relationship to the transactions encompassed by this Agreement. This Agreement, any dispute or claim relating hereto, whether sounding in contract, tort, law, equity, or otherwise, the relationship between EOD and each Merchant, and the relationship between EOD and each Guarantor will be governed by and construed in accordance with the laws of the State of New York, without regard to any applicable principles of conflict of laws. Each Merchant represents that it does not have a principal place of business located in the Commonwealth of Virginia and that therefore the provisions of Chapter 22.1 of Title 6.2 of the Virginia Code are not applicable to this Agreement.

**37. Venue and Forum Selection.** Any litigation relating to this Agreement, whether sounding in contract, tort, law, equity, or otherwise, or involving EOD on one side and any Merchant or any Guarantor on the other must be commenced and maintained in any court located in the Counties of Kings, Nassau, New York, or Sullivan in the State of New York (the "Acceptable Forums"). The parties agree that the Acceptable Forums are convenient, submit to the jurisdiction of the Acceptable Forums, and waive any and all objections to the jurisdiction or venue of the Acceptable Forums. If any litigation is initiated in any other venue or forum, the parties waive any right to oppose any motion or application made by any party to transfer such litigation to an Acceptable Forum. The parties agree that this Agreement encompasses the transaction of business within the City of New York and that the Civil Court of the City of New York ("Civil Court") will have jurisdiction over any litigation relating to this Agreement that is within the jurisdictional limit of the Civil Court. Notwithstanding any provision in this Agreement to the contrary, in addition to the Acceptable Forums, any action or proceeding to enforce a judgment or arbitration award against any Merchant or Guarantor or to restrain or collect any amount due to EOD may be commenced and maintained in any other court that would otherwise be of competent jurisdiction, and each Merchant and each Guarantor agree that those courts are convenient, submit to the jurisdiction of those courts, waive any and all objections to the jurisdiction or venue of those courts, and may oppose any motion or application made by any party to transfer any such litigation to an Acceptable Forum.

**38. Jury Waiver.** The parties agree to waive trial by jury in any dispute between them.

**39. Counterclaim Waiver.** In any litigation or arbitration commenced by EOD, each Merchant and each Guarantor will not be permitted to interpose any counterclaim.

**40. Statutes of Limitations.** Each Merchant and each Guarantor agree that any claim, whether sounding in contract, tort, law, equity, or otherwise, that is not asserted against EOD within one year after its accrual will be time barred. Notwithstanding any provision in this Agreement to the contrary, each Merchant and each Guarantor agree that any application made by any of them to stay an arbitration initiated against any of them by EOD will be time barred if made more than 20 days after receipt of the demand for arbitration.

**I have read and agree to the terms and conditions set forth above:**

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Connie B Hassanién  
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Name: CONNIE B HASSANIEN Title: OWNER Date: 10/24/2023

**STANDARD MERCHANT CASH ADVANCE AGREEMENT**

**41. Costs.** Each Merchant and each Guarantor must pay all of EOD's reasonable costs associated with a breach by any Merchant of the covenants in this Agreement and the enforcement thereof, including but not limited to collection agency fees, attorney fees, which may include a contingency fee of up to 40% of the amount claimed, expert witness fees, and costs of suit.

**42. Prejudgment and Postjudgment Interest.** If EOD becomes entitled to the entry of a judgment against any Merchant or any Guarantor, then EOD will be entitled to the recovery of prejudgment interest at a rate of 24% per annum (or 16% per annum if any Merchant is a sole proprietorship), or the maximum rate permitted by applicable law if less, and upon entry of any such judgment, it will accrue interest at a postjudgment rate of 24% per annum (or 16% per annum if any Merchant is a sole proprietorship), or the maximum rate permitted by applicable law if less, which rate will govern over the statutory rate of interest up until actual satisfaction of the judgment.

**43. Legal Fees.** If EOD prevails in any litigation or arbitration with any Merchant or any Guarantor, then that Merchant and/or Guarantor must pay EOD's reasonable attorney fees, which may include a contingency fee of up to 40% of the amount claimed.

**44. Class Action Waiver.** EOD, each Merchant, and each Guarantor agree that they may bring claims against each other relating to this Agreement only in their individual capacities, and not as a plaintiff or class action member in any purported class or representative proceedings.

**45. Arbitration.** Any action or dispute, whether sounding in contract, tort, law, equity, or otherwise, relating to this Agreement or involving EOD on one side and any Merchant or any Guarantor on the other, including, but not limited to issues of arbitrability, will, at the option of any party to such action or dispute, be determined by arbitration in the State of New York. A judgment of the court shall be entered upon the award made pursuant to the arbitration. The arbitration will be administered either by Arbitration Services, Inc. under its Commercial Arbitration Rules as are in effect at that time, which rules are available at [www.arbitrationservicesinc.com](http://www.arbitrationservicesinc.com), or by Mediation And Civil Arbitration, Inc. under its Commercial Arbitration Rules as are in effect at that time, which rules are available at [www.mcarbitration.org](http://www.mcarbitration.org). Once an arbitration is initiated with one of these arbitral forums, it must be maintained exclusively before that arbitral forum and the other arbitral forum specified herein may not be used. Notwithstanding any provision to the contrary in the arbitration rules of the arbitral forum selected, the arbitration will be heard by a single arbitrator and not by a panel of arbitrators, any arbitration hearing relating to this Agreement must be held in the Counties of Nassau, New York, Queens, or Kings in the State of New York, and any witness in an arbitration hearing who does not reside in or have a place for the regular transaction of business located in New York City or the Counties of Nassau, Suffolk, or Westchester in the State of New York will be permitted to appear and testify remotely by telephone or video conferencing.

Each Merchant acknowledges and agrees that this Agreement is the product of communications conducted by telephone and the Internet, which are instrumentalities of interstate commerce, that the transactions contemplated under this Agreement will be made by wire transfer and ACH, which are also instrumentalities of interstate commerce, and that this Agreement therefore evidences a transaction affecting interstate commerce. Accordingly, notwithstanding any provision in this Agreement to the contrary, all matters of arbitration relating to this Agreement will be governed by and construed in accordance with the provisions of the Federal Arbitration Act, codified as Title 9 of the United States Code, however any application for injunctive relief in aid of arbitration or to confirm an arbitration award may be made under Article 75 of the New York Civil Practice Law and Rules or the laws of the jurisdiction in which the application is made, and the application will be governed by and construed in accordance with the laws under which the application is made, without regard to any applicable principles of conflict of laws. The arbitration agreement contained herein may also be enforced by any employee, agent, attorney, member, manager, officer, subsidiary, affiliate entity, successor, or assign of EOD.

**46. Service of Process.** Each Merchant and each Guarantor consent to service of process and legal notices made by First Class or Priority Mail delivered by the United States Postal Service and addressed to the Contact Address set forth on the first page of this Agreement or any other address(es) provided in writing to EOD by any Merchant or any Guarantor, and unless applicable law or rules provide otherwise, any such service will be deemed complete upon dispatch. Each Merchant and each Guarantor agrees that it will be precluded from asserting that it did not receive service of process or any other notice mailed to the Contact Address set forth on the first page of this Agreement if it does not furnish a certified mail

I have read and agree to the terms and conditions set forth above:

DocuSigned by:

Connie B Hassanién

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Name: CONNIE B HASSANIEN Title: OWNER Date: 10/24/2023

**STANDARD MERCHANT CASH ADVANCE AGREEMENT**

return receipt signed by EOD demonstrating that EOD was provided with notice of a change in the Contact Address.

**47. Survival of Representation, etc.** All representations, warranties, and covenants herein shall survive the execution and delivery of this Agreement and shall continue in full force until all obligations under this Agreement shall have been satisfied in full and this Agreement shall have terminated unless specified otherwise in this Agreement.

**48. Waiver.** No failure on the part of EOD to exercise, and no delay in exercising, any right under this Agreement, shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided hereunder are cumulative and not exclusive of any remedies provided by law or equity.

**49. Independent Sales Organizations/Brokers.** Each Merchant and each Guarantor acknowledge that it may have been introduced to EOD by or received assistance in entering into this Agreement or its Guarantee from an independent sales organization or broker ("ISO"). Each Merchant and each Guarantor agree that any ISO is separate from and is not an agent or representative of EOD. Each Merchant and each Guarantor acknowledge that EOD is not bound by any promises or agreements made by any ISO that are not contained within this Agreement. Each Merchant and each Guarantor exculpate from liability and agree to hold harmless and indemnify EOD and its officers, directors, members, shareholders, employees, and agents from and against all losses, damages, claims, liabilities, and expenses (including reasonable attorney and expert fees) incurred by any Merchant or any Guarantor resulting from any act or omission by any ISO. Each Merchant and each Guarantor acknowledge that any fee that they paid to any ISO for its services is separate and apart from any payment under this Agreement. Each Merchant and each Guarantor acknowledge that EOD does not in any way require the use of an ISO and that any fees charged by any ISO are not required as a condition or incident to this Agreement.

**50. Modifications; Agreements.** No modification, amendment, waiver, or consent of any provision of this Agreement shall be effective unless the same shall be in writing and signed by all parties.

**51. Severability.** If any provision of this Agreement is deemed invalid or unenforceable as written, it will be construed, to the greatest extent possible, in a manner which will render it valid and enforceable, and any limitation on the scope or duration of any such provision necessary to make it valid and enforceable will be deemed to be part thereof. If any provision of this Agreement is deemed void, all other provisions will remain in effect.

**52. Headings.** Headings of the various articles and/or sections of this Agreement are for convenience only and do not necessarily define, limit, describe, or construe the contents of such articles or sections.

**53. Attorney Review.** Each Merchant acknowledges that it has had an opportunity to review this Agreement and all addenda with counsel of its choosing before signing the documents or has chosen not to avail itself of the opportunity to do so.

**54. Entire Agreement.** This Agreement, inclusive of all addenda, if any, executed simultaneously herewith constitutes the full understanding of the parties to the transaction herein and may not be amended, modified, or canceled except in writing signed by all parties. Should there arise any conflict between this Agreement and any other document preceding it, this Agreement will govern. This Agreement does not affect any previous agreement between the parties unless such an agreement is specifically referenced herein. This Agreement will not be affected by any subsequent agreement between the parties unless this Agreement is specifically referenced therein.

**55. Counterparts; Fax and Electronic Signatures.** This Agreement may be executed electronically and in counterparts. Facsimile and electronic copies of this Agreement will have the full force and effect of an original.

