

Financing's Jackalope:
**UNDERSTANDING AND ADDRESSING
MERCHANT CASH ADVANCES
IN BANKRUPTCY**

**Western District of Virginia's
Annual Bankruptcy Practice Seminar**

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I. Introduction to a Merchant Cash Advance (“MCA”).

A. Overview.

1. What is an MCA?

- a. *According to Wikipedia:* A merchant cash advance (MCA) is a type of business funding in which the funder is paid by taking a percentage of the businesses’ revenues or sale proceeds. The term Merchant Cash Advance is commonly used to describe a variety of small business financing options characterized by purchasing future sales revenue in exchange for short payment terms (generally under 24 months) and small regular payments (typically paid each business day) as opposed to the larger monthly payments and longer payment terms associated with traditional bank loans.

2. History and Current Use of MCAs.

B. MCA Example (from www.nerdwallet.com -- [What Is a Merchant Cash Advance \(MCA\)? - NerdWallet](#)).

Calculate the cost of a merchant cash advance

To calculate the cost of a merchant cash advance, multiply the amount received by the factor rate. For example, if you are approved for an advance of \$50,000 at a factor rate of 1.4, your total repayment amount will be \$70,000, which means you'll be paying \$20,000 in fees.

But to understand the total borrowing cost of a merchant cash advance, you should always calculate the factor rate and additional fees into an APR. This will also help you determine how long it will take to repay the advance in full.

Let's break down what this MCA looks like if the provider deducted 10% of your monthly credit card sales until you repaid the full \$70,000 based on different revenue amounts:

MCA details	<ul style="list-style-type: none">• Advance amount: \$50,000.• Factor rate: 1.4.• Repayment rate: 10% of monthly credit card sales.
If your monthly credit card sales are \$100,000	<ul style="list-style-type: none">• Payment amount: \$333 daily.• Repayment term: Seven months.• Total repaid: \$70,000.• Estimated APR: 125%.
If your monthly credit card sales are \$70,000	<ul style="list-style-type: none">• Payment amount: \$233 daily.• Repayment term: 10 months.• Total repaid: \$70,000.• Estimated APR: 87.3%.

C. Pros & Cons as a Financing Tool (from www.nerdwallet.com -- [What Is a Merchant Cash Advance \(MCA\)? - NerdWallet](#)).

✓ **Fast to fund.** You can apply for a merchant cash advance online — and get approved quickly — usually with minimal documentation required. Many MCA providers offer [funding within 24 hours](#).

✓ **Flexible requirements.** Merchant cash advance companies may work with businesses facing credit challenges, startups and those with previous financial difficulties. Plus, MCAs don't typically require physical [collateral](#). Providers will likely consider traditional [business loan requirements](#) but may focus on your debit and credit card transactions or business revenue. Of course, the better your qualifications, the better factor rate you can receive.

✓ **Repayment based on your sales.** Unlike other types of business financing, your repayment schedule is based on a fixed percentage of your sales, so payments adjust based on how well your business is performing.

Cons

✗ **Expensive.** Compared with other types of business loans, like online term loans or [business lines of credit](#), whose APRs typically range from 9% to 99%, MCAs are one of the most expensive forms of financing. APRs on merchant cash advances can reach 350%, depending on factors such as the lender, size of the advance, fees, time it takes to repay and business revenue. Plus, unlike traditional interest rates, factor rates can make it more difficult to determine exactly how much an MCA will cost you.

✗ **Frequent repayment and debt cycle danger.** Merchant cash advances are repaid daily (sometimes weekly) and payments are deducted directly from your incoming sales, which can seriously impact your cash flow. The high cost, coupled with frequent repayments, can easily trap you in a cycle of debt that's hard to break, especially if one advance is not enough and you can't qualify for other types of financing.

✗ **No benefit to repaying early.** Since you have to repay a fixed amount of fees no matter what, you can't save on interest by repaying early, unlike traditional amortizing loans.

✗ **Confusing contracts.** Merchant cash advance contracts can be confusing, especially considering the nature of factor rates and repayment schedules that are based on percentages of your daily sales. MCA providers also don't typically provide APRs in their agreements, which makes it difficult to compare these products with other types of financing. Although some states have moved to force transparency among MCA companies in recent years, providers have historically been criticized for agreements that are unclear and hard to understand.

✗ **No federal regulation.** Unlike traditional loans, merchant cash advances, which are structured as commercial transactions, are not subject to federal regulation. Instead, MCAs are regulated by the Uniform Commercial Code in each state. This limited regulation has often led businesses to fall victim to predatory companies that use misleading marketing and sales tactics, offering instant approvals and funding.