I have read and agree to the terms and conditions set forth above:

DocuSigned by:  
*Connie B Hassani*  
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Name: CONNIE B HASSANIEN Title: OWNER Date: 10/24/2023

**STANDARD MERCHANT CASH ADVANCE AGREEMENT**

**EACH UNDERSIGNED HEREBY ACCEPTS THE TERMS OF THIS AGREEMENT**

**FOR THE MERCHANT/OWNER (#1)**

By: CONNIE B HASSANIEN  
(Print Name)

OWNER  
(Print Title)

DocuSigned by:  
*Connie B Hassanien*  
AEC52E1D8C8B4F1...  
(Signature)

SS# [REDACTED]

Driver License Number [REDACTED]

**FOR THE MERCHANT/OWNER (#2)**

By: \_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Signature)

SS# \_\_\_\_\_

Driver License Number \_\_\_\_\_

Approved for EN OD CAPITAL by: \_\_\_\_\_

**STANDARD MERCHANT CASH ADVANCE AGREEMENT****GUARANTEE**

**G1. Personal Guarantee of Performance.** This is a personal guaranty of performance, dated 10/24/2023, of the Standard Merchant Cash Advance Agreement, dated 10/24/2023 ("Agreement"), inclusive of all addenda, if any, executed simultaneously therewith, by and between EN OD CAPITAL ("EOD") and ONE FAT FROG INCORPORATED and the entities listed in "EXHIBIT A" ("Merchant"). Each undersigned Guarantor hereby guarantees each Merchant's performance of all of the representations, warranties, and covenants made by each Merchant to EOD in the Agreement, inclusive of all addenda, if any, executed simultaneously herewith, as the Agreement may be renewed, amended, extended, or otherwise modified (the "Guaranteed Obligations"). Each Guarantor's obligations are due at the time of any breach by any Merchant of any representation, warranty, or covenant made by any Merchant in the Agreement.

**G2. Communications.** EOD may use automated telephone dialing, text messaging systems, and e-mail to provide messages to Guarantor(s) about Merchant(s)'s account. Telephone messages may be played by a machine automatically when the telephone is answered, whether answered by an Owner, a Guarantor, or someone else. These messages may also be recorded by the recipient's answering machine or voice mail. Each Guarantor gives EOD permission to call or send a text message to any telephone number given to EOD in connection with this Agreement and to play pre-recorded messages and/or send text messages with information about this Agreement and/or any Merchant's account over the phone. Each Guarantor also gives EOD permission to communicate such information to them by e-mail. Each Guarantor agrees that EOD will not be liable to any of them for any such calls or electronic communications, even if information is communicated to an unintended recipient. Each Guarantor acknowledges that when they receive such calls or electronic communications, they may incur a charge from the company that provides them with telecommunications, wireless, and/or Internet services, and that EOD has no liability for any such charges.

**G3. Guarantor Waivers.** If EOD considers any Event of Default to have taken place under the Agreement, then EOD may enforce its rights under this Guarantee without first seeking to obtain payment from any Merchant, any other guarantor, or any Collateral or Cross-Collateral EOD may hold pursuant to this Guarantee or any other agreement or guarantee. EOD does not have to notify any Guarantor of any of the following events and Guarantor(s) will not be released from its obligations under this Guarantee even if it is not notified of: (i) any Merchant's failure to pay timely any amount owed under the Agreement; (ii) any adverse change in any Merchant's financial condition or business; (iii) any sale or other disposition of any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations; (iv) EOD's acceptance of the Agreement with any Merchant; and (v) any renewal, extension, or other modification of the Agreement or any Merchant's other obligations to EOD. In addition, EOD may take any of the following actions without releasing any Guarantor from any obligations under this Guarantee: (i) renew, extend, or otherwise modify the Agreement or any Merchant's other obligations to EOD; (ii) if there is more than one Merchant, release a Merchant from its obligations to EOD such that at least one Merchant remains obligated to EOD; (iii) sell, release, impair, waive, or otherwise fail to realize upon any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations; and (iv) foreclose on any collateral securing the Guaranteed Obligations or any other guarantee of the Guaranteed Obligations in a manner that impairs or precludes the right of Guarantor to obtain reimbursement for payment under the Agreement. Until the Receivables Purchased Amount and each Merchant's other obligations to EOD under the Agreement and this Guarantee are paid in full, each Guarantor shall not seek reimbursement from any Merchant or any other guarantor for any amounts paid by it under the Agreement. Each Guarantor permanently waives and shall not seek to exercise any of the following rights that it may have against any Merchant, any other guarantor, or any collateral provided by any Merchant or any other guarantor, for any amounts paid by it or acts performed by it under this Guarantee: (i) subrogation; (ii) reimbursement; (iii) performance; (iv) indemnification; or (v) contribution.

**G4. Joint and Several Liability.** The obligations hereunder of the persons or entities constituting each Guarantor under this Guarantee are joint and several.

**G5. Choice of Law.** Each Guarantor acknowledges and agrees that the Agreement and this Guarantee were made in the State of New York, that the Purchase Price is being paid by EOD in the State of New York, that the Receivables Purchased Amount is being delivered to EOD in the State of New York, and that the State of New York has a reasonable relationship to the transactions encompassed by the Agreement and this Guarantee. The Agreement, this Guarantee, any

**I have read and agree to the terms and conditions set forth above:**

DocuSigned by:

*Connie B Hassaniien*

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Name: CONNIE B HASSANIEN Title: OWNER Date: 10/24/2023

**STANDARD MERCHANT CASH ADVANCE AGREEMENT**

dispute or claim relating to the Agreement or this Guarantee, whether sounding in contract, tort, law, equity, or otherwise, the relationship between EOD and each Merchant, and the relationship between EOD and each Guarantor will be governed by and construed in accordance with the laws of the State of New York, without regard to any applicable principles of conflict of laws.

**G6. Venue and Forum Selection.** Any litigation, whether sounding in contract, tort, law, equity, or otherwise, relating to the Agreement or this Guarantee or involving EOD on one side and any Merchant or any Guarantor on the other must be commenced and maintained in any court located in the Counties of Kings, Nassau, New York, or Sullivan in the State of New York (the "Acceptable Forums"). The parties agree that the Acceptable Forums are convenient, submit to the jurisdiction of the Acceptable Forums, and waive any and all objections to the jurisdiction or venue of the Acceptable Forums. If any litigation is initiated in any other venue or forum, the parties waive any right to oppose any motion or application made by any party to transfer such litigation to an Acceptable Forum. The parties agree that this Guarantee encompasses the transaction of business within the City of New York and that the Civil Court of the City of New York ("Civil Court") will have jurisdiction over any litigation relating to this Guarantee that is within the jurisdictional limit of the Civil Court. Notwithstanding any provision in this Agreement to the contrary, in addition to the Acceptable Forums, any action or proceeding to enforce a judgment or arbitration award against any Merchant or Guarantor or to restrain or collect any amount due to EOD may be commenced and maintained in any other court that would otherwise be of competent jurisdiction, and each Merchant and each Guarantor agree that those courts are convenient, submit to the jurisdiction of those courts, waive any and all objections to the jurisdiction or venue of those courts, and may oppose any motion or application made by any party to transfer any such litigation to an Acceptable Forum.

**G7. Jury Waiver.** Each Guarantor agrees to waive trial by jury in any dispute with EOD.

**G8. Counterclaim Waiver.** In any litigation or arbitration commenced by EOD, each Merchant and each Guarantor will not be permitted to interpose any counterclaim.

**G9. Statutes of Limitations.** Each Merchant and each Guarantor agree that any claim, whether sounding in contract, tort, law, equity, or otherwise, that is not asserted against EOD within one year of its accrual will be time barred. Notwithstanding any provision in the Agreement or this Guarantee to the contrary, each Merchant and each Guarantor agree that any application made by any of them to stay an arbitration initiated against any of them by EOD will be time barred if made more than 20 days after receipt of the demand for arbitration.

**G10. Costs.** Each Merchant and each Guarantor must pay all of EOD's reasonable costs associated with a breach by any Merchant of the covenants in this Agreement or this Guarantee and the enforcement thereof, including but not limited to collection agency fees, expert witness fees, and costs of suit.

**G11. Prejudgment and Postjudgment Interest.** If EOD becomes entitled to the entry of a judgment against any Merchant or any Guarantor, then EOD will be entitled to the recovery of prejudgment interest at a rate of 24% per annum (or 16% per annum if any Merchant is a sole proprietorship), or the maximum rate permitted by applicable law if less, and upon entry of any such judgment, it will accrue interest at a postjudgment rate of 24% per annum (or 16% per annum if any Merchant is a sole proprietorship), or the maximum rate permitted by applicable law if less, which rate will govern over the statutory rate of interest up until actual satisfaction of the judgment.

**G12. Legal Fees.** If [redacted] prevails in any litigation or arbitration with any Merchant or any Guarantor, then that Merchant and/or Guarantor must pay EOD's reasonable attorney fees, which may include a contingency fee of up to 40% of the amount claimed.

**G13. Class Action Waiver.** EOD, each Merchant, and each Guarantor agree that they may bring claims against each other relating to this Agreement only in their individual capacities, and not as a plaintiff or class action member in any purported class or representative proceedings.

**G14. Arbitration.** Any action or dispute, whether sounding in contract, tort, law, equity, or otherwise, relating to the Agreement, this Guarantee, or involving EOD on one side and any Merchant or any Guarantor on the other, including, but

**I have read and agree to the terms and conditions set forth above:**

DocuSigned by:  
*Connie B Hassanién*  
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Name: CONNIE B HASSANIEN Title: OWNER Date: 10/24/2023

**STANDARD MERCHANT CASH ADVANCE AGREEMENT**

not limited to issues of arbitrability, will, at the option of any party to such action or dispute, be determined by arbitration in the State of New York. A judgment of the court shall be entered upon the award made pursuant to the arbitration. The arbitration will be administered either by Arbitration Services, Inc. under its Commercial Arbitration Rules as are in effect at that time, which rules are available at [www.arbitrationservicesinc.com](http://www.arbitrationservicesinc.com), or by Mediation And Civil Arbitration, Inc. under its Commercial Arbitration Rules as are in effect at that time, which rules are available at [www.mcarbitration.org](http://www.mcarbitration.org). Once an arbitration is initiated with one of these arbitral forums, it must be maintained exclusively before that arbitral forum and the other arbitral forum specified herein may not be used. Notwithstanding any provision to the contrary in the arbitration rules of the arbitral forum selected, the arbitration will be heard by a single arbitrator and not by a panel of arbitrators, any arbitration relating to the Agreement or this Guarantee must be held in the Counties of Nassau, New York, Queens, or Kings in the State of New York, and any witness in an arbitration hearing who does not reside in or have a place for the regular transaction of business located in New York City or the Counties of Nassau, Suffolk, or Westchester in the State of New York will be permitted to appear and testify remotely by telephone or video conferencing.

Each Guarantor acknowledges and agrees that the Agreement and this Guarantee are the products of communications conducted by telephone and the Internet, which are instrumentalities of interstate commerce, that the transactions contemplated under the Agreement will be made by wire transfer and ACH, which are also instrumentalities of interstate commerce, and that the Agreement and this Guarantee therefore evidence a transaction affecting interstate commerce. Accordingly, notwithstanding any provision in the Agreement or this Guarantee to the contrary, all matters of arbitration relating to the Agreement or this Guarantee will be governed by and construed in accordance with the provisions of the Federal Arbitration Act, codified as Title 9 of the United States Code, however any application for injunctive relief in aid of arbitration or to confirm an arbitration award may be made under Article 75 of the New York Civil Practice Law and Rules or the laws of the jurisdiction in which the application is made, and the application will be governed by and construed in accordance with the laws under which the application is made, without regard to any applicable principles of conflict of laws. The arbitration agreement contained herein may also be enforced by any employee, agent, attorney, member, manager, officer, subsidiary, affiliate entity, successor, or assign of EOD.

**G15. Service of Process.** Each Merchant and each Guarantor consent to service of process and legal notices made by First Class or Priority Mail delivered by the United States Postal Service and addressed to the Contact Address set forth on the first page of the Agreement or any other address(es) provided in writing to EOD by any Merchant or any Guarantor, and unless applicable law or rules provide otherwise, any such service will be deemed complete upon dispatch. Each Merchant and each Guarantor agrees that it will be precluded from asserting that it did not receive service of process or any other notice mailed to the Contact Address set forth on the first page of the Agreement if it does not furnish a certified mail return receipt signed by EOD demonstrating that EOD was provided with notice of a change in the Contact Address.

**G16. Severability.** If any provision of this Guarantee is deemed invalid or unenforceable as written, it will be construed, to the greatest extent possible, in a manner which will render it valid and enforceable, and any limitation on the scope or duration of any such provision necessary to make it valid and enforceable will be deemed to be part thereof. If any provision of this Guarantee is deemed void, all other provisions will remain in effect.

**G17. Survival.** The provisions of Sections G2, G3, G4, G5, G6, G7, G8, G9, G10, G11, G12, G13, G14, G15, G16, G17, G18, G19, G20, and G21 shall survive any termination of this Guarantee.

**G18. Headings.** Headings of the various articles and/or sections of this Guarantee are for convenience only and do not necessarily define, limit, describe, or construe the contents of such articles or sections.

**G19. Attorney Review.** Each Guarantor acknowledges that it has had an opportunity to review this Guarantee, the Agreement, and all addenda with counsel of its choosing before signing the documents or has chosen not to avail itself of the opportunity to do so.

I have read and agree to the terms and conditions set forth above:

DocuSigned by:  
*Connie B Hassanién*  
AEC52E1D8C8B4F1...

Name: CONNIE B HASSANIEN Title: OWNER Date: 10/24/2023

**STANDARD MERCHANT CASH ADVANCE AGREEMENT**

**G20. Entire Agreement.** This Guarantee, inclusive of all addenda, if any, executed simultaneously herewith may not be amended, modified, or canceled except in writing signed by all parties. Should there arise any conflict between this Guarantee and any other document preceding it, this Guarantee will govern. This Guarantee does not affect any previous agreement between the parties unless such an agreement is specifically referenced in the Agreement or herein. This Guarantee will not be affected by any subsequent agreement between the parties unless this Guarantee is specifically referenced therein.

**G21. Counterparts; Fax and Electronic Signatures.** This Guarantee may be executed electronically and in counterparts. Facsimile and electronic copies of this Guarantee will have the full force and effect of an original.

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE "STANDARD MERCHANT CASH ADVANCE AGREEMENT", INCLUDING THE "TERMS AND CONDITIONS", ARE HEREBY INCORPORATED IN AND MADE A PART OF THIS GUARANTEE. CAPITALIZED TERMS NOT DEFINED IN THIS GUARANTEE SHALL HAVE THE MEANING SET FORTH IN THE STANDARD MERCHANT CASH ADVANCE AGREEMENT, INCLUDING THE TERMS AND CONDITIONS.

**EACH UNDERSIGNED HEREBY ACCEPTS THE TERMS OF THIS GUARANTEE**

**GUARANTOR (#1)**

By: CONNIE B HASSANIEN  
(Print Name)

DocuSigned by:  
*Connie B Hassanien*  
AEC52E1D8C8B4F1...  
(Signature)

SS# [REDACTED]

Driver License Number [REDACTED]

**GUARANTOR (#2)**

By: \_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature)

SS# \_\_\_\_\_

Driver License Number \_\_\_\_\_

**STANDARD MERCHANT CASH ADVANCE AGREEMENT**

**BANK INFORMATION**

Dear Merchant,

We look forward to being your funding partner. You authorize EN OD CAPITAL to collect the Receivables Purchased Amount under this Agreement by ACH debiting your bank account with the bank listed below.

EN OD CAPITAL will require viewing access to your bank account each business day. EN OD CAPITAL will also require viewing access to your bank account, prior to funding, as part of our underwriting process.

Please fill out the form below with the information necessary to access your account.

**\* Be sure to indicate capital or lower case letters.**

Name of bank: FIFTH THIRD BANK

Name of account: ONE FAT FROG INCORPORATED

Account number: [REDACTED] 2056 Routing number: [REDACTED]

Bank portal website: www.fifththird.com

Username: [REDACTED]

Password: [REDACTED]

Security Question/Answer 1: [REDACTED]

Security Question/Answer 2: [REDACTED]

Security Question/Answer 3: [REDACTED]

Any other information necessary to access your account: \_\_\_\_\_

If you have any questions please feel free to contact us directly at (347) 946-8768.

I have read and agree to the terms and conditions set forth above:

DocuSigned by:  
*Connie B Hassani*  
AEC52E1D8C8B4F1...

Name: CONNIE B HASSANIEN Title: OWNER Date: 10/24/2023

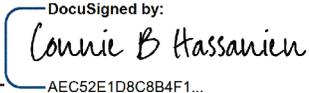
**ADDENDUM TO STANDARD MERCHANT CASH ADVANCE AGREEMENT  
FOR ESTIMATED PAYMENTS**

This is an Addendum, dated 10/24/2023, to the Standard Merchant Cash Advance Agreement ("Agreement"), dated 10/24/2023, between EN OD CAPITAL ("EOD") and ONE FAT FROG INCORPORATED and the entities listed in "EXHIBIT A" ("Merchant"). This Addendum incorporates the Agreement by reference. The terms of this Addendum will control to the extent they conflict with any of the terms in the Agreement.

Instead of debiting the 6 % Specified Percentage of Merchant's Receivables, EOD may instead debit \$ 12,500.00 ("Estimated Payment") from the Account every WEEK. The Estimated Payment is intended to be an approximation of no more than the Specified Percentage.

Any Merchant may give written notice to EOD requesting that EOD conduct a reconciliation in order to ensure that the amount that EOD has collected equals the Specified Percentage of Merchant(s)'s Receivables under this Agreement. Any Merchant may give written notice requesting a reconciliation. A request for reconciliation may also be made by e-mail to ENODCAPITALLLC@GMAIL.COM and such notice will be deemed to have been received if and when EOD sends a reply e-mail (but not a read receipt). If such reconciliation determines that EOD collected more than it was entitled to, then within seven days thereafter, EOD will credit to the Account all amounts to which EOD was not entitled and decrease the Estimated Payment so that it is consistent with the Specified Percentage of Merchant(s)'s Receivables from the date of the Agreement through the date of the reconciliation. If such reconciliation determines that EOD collected less than it was entitled to, then within seven days thereafter, EOD will debit from the Account all additional amounts to which EOD was entitled and increase the Estimated Payment so that it is consistent with the Specified Percentage of Merchant(s)'s Receivables from the date of the Agreement through the date of the reconciliation, with the increase being subject to any Cap in place on collections. In order to effectuate this reconciliation, any Merchant must produce with its request the login and password for the Account and any and all bank statements and merchant statements covering the period from the date of this Agreement through the date of the request for a reconciliation. EOD will complete each such reconciliation within two business days after receipt of a written request for one accompanied by the information and documents required for it. Nothing herein limits the amount of times that such a reconciliation may be requested.

**FOR THE MERCHANT/OWNER (#1)**

By: CONNIE B HASSANIEN (Print Name) OWNER (Print Title)  AEC52E1D8C8B4F1...

**FOR THE MERCHANT/OWNER (#2)**

By: \_\_\_\_\_ (Print Name) \_\_\_\_\_ (Print Title) \_\_\_\_\_ (Signature)

**ADDENDUM TO STANDARD MERCHANT CASH ADVANCE AGREEMENT  
FOR ADDITIONAL FEES**

This is an Addendum, dated 10/24/2023, to the Standard Merchant Cash Advance Agreement ("Agreement"), dated 10/24/2023, between EN OD CAPITAL ("EOD") and ONE FAT FROG INCORPORATED and the entities listed in "EXHIBIT A" ("Merchant"). This Addendum incorporates the Agreement by reference. The terms of this Addendum will control to the extent they conflict with any of the terms in the Agreement.

Each Merchant may be held responsible for an NSF/ Rejected ACH Fee of \$50.00 for each time an ACH debit to the Account by EOD is returned or otherwise rejected. No Merchant will be held responsible for such a fee if any Merchant gives EOD advance notice of no more than one business day in advance that the Account has insufficient funds to be debited by EOD and no Merchant is otherwise in default of the terms of the Agreement. Each such fee may be deducted from any payment collected by EOD or may be collected in addition to any other payment collected by EOD under this Agreement.

**FOR THE MERCHANT/OWNER (#1)**

By: CONNIE B HASSANIEN  
(Print Name)

OWNER  
(Print Title)

DocuSigned by:  
*Connie B Hassanien*  
AEC52E1D8C8B4F1...  
(Signature)

**FOR THE MERCHANT/OWNER (#2)**

By: \_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Signature)

**DECLARATION OF ORDINARY COURSE OF BUSINESS**

Each undersigned hereby declares the following:

1. I am duly authorized to sign the Standard Merchant Cash Advance Agreement (“Agreement”), dated 10/24/2023, between EN OD CAPITAL (“EOD”) and ONE FAT FROG INCORPORATED and the entities listed in “EXHIBIT A” (“Merchant”) on behalf of Merchant.
2. This Declaration incorporates by reference the Agreement and every addendum to it.
3. I acknowledge that I am authorized to sign the Agreement and every addendum to it on behalf of each Merchant.
4. I acknowledge that I had sufficient time to review the Agreement and every addendum to it before signing it.
5. I acknowledge that I had an opportunity to seek legal advice from counsel of my choosing before signing the Agreement and every addendum to it.
6. I acknowledge that each Merchant is entering into the Agreement voluntarily and without any coercion.
7. I acknowledge that each Merchant is entering into the Agreement in the ordinary course of its business.
8. I acknowledge that the payments to be made from any Merchant to CCU under the Agreement are being made in the ordinary course of each Merchant’s business.
9. I am aware of each Merchant’s right to request a reconciliation of the payments made under the Agreement at any time.
- 10. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.**

Executed on 10/24/2023  
(Date)

**FOR THE MERCHANT/OWNER (#1)**

By: \_\_\_\_\_  
 (Print Name) (Print Title)   
 (Signature)

**FOR THE MERCHANT/OWNER (#2)**

By: \_\_\_\_\_  
(Print Name) (Print Title) (Signature)

**EXHIBIT A - ADDITIONAL ENTITIES SUBJECT TO THE TERMS OF THIS CONTRACT**

LIST OF ADDITIONAL PARTIES IN WHOSE ASSETS SELLER HAS GRANTED BUYER A BLANKET SECURITY INTEREST:

TAX ID: TAX ID:

TAX ID: KING RESTAURANT EQUIPMENT, INC. TAX ID:

2416 SAND LAKE ROAD,

TAX ID: ORLANDO, FL 32809 TAX ID:

TAX ID: EIN [REDACTED] TAX ID:

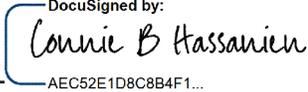
TAX ID: TAX ID:

TAX ID: TAX ID:

TAX ID: TAX ID:

TAX ID: TAX ID:

Buyer may file a UCC 1 financing statement with the Secretary of State(s), reflecting a blanket security interest in the assets of the above listed entities.