D. What makes an MCA an MCA?

1. Distinction from loans.
2. Indefinite repayment term.
3. Reconciliation provision.
4. No true interest component.
5. Identification of the “specific percentage.”

E. What is difference between factors and MCA companies?

1. Factors purchase specific receivables at a discount.
2. Factors also traditionally assess a lower premium and have far more limited recourse should a delineated receivable not be paid.
3. MCAs purchase all “future receipts,” including those which may not yet exist.

II. True Sale or Disguised Loan?

A. MCA transaction recharacterized as a loan. *CapCall LLC v. Foster (In re Shoot the Moon LLC)*, 635 B.R. 797 (Bankr. D. Mont. 2021) (Judge Whitman Holt).

1. Facts:
 - a. The Shoot the Moon entities and CapCall entered into eighteen financing transactions.
 - b. The parties detailed the terms in written Merchant Agreements and associated documents (including confessions of judgment, personal guaranties by Shoot the Moon’s principals, and UCC-1 financing statements).
 - c. The economic core of these transactions was that CapCall provided the Shoot the Moon entities with immediate cash (and hence liquidity to operate) upon closing. In exchange, CapCall received a portion of future receivables generated through the restaurant operations.
 - d. The amounts promised to CapCall substantially exceeded the amount of cash CapCall paid, which created possible [**5] profit for CapCall and represented the cost to the Shoot the Moon entities of obtaining financing in this fashion.
 - e. Return transfers to CapCall were effected via fixed daily ACH debits (in the “Specified Daily Amount” per each agreement) against bank accounts.
 - f. The debits continued regarding a given agreement until CapCall received a total “Receipts Purchased Amount” set forth in that agreement.

- g. Once Shoot the Moon was in bankruptcy, CapCall commenced an adversary proceeding seeking declaratory relief that it owns the remaining balance deposited in the segregated account, a judgment against the Trustee for converting postpetition receipts, and other miscellaneous fees, costs, and interest components. The Trustee counterclaimed seeking declaratory relief about which state's law applies to the transactions and that the transactions are disguised loans rather than sales, and ruling that it held unencumbered title to the segregated account.

2. Holding: Court concluded the transaction was a loan.

3. Factors:

- a. whether the buyer has a right of recourse against the seller;
- b. whether the seller continues to service the accounts and commingles receipts with its operating funds;
- c. whether there was an independent investigation by the buyer of the account debtor;
- d. whether the seller has a right to excess collections;
- e. whether the seller retains an option to repurchase accounts;
- f. whether the buyer can unilaterally alter the pricing terms;
- g. whether the seller has the absolute power to alter or compromise the terms of the underlying asset; and
- h. the language of the agreement and the conduct of the parties.

B. MCA transaction found to be a true sale of future accounts receivables. *In re R&J Pizza Corp.*, 2014 Bankr. LEXIS 5461 (Bankr. E.D.N.Y. Oct. 14, 2014)

1. Facts and Holdings:

- a. Credit card receivables purchased by the creditor qualified as "accounts" within the meaning of N.Y. U.C.C. Law § 9-102(a)(2);
- b. Debtor had no interest in purchased Accounts and thus the bankruptcy estate similarly had no interest in the purchased Accounts;
- c. An examination of the Purchase Agreements reflected that consideration of the factors identified in the case law established that the transaction between the parties was a true sale and that debtor retained no rights in the purchased Accounts;
- d. Debtor had no right to control the processing of its credit card receivables and no right to commingle the credit card receivables with those credit card receivables that were purchased by the creditor;
- e. The Purchase Agreements represented a true sale and not a disguised financing arrangement;

- f. Debtor was obligated to turnover the purchased Accounts to the creditor.

2. Factors:

- a. All of the underlying documents consistently referred to the transaction as a “purchase” and “sale” and to the parties as “Buyer” and “Seller,” and did not include any provision allowing for interest to be paid;
- b. The agreement did not provide for recourse against the business for noncollection and the personal guarantee was effective only under a limited set of circumstances;
- c. The debtor had no right to process or repurchase the accounts, and no ability to commingle proceeds; and
- d. MCC had no right to alter the price or terms of the purchase.