By:  DocuSigned by:  
Name: CONNIE B HASSANIEN  
Dated: HERSEY 10/24/2023

By:  
Name:  
Dated:

## OFFER SUMMARY – MERCHANT CASH ADVANCE

<b>Total amount of funds provided to the business under the terms of the agreement</b>	<b>\$250,000.00</b>
<b>Total amount of funds disbursed to the business (after any fees deducted or withheld at disbursement, any amount paid to the provider to satisfy a prior balance, and any amount paid to a third party on behalf of the business)</b>	<b>\$237,500.00</b>
<b>Total amount to be paid to the provider under the terms of the agreement</b>	<b>\$350,000.00</b>
<b>Total dollar cost under the terms of the agreement</b>	<b>\$362,500.00</b>
<b>Manner, frequency, estimated amount of the initial payment, description of the methodology for calculating any variable payment, and circumstances under which payments may vary</b>	<p>This financing does not have a fixed payment schedule and there is no minimum payment amount. \$12,500.00, or the estimated payment amount in effect at that time, if different from this amount, will be debited by provider from your bank account every week. Your contract may allow the debits to change back and forth between being on a daily basis and a weekly basis for a proportionate amount instead. The amounts debited are subject to reconciliation as explained in paragraph 4 of the agreement. If a reconciliation demonstrates that your payments have exceeded 6% of your total income during the duration of the agreement, then you will be refunded the amount that you paid in excess of the specified percentage of your total income during the duration of the agreement and the payment amount will be decreased as necessary so that it is consistent with 6% of the business' income from the date of the agreement through the date of the reconciliation. If a reconciliation demonstrates that your payments have fallen below 6% of your total income during the duration of the agreement, then you will be debited the amount that you paid in deficiency of the specified percentage of your total</p>
<b>Prepayment Policy</b>	<p>income during the duration of the agreement and the payment amount will be increased as necessary so that it is consistent with 6% of the business' income from the date of the agreement through the date of the reconciliation.</p> <p>There is no provision in the agreement prohibiting prepayment. If you pay off the agreement faster than required, you will not be required to pay additional fees.</p>



## AGREEMENT FOR THE PURCHASE AND SALE OF FUTURE RECEIVABLES

This purchase and sale of future receivables agreement (“Agreement”) dated 11/20/2023, is made by and between Parkside Funding Group LLC (hereinafter “Parkside” or “Purchaser”) and each Seller listed below (together referred to as “Seller”).

### TERMS AND CONDITIONS

#### SECTION A:

1. **SALE OF FUTURE RECEIVABLES:** Seller, identified on page 2 and 3, in addition to any Seller attached to this agreement in Addendum A, hereby sells, assigns and transfers to Parkside, the Specified Percentage of the proceeds of each future sale (“Future Receivables”) made by Seller in consideration for receiving the Purchase Price, minus any Fees and/or any Payoff/Refinance, until Parkside has received the full Purchase Amount.

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#### **Purchase Amount:**

Q: What is the Purchase Amount? \$417,000.00

A: The Purchase Amount is the amount of future receivables

**Parkside** is purchasing from Seller.

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#### **Purchase Price:**

Q: What is the Purchase Price? \$300,000.00

A: The Purchase Price is the amount Parkside is paying upfront for the Purchase Amount before deducting any Fee or REFI.

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#### **Payoff/Refinance (“REFI”):**

Q: What is a Payoff/Refinance?

A: If Seller has an open balance with either Parkside or another third party, Seller may request Parkside to Payoff said balance with part or all of the Purchase Price. \$0.00

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#### **Total Funds Received by Seller(s):**

Purchase Price received by Seller minus any Fee \$285,000.00  
and/or any Payoff from REFI.

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#### **Percentage Purchased (“PP”):**

Q: What is the Percentage Purchased?

A: The Percentage Purchased is the percentage of receivables to be remitted to Parkside until the Purchase Amount is fully remitted to Parkside or the Seller no longer has such obligation pursuant to the terms of the Agreement. 10.00%

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#### **Estimated Payment (“EP”):**

Q: What is the Estimated Payment?

A: An estimated initial amount calculated based on Sellers’s past receivables amount and the Percentage Purchased, to be paid from the Seller’s receivables to Parkside, which is subject to Reconciliation pursuant to Section A (3). \$17,375.00 Weekly

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#### **Fee:**

Q: What is a Fee that will deducted from the Purchase Price? \$15,000.00

A: Up to 5.00% of the Purchase price  
will be deducted from the Purchase Amount for underwriting costs.

### SELLER INFORMATION

#### Seller(s) Information



Legal/Corporate Name: ONE FAT FROG, INCORPORATED

D/B/A: ONE FAT FROG Federal Tax ID: [REDACTED]

Type of Entity Corporation State of Incorporation FL

Physical Address: 2416 SAND LAKE RD City: ORLANDO State: FL Zip: 32809

Business Phone: [REDACTED] Email: [REDACTED]

**Seller 2**

Legal/Corporate Name: KING RESTAURANT EQUIPMENT, INC.

D/B/A: [REDACTED] Federal Tax ID: [REDACTED]

Type of Entity Corporation State of Incorporation FL

Physical Address: 2416 SAND LAKE ROAD City: ORLANDO State: FL Zip: 32809

Business Phone: [REDACTED] Email: [REDACTED]

**Guarantor (“Guarantor”) Information 1**

Corporate Officer/Owner Name: CONNIE BAUGHER HASSANIEN Title: Owner

Ownership %: 100 Date of Birth: [REDACTED] SS#: [REDACTED]

Home Address: 9085 GREAT HERON CIRCLE City: ORLANDO State: FL Zip Code: 32836

Home Phone Number: -- Cell Phone Number: -- Email: [REDACTED]

**Guarantor (“Guarantor”) Information 2**

Corporate Officer/Owner Name: [REDACTED] Title: [REDACTED]

Ownership %: -- Date of Birth: [REDACTED] SS#: --

Home Address: [REDACTED] City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Home Phone Number: -- Cell Phone Number: -- Email: [REDACTED]

**2. THIS AGREEMENT IS NOT A LOAN: PARKSIDE and each Seller (together the “Parties”) intend and agree that the purchase and sale of the Future Receivables by Seller is not, nor interpreted to be, a loan.** There is no interest rate, or payment schedule and no time period during which the Purchase Amount must be collected by Parkside. Parkside is purchasing the Purchase Amount knowing the risks that Seller’s receivables may be substantially reduced, or that Seller’s business may fail in which Parkside will not receive any remittance from Seller. In such an event, Seller would not be in breach/default of this Agreement. Parkside assumes these risks based on the Seller’s representations,



warranties and covenants in this Agreement that are designed to give Parkside a reasonable and fair opportunity to receive the benefit of the bargain. The Parties agree that the Purchase Price is the fair market value for said receivables. If a court determines that Parkside has charged or received interest hereunder in excess of the highest applicable rate, the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by applicable law and Parkside shall promptly refund to seller any interest received by Parkside in excess of the maximum lawful rate, it being intended that Seller not pay or contract to pay and that Parkside not receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by Seller under applicable law. Seller knowingly and willingly waives the defense of usury in any action or proceeding.

**3. Reconciliation:** To ensure that Parkside has collected from Seller an amount that equals the Percentage Purchased, and as long as Seller has not breached this Agreement, any Seller may give written notice to Parkside requesting that Parkside conduct a reconciliation to adjust the daily amount to reflect the Seller's actual past and expected future receivables. A reconciliation may also be requested by sending an e-mail to Parkside at [Accounting@parksidefundinggroup.com](mailto:Accounting@parksidefundinggroup.com). Seller shall provide Parkside with any financial documentation or information requested by Parkside for Parkside to verify the actual receivables and complete the reconciliation. Parkside will complete each reconciliation within five business days after receipt of a written request and accompanied by the documentation and information required for it. If after Parkside conducts the reconciliation, and it is determined by Parkside that Parkside received more funds from Seller than it was entitled to, Parkside shall remit the excess funds to Seller within three business days of completing the Reconciliation.

**4. Authorized Bank Account:** Seller shall deposit all of the Future Receivables into the single business banking account (the "Account") acceptable to Parkside to obtain electronic fund transfer services and/or "ACH" payments. Seller must instruct Seller's credit card processor, which must be approved by Parkside, (the "Processor") to deposit all payment card receipts of Seller into the Account. Seller shall provide Parkside and/or its authorized agent with all of the information, authorizations, and passwords necessary to verify each Seller's Receivables. Seller shall not change any of the passwords without prior written consent from Parkside. Seller authorizes Parkside to debit the Estimated Payment from the Account each business day/week/month by either electronic fund transfer services and/or "ACH" payments.

**5. Insufficient Funds In Account:** Seller understands that it is responsible for ensuring that the Estimated Payment amount is available in the Account each business day/week/month or advising Parkside prior to each daily/weekly/monthly withdrawal of a shortage of funds. Seller will be responsible for any fees incurred by Parkside as a result of a rejected electronic check or ACH debit attempt (if no prior notice was provided) and such rejection may be result in event of default as defined with **Section D**. Parkside is not responsible for any overdrafts or rejected transactions that may result from Parkside's debiting any amount authorized under the terms of the Agreement. Seller acknowledges that the foregoing ACH authorization is a fundamental condition to induce Parkside to accept the Agreement. As such, such authorization is intended to be irrevocable.

**6. Fiduciary Duty of Seller:** Each Seller agrees that it is a fiduciary for Parkside, and each Seller will hold its receivables in trust for Parkside in its capacity as a fiduciary for Parkside. Until the



Purchased Amount has been received in full by Parkside, Seller's receivables, up to the balance of the Purchased Amount, shall be the property of Parkside.

7. **Information To Be Delivered To Parkside:** Seller shall provide to Parkside any authorizations, bank or financial statements, tax returns, as Parkside deems necessary in its sole discretion prior to or any time after execution of this Agreement. Seller shall provide the requested documents within five (5) business days after request by Parkside. Seller authorizes all of its banks, brokers and credit card processors to provide Parkside with Seller's banking, brokerage and/or processing history to determine qualification or continuation of the Agreement or for collections upon the event of Default. A photocopy of this authorization shall be deemed acceptable as an authorization for release of financial and credit information.

8. **Financial Information Authorization:** Seller authorize Parkside, its agents, representatives and any credit reporting agency engaged in Parkside to:

- (i) Investigate any references given or other statements or data obtained from or about Seller for the purpose of this Agreement.
- (ii) Obtain consumer and business reports on the Seller.
- (iii) Contact any current or prior banks of the Seller, to obtain any information regarding Seller's transactions with said banks, in the furtherance of this Agreement.
- (iv) Investigate its financial responsibility and history.
- (v) Update such information and financial and credit reports/profiles from time to time as Parkside deems appropriate.
- (vi) Seller Waives to the maximum extent permitted by law any claim for damages against Parkside or any of its affiliates related to any investigation undertaken by or on behalf of Parkside as permitted by this Agreement or disclosure of information as permitted by this Agreement.