C. Fourth Circuit.

- 1. Fourth Circuit has found purported “sale of receivables” to be disguised loan.
 - a. *Nickey Gregory Co., LLC v. AgriCap, LLC*, 597 F.3d 591, 601–03 (4th Cir. 2010) (finding purported “sale of receivables” to be disguised loan when certain parts of documents described agreement as financing, when agreement shifted risk of account debtor insolvency to “seller,” when “account purchaser” filed UCC statement, when “account purchaser” was secured by more than just receivables, when “seller” was prohibited from paying other debts before “account purchaser,” when a full personal guarantee was required).
 - b. The buyer, who purchased produce from the sellers on credit, obtained funds from the financing company, using its accounts receivable as collateral. The buyer later filed for Chapter 7 bankruptcy. On appeal, the court held that under 7 U.S.C.S. § 499e(c), purchased perishable agricultural commodities and their proceeds had to be maintained in a trust until sellers were paid, and failure to do so was a violation of 7 U.S.C.S. § 499b. Sale of trust assets was permitted, but if the assets were merely transferred as collateral and not converted to cash, they remained trust assets, and the transferee’s interest was subject to the superior claim of the seller. The district court found that the arrangement between the buyer and the financing company was a loan, not a sale. They did not have a factoring agreement because the risk of noncollection remained with the buyer, and several contract documents referred to the “debt” and the security interest in the accounts receivable.

The financing company did not have a bona fide purchaser defense because it had notice of the trust obligations, and it was not a purchaser of the accounts for value because it never owned them.

III. Issues with MCAs in and out of Bankruptcy.

A. Property Law Issues with MCAs.

1. Can you sell (and transfer property rights in) something that doesn't exist yet?
2. An assignee of rights under a contract stands in the shoes of the assignor and has no greater rights against the account debtor than did the assignor. *In re Concrete Structures, Inc.*, 23 B.R. 605, 614 (Bankr. E.D.Va Sept 30, 1982), citing *Farmers Acceptance Corporation v. DeLozier*, 178 Colo. 291, 496 P.2d 1016, 1018 (1972).
3. The Restatement of Contracts: "A contract to make a future assignment of a right, or to transfer proceeds to be received in the future by the promisor, is not an assignment." RESTATEMENT (SECOND) OF CONTRACTS § 330 (1981).
4. MCA documents often assert both assignment of future receivables and rights as a secured lender.

IV. Issues with MCAs in Bankruptcy

A. General Observations

1. Ghosted. Many MCA companies ignore debtors once in bankruptcy.
2. Unpredictable. MCA companies are not consistent in their approach or the positions they take.
3. If "liens" – must be addressed or risk passing through bankruptcy unaffected, regardless of MCA participation.
4. Is meaningful communication possible? How to contact (for negotiation) / How to serve (for contested matter)?

B. Threshold determination necessary: Loan or Sale?

1. If a Sale:
 - a. The "sold" account is not property of the estate.
 - b. Cash collateral problems - Debtor cannot use "cash."
 - c. No automatic stay. No authority of the Court over nonestate property.

2. If a Loan:

- a. Debtor may treat as a secured lender (subject to perfection issues, if any).
- b. Modification of the “effective interest rate.”
- c. Modification of the secured claim generally / valuation issues.

C. Code’s treatment of postpetition receivables.

- a. 11 U.S.C. § 552(a) Except as provided in subsection (b) of this section, property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.
- b. Its purpose is to prevent a creditor’s pre-petition security interest in “after-acquired property” (such as a “floating lien”) from attaching to property acquired by the estate or debtor-in-possession *after* the filing of a bankruptcy petition. *See* H.R. Rep. No. 595, 95th Cong., 1st Sess. 376-77 (1977) *reprinted in* 1978 U.S. Code Cong. & Admin. News 5963, 6332-33 (“House Report”); S. Rep. No. 989, 95th Cong., 2d Sess. 91 (1978), *reprinted in* 1978 U.S. Code Cong. & Admin. News 5787, 5877.
- c. Under § 552, are accounts receivable generated post-petition are subject to the claimed interest of an MCA? By their very nature, the MCA agreement purports to buy receivables not yet in existence.

D. How/when to get the issue before the Court?

1. Cash collateral motion.

- a. How do MCA Companies approach cash collateral?
- b. How does the MCA company’s “ownership” of future receivables or receipts factor into cash collateral?
- c. What if there are competing interstests? Accounts receivable may have already been pledged to a conventional/non-MCA lender so that the accounts receivable may be fully encumbered to a prior perfected third-party lender.

2. Motion to impose stay.

- a. Often necessary to address efforts by MCA to assert control over the receivables.