9. **No Liability:** In no event shall Parkside be liable for any claims asserted by Seller or Guarantor under any legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect, or consequential damages, each of which is waived by both Seller and Guarantor.

## **SECTION B** **REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER**

1. **Good Faith, Best Efforts And Due Diligence:** Seller and each Guarantor represents, warrants and covenants that it will conduct its business in good faith and will use its best efforts to ensure that Parkside obtains the Purchase Amount. Seller represents, warrants and covenants that it is entering this Agreement for business purposes and not as a consumer for personal, family, or household purposes.

2. **Financial Condition And Financial Information:** Seller and each Guarantor represents, warrants and covenants that any information provided to Parkside under Section A, Paragraph 7 or 8, fairly represent the financial condition of Seller and each Guarantor at such dates.



3. **Material Change In Business:** Seller represents, warrants and covenants that Seller shall notify Parkside immediately if there are material adverse changes, financial or otherwise, in the operation of Seller or any change in the ownership of Seller.
4. **Governmental Compliance:** Seller represents, warrants and covenants that Seller is in compliance and shall comply with any and all laws and regulations promulgated by the State or Federal government including State and Federal Taxes. Seller has valid permits, authorizations and licenses to own operate, lease its properties, and to conduct its business in which it is presently engaged and or will engage in hereafter.
5. **Authority To Enter Into This Agreement:** Seller represents, warrants and covenants that Seller has full power and authority to incur and perform the obligations under this Agreement, all of which have been duly authorized.
6. **Change Of Business Name, Location Or Closing Of Business:** Seller shall not conduct Seller's business under any name other than as disclosed to Parkside. Seller shall not change its place of business without prior written consent of Parkside. Seller shall not sell, dispose, transfer or otherwise convey all or substantially all of its business or assets without,
  - (i) The express prior written consent of Parkside and
  - (ii) The written Agreement of any purchaser or transferee assuming all of Seller's obligations under this Agreement pursuant to documentation satisfactory to Parkside.
7. **Bankruptcy:** Seller represents, warrants and covenants that as of the date of the executed Agreement, Seller is not insolvent, is not contemplating bankruptcy, has not filed any petition for bankruptcy protection under any Title of the United States Bankruptcy code, and to Sellers's knowledge, there has been no involuntary petition brought or pending against Seller.
8. **Business Interruption Insurance:** Seller shall maintain business interruption insurance and shall provide PARKSIDE proof of such insurance upon request.
9. **No Conflict with Other Agreements:** Seller represents, warrants and covenants that Seller's execution and performance of this Agreement will not conflict with any other agreement, obligation, promise, court order, administrative order or decree, law or regulation, to which Seller is subject, including any agreement which prohibits the sale or pledge of Seller's future receivables.
10. **No Stacking:** Seller represents, warrants and covenants that Seller shall not enter into any purchase and sale of future receivables or any loan agreement that relates to or involves its future receivables with any party other than Parkside for the duration of this Agreement, without the prior written consent of Parkside.
11. **No Diversion of Receipts:** Seller represents, warrants and covenants that Seller shall not permit any event to occur that could cause a diversion of any of Seller's Future receivables from the Account to another entity.
12. **Negative Pledge:** Seller agrees not to create, incur, assume, or permit to exist, directly or indirectly, any lien on or with respect to any of the "Collateral" (Defined in Section C paragraph 1).



**13. Seller's Knowledge And Representation:** Seller represents, warrants and covenants that it is a sophisticated business entity familiar with the kind of transaction covered by the Agreement and that it was or had the opportunity to be represented by legal counsel prior to signing this Agreement.

**14. Title of Receipts:** Seller represents, warrants and covenants that Seller has good, complete, unencumbered and marketable title to all future receivables, free and clear of any and all liabilities, liens, claims, changes, restrictions, options, rights, mortgages, security interests, equities, pledges and encumbrances of any kind or nature whatsoever or any other rights or interest that may be inconsistent with the transactions contemplated with or adverse to the interests of Parkside.

**15. Estoppel Certificate:** Seller represents, warrants and covenants that Seller shall, at least one day after notice from Parkside to Seller, execute, acknowledge and deliver to Parkside or to any other person, firm, entity specified by Parkside a statement certifying that this agreement is unmodified and in full force and effect (if modified- the same is in full force and effect as modified and stating the modifications).

### **SECTION C** **RIGHTS OF PARKSIDE**

**1. Security Interest:** Seller hereby grants to Parkside a first priority security interest in and lien upon: (a) All accounts receivable as defined in Article 9 of the Uniform Commercial Code (the "UCC"), now or hereafter owned or acquired by Seller and (b) all proceeds of any account receivable, as the term is defined in Article 9 of the UCC (together, the "Collateral"). Seller hereby represents and warrants that no other person or entity has a security interest in the Collateral. Seller acknowledges and agrees that any security interest granted to Parkside under any other agreement between Seller and Parkside (the "Cross-Collateral") will secure the obligations hereunder. Seller agrees to execute any documents or take any action in connection with this Agreement as Parkside deems necessary to perfect or maintain Parkside's first priority security interest in the Collateral or to effectuate Parkside's right of setoff. Seller hereby authorizes Parkside to file any financing statements deemed necessary by Parkside to perfect or maintain Parkside's security interest. Pursuant to Article 9 of the Uniform Commercial Code, upon any Event of Default hereunder, Parkside has control over and may direct the disposition of the Collateral, without further consent of Seller. Upon any Event of Default hereunder, Parkside shall have the right, without notice or demand of any kind, to notify account debtors of Parkside's lien and collect any amount owed to Parkside directly from the account debtors.

**2. Fees:** Underwriting fee 5.00% of the Purchase Amount to cover underwriting related expenses. (Will be deducted from Purchase Price). Seller agrees that the Fees are reasonable.

**3. Refinance/Payoff:** At the time of this Agreement, Seller may have an existing balance, in which Seller previously sold its future receivables, with (i) Parkside (ii) another purchaser. Seller must disclose any prior Agreement to Parkside prior to signing this Agreement. Seller may opt to refinance or payoff its prior balance with part or all of the Purchase Price in order to enter this Agreement with Parkside. Seller shall direct Parkside to refinance or payoff its prior balance.

**4. Right To Access:** In order to ensure that Seller is complying with the terms of this Agreement, Parkside shall have the right to:



- (i) Enter the premises, without notice, of Seller’s business, for the purpose of inspection of Seller’s transaction processing terminals.
- (ii) Access to Seller’s employees and records and all other items as requested Parkside

**5. Phone Recordings and Contact:** Seller and each Guarantor agrees that any call between Parkside and Seller, their agents, and employees may be recorded and monitored. In addition, Seller and each Guarantor agrees that:

- (i) It has an established business relationship with Parkside including its employees and agents, and that Seller may be contacted, via phone, mail or email, from time-to-time regarding this Agreement or other related business transactions.
- (ii) Such communications and contacts are not unsolicited or inconvenient.
- (iii) Any such contact may be made by any phone number including cell phone numbers, email address, or facsimile number given to Parkside by Seller, its agents or employees.
- (iv) Seller and each Guarantor acknowledge that such calls or electronic communications may incur a charge or fee from the company that provides them with telecommunications, wireless, and/or Internet services, and that Parkside has no liability for any such charges.

**6. Publicity:** Parkside may, at its discretion, use Seller and each Guarantor’s name in listings of clients, and in marketing and advertising materials.

**7. SERVICE OF PROCESS: IN ADDITION TO THE METHODS OF SERVICE ALLOW BY NEW YORK COURT RULES, SELLER AND GUARANTOR HEREBY CONSENTS TO SERVICE OF PROCESS UPON IT BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO THE ADDRESSES PROVIDED ON PAGE 1 OF THIS AGREEMENT, SERVICE HEREUNDER SHALL BE COMPLETE UPON SELLER’S OR GUARANTOR’S ACTUAL RECEIPT OF PROCESS OR UPON PARKSIDE’S RECEIPT OF THE RETURN THEREOF BY THE UNITED STATES POSTAL SERVICE AS REFUSED OR UNDELIVERABLE. SELLER AND GUARANTOR MUST PROMPTLY NOTIFY PARKSIDE, IN WRITING, OF EACH AND EVERY CHANGE OF ADDRESS TO WHICH SERVICE OF PROCESS CAN BE MADE.**

**SECTION D**  
**EVENTS OF DEFAULT**

**1. Events of Default:** The occurrence of any of the following events shall constitute an “Event of default” and Parkside shall be intitled to pursue without limitation any of the Remedies under Section D (2) immediately and without notice to Seller in addition to any remedy available to PARKSIDE under the law, in equity or otherwise pursuant to this Agreement.

- (i) Seller or Guarantor violates any term, covenant, warranty, or condition in this Agreement.
- (ii) Seller interferes with Parkside’s right to collect the Purchase Amount.
- (iii) Seller uses multiple depository accounts without the prior written consent of Parkside.
- (iv) Seller changes its depositing account or its payment card processor without the prior written consent of Parkside.
- (v) Any representation or warranty by Seller in the Agreement shall prove to have been incorrect, false or misleading in any material respect when made.
- (vi) Seller notifies Parkside that it is unilaterally terminating the Agreement.



- (vii) Seller transfers or sells all or substantially all of its assets without the prior written consent of Parkside.
- (viii) Seller transports, moves, interrupts, suspends, dissolves, or terminates its business without the prior written consent of Parkside other than a bankruptcy filing.
- (ix) Seller changes its processor or adds terminals without the prior written consent of Parkside.
- (x) Seller changes the Account username and/or password credentials without giving Parkside at least twenty-four-hour advance written notice of said change with the updated username and password.
- (xi) Seller causes its account to stop allowing Parkside to withdraw the Estimated Payment from the account and Seller does not notify Parkside by email at [Accounting@parksidefundinggroup.com](mailto:Accounting@parksidefundinggroup.com), within three business days of a valid reason for causing the account to stop payment.

**2. Protections Against Default:** The following protections may be invoked by Parkside immediately and without notice to Seller if any Event of Default occurs.

- (i) The full uncollected Purchase Amount plus all fees under section C (2) and Section D (5) due under the Agreement.
- (ii) Parkside may enforce the provisions of the Limited Personal Guaranty of performance – Attached to this Agreement – against the Guarantor.
- (iii) Parkside may enforce its security interest in the collateral under Section C (1).
- (iv) Parkside may proceed to protect and enforce its right and remedies by bringing a legal action against Seller and Guarantor pursuant to the Agreement in addition to any remedy available to Parkside under the law or in equity. In said action if judgment should be granted in favor of Parkside against Seller or Guarantor, Seller and Guarantor shall be liable for Parkside’s costs of said action, including but not limited to collection costs, reasonable attorneys’ fees, and court costs.
- (v) Parkside may debit Seller’s depository accounts wherever situated by means of ACH debit or facsimile signature on a computer-generated check drawn on Seller’s bank account or otherwise for all sums due to Parkside.
- (vi) Parkside may notify Seller’s credit card and check processor and to request said credit card processor to remit payments to Parkside for any remaining balance under the Purchase Amount on behalf of seller.