3. Motion to determine secured status.

- a. Fed. R. Bankr. P. 3012(a) provides, in part, that, “[o]n request by a party in interest and after notice—to the holder of the claim and any other entity the court designates— and a hearing, the court may determine: (1) the amount of a secured claim under § 506(a) of the Code....”
 - b. Such request may be made, with certain exceptions, by motion in accordance with Fed. R. Bankr. P. 3012(b).
 - c. Section 506(a) states, in relevant part, that “[a]n allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor’s interest or the amount so subject to setoff is less than the amount of such allowed claim.”
4. Motion to void lien.
 5. Claim objection.
 6. Declaratory judgment action.
 7. Creditor’s motion and/or objection.

E. Other Chapter 11 Issues.

1. Eligibility - Debt Limits. *In re Heart Heating & Cooling, LLC*, 2024 Bankr. LEXIS 689 (Bankr. D. Colo. March 21, 2024).
 - a. Debtor checked the "contingent" and/or "unliquidated" boxes for a number of claims that the Debtor characterized as "merchant cash advance" "loans."
 - b. “The Debtor defaulted in its obligations well before the Petition Date by, among other things, diverting all its receivables into a new business checking account . . . By diverting its receivables, the Debtor made it impossible for [MCA] to collect such receivables. So, there is nothing contingent about it because the events giving rise to the [MCA] obligations occurred prior to the Petition Date.”
 - c. The MCA debt is liquidated because the process for determining the claim is fixed, certain, or otherwise determinable by a specific standard: the MCA Agreements.

2. Executory Contracts.

- a. Is an MCA agreement an executory contract under 11 U.S.C. § 365?

F. Avoidance Actions.

1. Constructively Fraudulent Transfers.

- a. Some MCA advances represent a large difference between the amount advanced relative to the amount received, so that there might be a claim that the sale of accounts receivable/income stream was not for “reasonably equivalent value,” making it constructively fraudulent.
- b. The focus of at least two courts have been whether the amount paid to the MCA was reasonably equivalent to the amount that the MCA advanced to the merchant rather than on the amount of receivables/income stream sold to the MCA.
 - a. *GMI Group, Inc. v. Unique Funding Solutions, LLC (In re GMI Grp., Inc.)*, 606 B.R. 467, 495 (Bankr. N.D. Ga. 2019).
 - b. *GMI Group, Inc. v. Reliable Fast Cash, LLC (In re GMI Grp., Inc.)*, 2019 WL 3774117 (Bankr. N.D. Ga. 2019).

2. Preferential Transfers.

- a. Preferences appear to be much harder to successfully litigate than constructively fraudulent conveyances because one element of a preferential transfer is that the transfer must have been “for or on account of an antecedent debt.”
- b. As is the case with most MCA analyses, whether the transaction involved is a loan, with resulting debt, or a sale of accounts receivable/income stream, goes a long way in determining whether or not payments made as a result of the transaction could be clawed back as preferences.
- c. And, if the transaction is characterized as a sale and not a loan or a secured transaction, one of the fundamental elements of a preferential transfer cause of action is lacking.
- d. However, if the transaction is characterized as a loan or a secured transaction, typical preferential transfer analysis will then be appropriate, especially if there is a prior, properly perfected security interest, to a third party, in the debtor’s accounts receivable.

G. Discharge/Dischargeability.

1. SubV v. Traditional Chapter 11 Cases.

- a. Discharge litigation in traditional Chapter 11 cases does not occur because 11 U.S.C. § 523 was limited in its coverage to individuals, and not to corporations.
- b. However, the statutory language of Subchapter V with respect to discharges (occasionally described as “awkward”) leaves open the issue of whether or not discharge litigation could be brought against a corporate debtor in a Subchapter V case.
- c. Substantially all of the lower courts considering the issue ruled that discharges apply only to individual cases and not to corporate Subchapter V cases.

2. *Cantwell-Cleary*.

- a. The Fourth Circuit, however, in *Cantwell-Cleary Co., Inc. v. Cleary Packaging, LLC (In re Clear Packaging, LLC)*, 36 F.4th 509 (4th Cir. 2022), ruled to the contrary and found that “[w]hile the question is a close one,” it disagreed with the trial court and ruled that all Subchapter V debtors are subject to the discharge limitations described in 11 U.S.C. § 523(a) and not just individual Subchapter V debtors. *Id.* at 512.
- b. The court dissected the applicable statutory sections and found that “any” tension between the language of § 523(a) addressing individual debtors and the language of § 1192(2) addressing both individual and corporate debtors, that the more specific provisions should govern over the general.
- c. So, while § 523(a) refers to a number of discharge provisions of the Bankruptcy Code, § 1192(2) is more specific, and addresses only Subchapter V discharges.
- d. Again, while noticing the language might be “clumsy,” the court also found that the abrogation of the absolute priority rule in Subchapter V was a bargain for “give” that justified, from an equitable standpoint, including corporations within the coverage of § 523(a) of the Bankruptcy Code.