**3. Temporary Restraining Order (“TRO”):** In the event an Event of Default occurs, Seller and Guarantor hereby consent and agree that Parkside may be intitled to apply, in any action arising from a breach of this Agreement, for an Ex Parte entry of a preliminary or permanent injunction, temporary restraining order or other equitable relief, in an effort to protect Parkside’s collateral. Seller acknowledges that unless Parkside chooses to file a TRO, Parkside may be unable to adequately protect it’s interest in the Collateral and RNS may not have another remedy at law.

**4. Statutes of Limitations:** Any claim not asserted by Seller or Guarantor against Parkside within one year of its accrual will be time barred.

**5. Costs and Legal Fees:** Seller and Guarantor shall be responsible to pay all of Parkside’s reasonable costs associated with any Event of Default, and the enforcement thereof, including a ‘Default



fee' of \$2,500.00, and collection fees and or attorney fees, which may include a contingency fee of up to 33% of the amount demanded, and costs of suit.

## **SECTION E** **MISCELLANEOUS**

1. **No Modification:** No modification, amendment waiver or consent of any provision of this Agreement shall be effective unless the same shall be in writing and signed by Parkside.
2. **Assignment:** Parkside may assign, transfer or sell its rights to receive the Purchase Amount or delegate its duties hereunder, either in whole or in part, with or without prior written notice to Seller.
3. **Notice:** Except for Service of Process under Section C (7), all notices and other communications to Seller and Guarantor, required or permitted to be given shall be in writing, and shall be deemed duly given as follows: (a) on the date delivered if personally delivered, (b) on the date sent by facsimile with automatic confirmation by the transmitting machine showing the proper number of pages were transmitted without error to the addresses listed on page 1, (c) on the next business day if sent by overnight mail by Federal Express or other recognized overnight mail service to the addresses listed on page 1, or (d) five business days after mailing, if mailed by certified or registered mail, return receipt requested, in each case addressed to the parties at their respective addresses set forth on page 1 of this agreement.
4. **Waiver:** No course of dealing or omission or delay on the part of Parkside in asserting or exercising any right hereunder shall constitute or operate as a waiver of any such right. No waiver by Parkside of any provision hereof shall be effective, unless in writing and signed by Parkside. No waiver by Parkside shall be deemed a continuing waiver or waiver in respect of any other or subsequent breach or default, unless expressly so stated in writing.
5. **Severability:** The provisions hereof are severable and in the event that any provision of this Agreement shall be determined to be invalid or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions hereof shall not be affected, but shall, subject to the discretion of such court, remain in full force and effect, and any invalid or unenforceable provision shall be deemed, without further action on the part of the parties hereto, amended and limited to the extent necessary to render such provision, as so amended and limited, valid and enforceable.
6. **Titles and Captions:** The titles, captions and Sections of this Agreement are for convenience of reference only and do not in any way define or interpret the intent of the parties or modify or otherwise affect any of the provisions hereof and shall not affect the construction or interpretation of any provision hereof.
7. **Survival of Representation:** All representations, warranties, and covenants herein shall survive the execution and delivery of this Agreement and shall continue in full force until all obligations under this Agreement shall have been satisfied in full and this Agreement shall have terminated.
8. **Entire Agreement:** This Agreement contains a complete statement of the agreement and supersedes all prior agreements and understandings.



9. **Governing Law:** This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of New York, without regard to choice or conflict of laws principles that would defer to the substantive laws of any other jurisdiction.

10. **Forum and Venue Selection:** Parkside and Seller agree that any legal dispute, controversy, demand, or claim (“claim” or “claims”) arising out of, or relating to, the Agreement, any breach thereof, shall be instituted in any federal or state court sitting in the State of New York (the “Satisfactory Forums”) provided that Parkside may institute suit in another forum. Seller, and any Guarantor agree that the Satisfactory Forums are convenient to them and submit to the personal jurisdiction of the acceptable forums. Should a proceeding be initiated by Seller or Guarantor in any other forum, Seller and Guarantor each waive any right to oppose any motion or application by Parkside to dismiss such proceeding to remove and/or transfer the proceeding to a Satisfactory Forum and for an anti-suit injunction against such proceeding.

11. **Arbitration:** Parkside and Seller agree that any legal dispute, controversy, demand, or claim arising out of, or relating to, the Agreement, any breach thereof, including, but not limited to issues of arbitrability, will, at the option of any party to such action or dispute, be determined by arbitration before a single arbitrator. Such Arbitration shall be at a place and time agreed upon by the parties in the county in New York. A neutral arbitrator shall conduct the matter in accordance with the commercial rules of the American Arbitration Association in New York, New York. The arbitrator will be a neutral person agreed upon by the parties. The parties agree that the costs of mediation and arbitration shall be shared equally unless otherwise agreed or ordered. Seller and/or Guarantor acknowledges and agrees that the Purchase and Sale of future receivables Agreement and/or the Guaranty Agreement is the product of communications conducted by telephone and the Internet, which are instrumentalities of interstate commerce, and that the transactions contemplated under this Agreement will be made by wire transfer and/or ACH, which are also instrumentalities of interstate commerce, and that the Purchase and Sale of future receivables Agreement and/or the Guaranty Agreement therefore evidences a transaction affecting interstate commerce.

12. **Jury Waiver:** EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER AGREEMENT OR INSTRUMENT DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

13. **Class Action Waiver.** Guarantor, Seller, and Parkside each agree that they may bring claims against each other arising from or related to this Agreement only in their individual capacities and not as a class action member in any purported class or any such similar proceedings.

**ADVICE OF COUNSEL.** EACH PARTY HERETO ACKNOWLEDGES THAT HE OR IT HAS CAREFULLY REVIEWED ALL OF THE PROVISIONS CONTAINED IN THIS AGREEMENT PRIOR TO ITS EXECUTION, THAT HE OR IT HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF AN ATTORNEY OF HIS OR ITS CHOICE, AND THAT HE OR IT HAS EXECUTED THIS AGREEMENT FREELY AND VOLUNTARILY AND BELIEVES THIS AGREEMENT TO BE FAIR, JUST, AND REASONABLE.



**I have reviewed and agree with the terms and conditions set forth above in the Agreement.**

*Corinne Bauer*  
Corinne Bauer (Nov 21, 2023 10:28 EST)

\_\_\_\_\_  
Name: Seller  
Date: 11/20/2023

\_\_\_\_\_  
Name: PARKSIDE  
Date: 11/20/2023

*Corinne Bauer*  
Corinne Bauer (Nov 21, 2023 10:28 EST)

\_\_\_\_\_  
Name: Seller 2 (if applicable)  
Date: 11/20/2023



**LIMITED PERSONAL GUARANTEE OF PERFORMANCE**

1. **Definitions:** Capitalized terms used herein without definition shall have the meanings assigned to them in the Agreement for the Purchase and Sale of Future Receivables attached hereto (the “Agreement”).

2. **Personal Guarantee of Performance.** Guarantor will not be personally liable for any amount due under this Agreement unless Seller commits an Event of Default pursuant to the Agreement. The undersigned Guarantor hereby guarantees the Seller’s performance of all the covenants, representations and warranties made by the Seller to Parkside in the Agreement (the “Guarantor Obligations”). Guarantor’s obligations are due at the time of any breach by Seller of any covenant, representation, or warranty made by Seller in the Agreement. Upon any breach by the Seller of any such covenant, representation or warranty, each Guarantor shall be jointly and severally liable for all amounts owed to Parkside under the Agreement.

3. **Guarantor Waivers:** Upon the occurrence any Event of Default, Parkside may seek recovery from each Guarantor for all of Parkside’s losses and damages by enforcement of Parkside rights without first seeking to obtain payment from Seller, any other guarantor, or any Collateral Parkside may hold pursuant to this Agreement or any other guaranty. Parkside does not have to notify Guarantor of any of the following events and Guarantor will not be released from its obligations under this Agreement even if it is not notified of: (i) Seller’s failure to pay timely any amount required under the Agreement; (ii) any adverse change in Seller’s financial condition or business; (iii) any sale or other disposition of any Collateral securing the Guarantor Obligations or any other guaranty; (iv) Parkside’s acceptance of any Agreement with Seller; and (v) any renewal, extension or other modification of the Agreement or Seller’s other obligations to Parkside. In addition, Parkside may take any of the following actions without releasing Guarantor from any of its obligations under this Agreement: (i) renew, extend or otherwise modify the Agreement or Seller’s other obligations to Parkside; (ii) release Seller from its obligations to Parkside; (iii) sell, release, impair, waive or otherwise fail to realize upon any Collateral securing the Guarantor Obligations or any other guaranty; and (iv) foreclose on any Collateral securing the Guarantor Obligations or any other guaranty in a manner that impairs or precludes the right of Guarantor to obtain reimbursement for payment under this Agreement. Until the Purchased Amount and Seller’s other obligations to Parkside under the Agreement and this Guarantee are paid in full, Guarantor shall not seek reimbursement from Parkside or any other guarantor for any amounts paid by it under this Guarantee. Guarantor permanently waives and shall not seek to exercise any of the following rights that it may have against Seller, any other guarantor, or any Collateral provided by Seller or any other guarantor, for any amounts paid by it, or acts performed by it, under this Agreement: (i) subrogation; (ii) reimbursement; (iii) performance; (iv) indemnification; or (v) contribution.

4. **Class Action Waiver.** Guarantor, Seller, and Parkside each agree that they may bring claims against each other arising from or related to this Guarantee only in their individual capacities and not as a class action member in any purported class or any such similar proceedings.

5. **Incorporated Terms by Reference.** THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE AGREEMENT INCLUDING THE “TERMS AND



CONDITIONS”, ARE HEREBY INCORPORATED IN AND MADE A PART OF THIS GUARANTEE. In addition, Guarantor and Parkside each agree that the following terms from the Agreement shall be incorporated into this Guarantee by reference:

- “Phone Recordings and Contact” (Section C (5))
- “Publicity” (Section C (6))
- “Service of Process” (Section C (7))
- “Protections against default” (Section D (2) (i-vi))
- “Temporary Restraining Order” (Section D (3))
- “Statutes of Limitations” (Section D (4))
- “Costs and Legal Fees” (Section D (5))
- The ENTIRE SECTION E

6. **Attorney Review and Guarantor Acknowledgement:** Guarantor acknowledges that Guarantor and the provisions in the purchase and sale of future receivables agreement which are incorporated into the Guarantee and (a) understands the seriousness of the provisions of this Guarantee; (b) has had a full opportunity to consult with counsel of Guarantor’s choice; (c) Guarantor has consulted with counsel of its choice or has decided not to avail himself/herself of that opportunity.

**I have reviewed and agree with the terms and conditions set forth above in the Guarantee.**

  
\_\_\_\_\_  
Connie Bauer (Nov 21, 2023 10:28 EST)

Name: Guarantor  
Date: 11/20/2023

\_\_\_\_\_  
Name: Guarantor #2 (if applicable)  
Date: 11/20/2023



**EXHIBIT A – AUTHORIZATION FOR DIRECT DEPOSIT (ACH CREDIT) AND DIRECT PAYMENTS (ACH DEBITS)**

**Funder Name:** Parkside Funding Group LLC

**Merchant (Legal Name):** ONE FAT FROG, INCORPORATED

**Designated Checking Account:**

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Bank Name: FIFTH THIRD BANK

Routing: [REDACTED]

Account: [REDACTED] 2056

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Capitalized terms used in this Authorization Form without definition shall have the meanings set forth in the Merchant Agreement. This Authorization for Direct Deposit (ACH Credit) and Direct Payments (ACH Debits) is part of (and incorporated by reference into) the Merchant Agreement. Merchant should keep a copy of this important legal document for Merchant’s records.

**DISBURSEMENT OF ADVANCE PROCEEDS.** By signing below, Merchant authorizes Parkside Funding Group LLC to disburse the advance proceeds less the amount of any applicable fees upon advance approval by initiating ACH credits or a wire to the Designated Checking Account, in the amounts and at the times specified in the Merchant Agreement. **By signing below, Merchant also authorizes Parkside Funding Group LLC to collect amounts due from Merchant under the Merchant Agreement by initiating ACH Debits from the Designated Checking Account. The initial authorized amount is as follows, which may be adjusted by Parkside Funding Group LLC from time to time in accordance with the Merchant Agreement:**

- In the amount of: \$17,375.00
- (Or) percentage of each Banking Deposit: 10.00%
- On the following days: **MONDAY-FRIDAY**

**MISCELLANEOUS.** Funder Name is not responsible for any fees charged by Merchant’s bank as the result of credits or debits initiated under this Authorization Agreement. The origination of ACH Debits and Credits to the Designated Checking Account must comply with applicable provisions of state and federal law, and the rules and operating guidelines of NACHA (National Automated Clearing House Association). The individual signing below on behalf of Merchant certifies that he/she is an authorized signer on the Designated Checking Account. Merchant will not dispute any ACH transaction initiated pursuant to this Authorization Agreement, provided the transaction corresponds to the terms of this Authorization Agreement. Merchant requests the financial institution that holds the Designated Checking Account to honor all ACH entries initiated in accordance with this Authorization Agreement.

By signing below, Merchant attests that the Designated Checking Account was established for business purposes and not primarily for personal, family or household purposes.

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**FOR (Business Name):** ONE FAT FROG, INCORPORATED

Signature:   
Connie Baugher (Nov 21, 2023 10:28 EST)

Name: CONNIE BAUGHER HASSANIEN

SSN/EIN: [REDACTED]

Title: Owner

**EXHIBIT B – BANK ACCOUNT ACCESS INFORMATION**

Dear Merchant,

Thank you for accepting an offer from Parkside Funding Group LLC. We look forward to being your funding partner for as long as you need.

Please note that pursuant to the Agreement, we will need viewing access to your bank account. The requested access is for “look in” or viewing purposes only. We are not requesting any change or modification to your account.

Please fill out the form below with the access information for your account. Be sure to indicate capital or lower case letters.

**Please fill out the form below with the access information for your account**

---

Bank portal website:

Username:

Password:

Security Question/Answer 1:

Security Question/Answer 2:

Security Question/Answer 3:

---

**ACKNOWLEDGED AND AGREED:**

---

Name: CONNIE BAUGHER HASSANIEN

Title: Owner

Dated: 11/20/2023

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Failure to timely establish our access ability to your account is a breach of your merchant agreement for which we reserve the right to exercise all remedies under the merchant agreement.

**Exhibit J****Payments to MCA Lenders**

<b><u>Summary of Avoidable Transfers</u></b>	
Total to Fox (within 4 years of Petition Date)	\$1,140,799.55
Total to Fox (within 2 years of Petition Date)	\$737,599.76
Total to Bizfund (within 4 years of Petition Date)	\$849,340.00
Total to Bizfund (within 2 years of Petition Date)	\$750,050.00
Total to Union	\$194,977.00
Total to EN OD	\$246,000.00
Total to Parkside	\$142,250.00

<b><u>Transfers to Fox</u></b>		
<b><u>Date</u></b>	<b><u>Transferee</u></b>	<b><u>Amount</u></b>
2/3/2020	Fox Capital Group	\$2,039.33
2/4/2020	Fox Capital Group	\$2,039.33
2/5/2020	Fox Capital Group	\$2,039.33
2/6/2020	Fox Capital Group	\$2,039.33
2/7/2020	Fox Capital Group	\$2,039.33
2/10/2020	Fox Capital Group	\$2,039.33
2/11/2020	Fox Capital Group	\$2,039.33
2/12/2020	Fox Capital Group	\$2,039.33
2/13/2020	Fox Capital Group	\$2,039.33
2/14/2020	Fox Capital Group	\$2,039.33
2/18/2020	Fox Capital Group	\$2,039.33
2/19/2020	Fox Capital Group	\$2,039.33
2/19/2020	Fox Capital Group	\$2,039.33
2/20/2020	Fox Capital Group	\$2,039.33
2/21/2020	Fox Capital Group	\$2,039.33
2/24/2020	Fox Capital Group	\$2,039.33
2/25/2020	Fox Capital Group	\$2,039.33
2/26/2020	Fox Capital Group	\$2,039.33
2/27/2020	Fox Capital Group	\$2,039.33
2/28/2020	Fox Capital Group	\$2,039.33
3/2/2020	Fox Capital Group	\$2,039.33
3/3/2020	Fox Capital Group	\$2,039.33
3/4/2020	Fox Capital Group	\$2,039.33
3/5/2020	Fox Capital Group	\$2,039.33
3/6/2020	Fox Capital Group	\$2,039.33
3/9/2020	Fox Capital Group	\$2,039.33
3/10/2020	Fox Capital Group	\$2,039.33

3/11/2020	Fox Capital Group	\$2,039.33
3/12/2020	Fox Capital Group	\$2,039.33
3/13/2020	Fox Capital Group	\$2,039.33
3/16/2020	Fox Capital Group	\$2,039.33
3/17/2020	Fox Capital Group	\$2,039.33
3/18/2020	Fox Capital Group	\$2,039.33
3/19/2020	Fox Capital Group	\$2,039.33
3/23/2020	Fox Capital Group	\$2,039.33
3/24/2020	Fox Capital Group	\$2,039.33
3/25/2020	Fox Capital Group	\$2,039.33
3/25/2020	Fox Capital Group	\$2,039.33
3/26/2020	Fox Capital Group	\$2,039.33
3/27/2020	Fox Capital Group	\$2,039.33
3/30/2020	Fox Capital Group	\$2,039.33
3/31/2020	Fox Capital Group	\$2,039.33
4/1/2020	Fox Capital Group	\$2,039.33
4/2/2020	Fox Capital Group	\$2,039.33
4/3/2020	Fox Capital Group	\$2,039.33
4/6/2020	Fox Capital Group	\$2,039.33
4/7/2020	Fox Capital Group	\$1,019.66
4/8/2020	Fox Capital Group	\$1,019.66
4/9/2020	Fox Capital Group	\$1,019.66
4/10/2020	Fox Capital Group	\$1,019.66
4/13/2020	Fox Capital Group	\$1,019.66
4/14/2020	Fox Capital Group	\$1,019.66
4/15/2020	Fox Capital Group	\$1,019.66
4/17/2020	Fox Capital Group	\$1,019.66
4/20/2020	Fox Capital Group	\$1,019.66
4/22/2020	Fox Capital Group	\$1,019.66
4/23/2020	Fox Capital Group	\$1,019.66
4/24/2020	Fox Capital Group	\$1,019.66
4/27/2020	Fox Capital Group	\$1,019.66
4/28/2020	Fox Capital Group	\$1,019.66
4/29/2020	Fox Capital Group	\$1,019.66
4/30/2020	Fox Capital Group	\$1,019.66
5/1/2020	Fox Capital Group	\$1,019.66
5/4/2020	Fox Capital Group	\$1,019.66
5/5/2020	Fox Capital Group	\$1,019.66
5/6/2020	Fox Capital Group	\$1,019.66
5/7/2020	Fox Capital Group	\$1,019.66
5/8/2020	Fox Capital Group	\$1,019.66

5/11/2020	Fox Capital Group	\$1,019.66
5/12/2020	Fox Capital Group	\$1,019.66
5/13/2020	Fox Capital Group	\$1,019.66
5/14/2020	Fox Capital Group	\$1,019.66
5/15/2020	Fox Capital Group	\$1,019.66
5/18/2020	Fox Capital Group	\$1,019.66
5/19/2020	Fox Capital Group	\$2,039.33
5/20/2020	Fox Capital Group	\$2,039.33
5/21/2020	Fox Capital Group	\$2,039.33
5/22/2020	Fox Capital Group	\$2,039.33
5/26/2020	Fox Capital Group	\$2,039.33
5/27/2020	Fox Capital Group	\$2,039.33
5/27/2020	Fox Capital Group	\$2,039.33
5/28/2020	Fox Capital Group	\$2,039.33
5/29/2020	Fox Capital Group	\$2,039.33
6/1/2020	Fox Capital Group	\$2,039.33
6/2/2020	Fox Capital Group	\$2,039.33
6/3/2020	Fox Capital Group	\$2,039.33
6/4/2020	Fox Capital Group	\$2,039.33
6/5/2020	Fox Capital Group	\$2,039.33
6/8/2020	Fox Capital Group	\$2,039.33
6/9/2020	Fox Capital Group	\$2,039.33
6/10/2020	Fox Capital Group	\$2,039.33
6/12/2020	Fox Capital Group	\$2,039.33
6/15/2020	Fox Capital Group	\$2,039.33
6/16/2020	Fox Capital Group	\$2,039.33
6/17/2020	Fox Capital Group	\$2,039.33
6/18/2020	Fox Capital Group	\$2,039.33
6/19/2020	Fox Capital Group	\$2,039.33
6/23/2020	Fox Capital Group	\$2,039.33
6/24/2020	Fox Capital Group	\$2,039.33
6/25/2020	Fox Capital Group	\$2,039.33
6/26/2020	Fox Capital Group	\$2,039.33
6/29/2020	Fox Capital Group	\$2,039.33
6/30/2020	Fox Capital Group	\$2,039.33
7/1/2020	Fox Capital Group	\$2,039.33
7/2/2020	Fox Capital Group	\$2,039.33
7/3/2020	Fox Capital Group	\$2,039.33
7/6/2020	Fox Capital Group	\$2,039.33
7/7/2020	Fox Capital Group	\$2,039.33
7/8/2020	Fox Capital Group	\$2,039.33

7/9/2020	Fox Capital Group	\$2,039.33
7/10/2020	Fox Capital Group	\$2,039.33
7/13/2020	Fox Capital Group	\$2,039.33
7/14/2020	Fox Capital Group	\$2,039.33
7/15/2020	Fox Capital Group	\$2,039.33
7/16/2020	Fox Capital Group	\$2,039.33
7/17/2020	Fox Capital Group	\$2,039.33
7/20/2020	Fox Capital Group	\$2,039.33
7/21/2020	Fox Capital Group	\$2,039.33
7/22/2020	Fox Capital Group	\$2,039.33
7/23/2020	Fox Capital Group	\$2,039.33
7/24/2020	Fox Capital Group	\$2,039.33
7/27/2020	Fox Capital Group	\$2,039.33
7/28/2020	Fox Capital Group	\$2,039.33
7/29/2020	Fox Capital Group	\$2,039.33
7/30/2020	Fox Capital Group	\$2,039.33
7/31/2020	Fox Capital Group	\$2,039.33
8/3/2020	Fox Capital Group	\$2,039.33
8/4/2020	Fox Capital Group	\$2,039.33
8/5/2020	Fox Capital Group	\$2,039.33
8/6/2020	Fox Capital Group	\$2,039.33
8/7/2020	Fox Capital Group	\$2,039.33
8/10/2020	Fox Capital Group	\$2,039.33
8/11/2020	Fox Capital Group	\$2,039.33
8/12/2020	Fox Capital Group	\$2,039.33
8/13/2020	Fox Capital Group	\$2,039.33
8/14/2020	Fox Capital Group	\$2,039.33
8/17/2020	Fox Capital Group	\$2,039.33
8/18/2020	Fox Capital Group	\$2,039.33
8/19/2020	Fox Capital Group	\$2,039.33
8/20/2020	Fox Capital Group	\$2,039.33
8/21/2020	Fox Capital Group	\$2,039.33
8/24/2020	Fox Capital Group	\$2,039.33
8/25/2020	Fox Capital Group	\$2,039.33
8/26/2020	Fox Capital Group	\$2,039.33
8/27/2020	Fox Capital Group	\$2,039.33
8/28/2020	Fox Capital Group	\$2,039.33
8/31/2020	Fox Capital Group	\$2,039.33
9/1/2020	Fox Capital Group	\$2,039.33
9/2/2020	Fox Capital Group	\$2,039.33
9/3/2020	Fox Capital Group	\$2,039.33

9/4/2020	Fox Capital Group	\$2,039.33
9/8/2020	Fox Capital Group	\$2,039.33
9/9/2020	Fox Capital Group	\$2,039.33
9/9/2020	Fox Capital Group	\$2,039.33
9/10/2020	Fox Capital Group	\$2,039.33
9/11/2020	Fox Capital Group	\$2,039.33
9/14/2020	Fox Capital Group	\$2,039.33
9/15/2020	Fox Capital Group	\$2,039.33
9/16/2020	Fox Capital Group	\$2,039.33
9/17/2020	Fox Capital Group	\$2,039.33
9/18/2020	Fox Capital Group	\$2,039.33
9/21/2020	Fox Capital Group	\$2,039.33
9/22/2020	Fox Capital Group	\$2,039.33
9/23/2020	Fox Capital Group	\$2,039.33
9/28/2020	Fox Capital Group	\$0.64
3/20/2023	Fox Capital Group	\$7,942.84
3/27/2023	Fox Capital Group	\$9,928.55
4/3/2023	Fox Capital Group	\$9,928.55
4/10/2023	Fox Capital Group	\$9,928.55
4/17/2023	Fox Capital Group	\$9,928.55
4/24/2023	Fox Capital Group	\$9,928.55
5/1/2023	Fox Capital Group	\$9,928.55
5/8/2023	Fox Capital Group	\$9,928.55
5/15/2023	Fox Capital Group	\$9,928.55
5/22/2023	Fox Capital Group	\$9,928.55
5/30/2023	Fox Capital Group	\$9,928.55
6/5/2023	Fox Capital Group	\$9,928.55
6/12/2023	Fox Capital Group	\$9,928.55
6/16/2023	Fox Capital Group	\$299,843.11
6/20/2023	Fox Capital Group	\$5,999.60
6/26/2023	Fox Capital Group	\$14,999.00
7/3/2023	Fox Capital Group	\$14,999.00
7/10/2023	Fox Capital Group	\$14,999.00
7/25/2023	Fox Capital Group	\$14,999.00
7/26/2023	Fox Capital Group	\$14,999.00
8/2/2023	Fox Capital Group	\$14,999.00
8/9/2023	Fox Capital Group	\$14,999.00
8/16/2023	Fox Capital Group	\$14,999.00
8/23/2023	Fox Capital Group	\$14,999.00
8/30/2023	Fox Capital Group	\$14,999.00
9/6/2023	Fox Capital Group	\$14,999.00

9/13/2023	Fox Capital Group	\$14,999.00
9/20/2023	Fox Capital Group	\$14,999.00
9/27/2023	Fox Capital Group	\$14,999.00
10/4/2023	Fox Capital Group	\$14,999.00
10/11/2023	Fox Capital Group	\$14,999.00
10/18/2023	Fox Capital Group	\$14,999.00
10/25/2023	Fox Capital Group	\$14,999.00
11/1/2023	Fox Capital Group	\$14,999.00
11/8/2023	Fox Capital Group	\$14,999.00
11/15/2023	Fox Capital Group	\$14,999.00
11/22/2023	Fox Capital Group	\$14,999.00
11/29/2023	Fox Capital Group	\$14,999.00
12/6/2023	Fox Capital Group	\$14,999.00
12/13/2023	Fox Capital Group	\$14,999.00
12/29/2023	Fox Capital Group	\$14,999.00
1/3/2024	Fox Capital Group	\$8,999.40
2/6/2024	Fox Capital Group	\$1,499.00
2/7/2024	Fox Capital Group	\$1,499.00
<b><u>TOTAL</u></b>		<b><u>\$1,140,799.55</u></b>

<b><u>Transfers to Bizfund</u></b>		
<b><u>Date</u></b>	<b><u>Transferee</u></b>	<b><u>Amount</u></b>
3/20/2023	Bizfund	\$9,929.00
3/27/2023	Bizfund	\$9,929.00
4/3/2023	Bizfund	\$9,929.00
4/10/2023	Bizfund	\$9,929.00
4/17/2023	Bizfund	\$9,929.00
4/24/2023	Bizfund	\$9,929.00
5/1/2023	Bizfund	\$9,929.00
5/8/2023	Bizfund	\$9,929.00
5/15/2023	Bizfund	\$9,929.00
5/22/2023	Bizfund	\$9,929.00
5/30/2023	Bizfund	\$9,929.00
6/5/2023	Bizfund	\$9,929.00
6/12/2023	Bizfund	\$9,929.00
6/16/2023	Bizfund	\$287,293.00
6/20/2023	Bizfund	\$14,999.00
6/26/2023	Bizfund	\$14,999.00
7/3/2023	Bizfund	\$14,999.00
7/10/2023	Bizfund	\$14,999.00
7/17/2023	Bizfund	\$14,999.00

7/24/2023	Bizfund	\$14,999.00
7/27/2023	Bizfund	\$14,999.00
8/3/2023	Bizfund	\$14,999.00
8/10/2023	Bizfund	\$14,999.00
8/17/2023	Bizfund	\$14,999.00
8/24/2023	Bizfund	\$14,999.00
8/31/2023	Bizfund	\$14,999.00
9/7/2023	Bizfund	\$9,999.00
9/14/2023	Bizfund	\$14,999.00
9/21/2023	Bizfund	\$14,999.00
9/28/2023	Bizfund	\$14,999.00
10/5/2023	Bizfund	\$14,999.00
10/12/2023	Bizfund	\$14,999.00
10/19/2023	Bizfund	\$14,999.00
10/26/2023	Bizfund	\$14,999.00
11/2/2023	Bizfund	\$14,999.00
11/9/2023	Bizfund	\$14,999.00
11/16/2023	Bizfund	\$14,999.00
11/24/2023	Bizfund	\$14,999.00
11/30/2023	Bizfund	\$14,999.00
12/7/2023	Bizfund	\$14,999.00
12/14/2023	Bizfund	\$14,999.00
12/28/2023	Bizfund	\$14,999.00
1/4/2024	Bizfund	\$8,999.00
2/1/2024	Bizfund	\$8,999.00
<b><u>TOTAL</u></b>		<b><u>\$849,340.00</u></b>

<b><u>Transfers to Union</u></b>		
<b><u>Date</u></b>	<b><u>Transferee</u></b>	<b><u>Amount</u></b>
9/1/2023	Union Funding Source	\$8,999.00
9/8/2023	Union Funding Source	\$8,999.00
9/15/2023	Union Funding Source	\$8,999.00
9/22/2023	Union Funding Source	\$8,999.00
9/29/2023	Union Funding Source	\$8,999.00
10/6/2023	Union Funding Source	\$8,999.00
10/13/2023	Union Funding Source	\$8,999.00
10/20/2023	Union Funding Source	\$8,999.00
10/27/2023	Union Funding Source	\$8,999.00
11/3/2023	Union Funding Source	\$8,999.00
11/10/2023	Union Funding Source	\$8,999.00
11/17/2023	Union Funding Source	\$8,999.00

11/27/2023	Union Funding Source	\$8,999.00
12/1/2023	Union Funding Source	\$8,999.00
12/8/2023	Union Funding Source	\$8,999.00
12/15/2023	Union Funding Source	\$8,999.00
12/29/2023	Union Funding Source	\$8,999.00
1/5/2024	Union Funding Source	\$6,999.00
1/10/2024	Union Funding Source	\$6,999.00
1/12/2024	Union Funding Source	\$6,999.00
1/19/2024	Union Funding Source	\$6,999.00
1/26/2024	Union Funding Source	\$6,999.00
2/2/2024	Union Funding Source	\$6,999.00
<b>TOTAL</b>		<b>\$194,977.00</b>

**Transfers to EN OD**

<b><u>Date</u></b>	<b><u>Transferee</u></b>	<b><u>Amount</u></b>
10/31/2023	EN OD Capital	\$12,500.00
11/7/2023	EN OD Capital	\$12,500.00
11/14/2023	EN OD Capital	\$12,500.00
11/17/2023	EN OD Capital	\$12,500.00
11/21/2023	EN OD Capital	\$12,500.00
11/28/2023	EN OD Capital	\$12,500.00
12/5/2023	EN OD Capital	\$12,500.00
12/12/2023	EN OD Capital	\$12,500.00
12/19/2023	EN OD Capital	\$12,500.00
12/26/2023	EN OD Capital	\$12,500.00
12/29/2023	EN OD Capital	\$12,500.00
1/2/2024	EN OD Capital	\$12,500.00
1/5/2024	EN OD Capital	\$12,500.00
1/9/2024	EN OD Capital	\$12,500.00
1/16/2024	EN OD Capital	\$12,500.00
1/22/2024	EN OD Capital	\$9,500.00
1/25/2024	EN OD Capital	\$9,500.00
1/29/2024	EN OD Capital	\$12,500.00
2/1/2024	EN OD Capital	\$2,000.00
2/5/2024	EN OD Capital	\$12,500.00
2/12/2024	EN OD Capital	\$12,500.00
<b><u>TOTAL</u></b>		<b><u>\$246,000.00</u></b>

<b><u>Transfers to Parkside</u></b>		
<b><u>Date</u></b>	<b><u>Transferee</u></b>	<b><u>Amount</u></b>
11/28/2023	Parkside Funding	\$17,375.00
12/5/2023	Parkside Funding	\$17,375.00
12/12/2023	Parkside Funding	\$17,375.00
12/27/2023	Parkside Funding	\$17,375.00
1/2/2024	Parkside Funding	\$17,375.00
1/11/2024	Parkside Funding	\$17,375.00
1/24/2024	Parkside Funding	\$9,500.00
1/31/2024	Parkside Funding	\$9,500.00
2/2/2024	Parkside Funding	\$9,500.00
2/6/2024	Parkside Funding	\$9,500.00
	<b><u>TOTAL</u></b>	<b><u>\$142,250.00</u></b>