- e. The Fifth Circuit agreed with the Fourth Circuit in *Avion Funding, L.L.C. v. GFS Indus., L.L.C. (In the Matter of GFS Indus., L.L.C.)*, 99 F.4th 223 (5th Cir. 2024).

3. Individual / Guarantor Issues.

- a. Section 523(a)(2)(4) and (6).
- b. Stacking.
- c. Other covenants.
- d. Trust/fund/embezzlement.
- e. *In re Daddosio*, 2023 WL 5355265 (Bankr. N.D. Ill. Aug. 21, 2023). Debt nondischargeable under § 523(a)(4) and (a)(6) when debtor sold assets covered by MCA company's blanket lien without providing proceeds to MCA company.

H. Recent Enforcement Actions.

1. *People v. Richmond Capital Group LLC*, 195 N.Y.S.3d 637 (N.Y. Sup. Ct. Sept. 15, 2023).
 - a. Special proceeding brought by the New York Attorney General against various MCA lenders (collectively defined as the "Predatory Lenders" in the court's opinion).
 - b. The proceeding was brought pursuant to New York Executive Law, which allows for injunctive relief, restitution, and damages where a person or business engages in repeated or persistent fraud or illegality.
 - c. The court reviewed 140 sample MCA agreements from the Predatory Lenders, determined them to be loans instead of true sales, and that such loans were usurious.
 - d. The court found the Predatory Lenders had committed fraud and thus the MCAs were void, and that the loans were procedurally and substantively unconscionable and were thus void.
2. *The State of New Jersey v. Yellowstone Capital LLC et al.*¹
 - a. In December 2022, the Attorney General of New Jersey announced a \$27.4 million settlement with a private equity firm, its parent company, and six other associated companies (collectively, "Respondents") related to the violation of the New Jersey Consumer Fraud Act ("CFA").
 - b. The Respondents, like many MCA companies, have targeted small businesses to enter into lending agreements disguised to purchase future receivables.
 - c. Under the order, the Respondents are enjoined from engaging in any practices that might violate the CFA, and the Respondents are

¹ Because the case was resolved through settlement and a consent order, it does not have a traditional case citation.

required to pay all outstanding balances and any other associated fees.

V. Virginia Specific Issues.

A. In Virginia, a “provider” (i.e. purchaser/lender) engaged in “sales based financing” to a recipient whose principal place of business is in the Commonwealth of Virginia must be registered with the Bureau of Financial Institutions, a division of the Virginia State Corporation Commission if the transaction constitutes “sales-based financing” as defined in Section 6.2-2228 of the Virginia Code.

1. “‘Sales-based financing’ means a transaction that is repaid by the recipient to the provider, over time, as a percentage of sales or revenue, in which the payment amount may increase or decrease according to the volume of sales made or revenue received by the recipient. Sales-based financing also includes a true-up mechanism where the financing is repaid as a fixed payment but provides for a reconciliation process that adjusts the payment to an amount that is a percentage of sales or revenue.”

B. If the transaction meets the definition of sales-based financing, certain disclosures are required to be made pursuant to Section 6.2-2231.

C. Virginia Code Section 6.2-2234 provides potentially significant changes to the terms of an MCA, including: (1) any cause of action arising under the MCA shall be brought in Virginia, and any choice of forum provision providing for a forum outside of Virginia is unenforceable; (2) where the MCA contains an arbitration provision, the MCA cannot provide for an in-person arbitration outside of the jurisdiction where the recipient’s principal place of business is located, the arbitration procedures must comply with the Virginia Code, the United States Arbitration Act (P.L. 68-401), and any applicable rules of arbitration, and the purchaser/lender “shall pay any arbitrators’ expenses or fees or any other expenses or administrative fees incurred in the conduct of the arbitration proceedings”, and (3) no sales-based financing contract shall contain any confession of judgment provision or similar provision, and any such provision shall be unenforceable.”

VI. Checklist for MCA Reviews.²

A. WHAT IS THE NATURE OF THE AGREEMENT: A BONA FIDE SALE OR A LOAN?

1. Is the lender's purchase based on the creditworthiness of account debtors or the cash flow of the borrower?
2. Does the language of the agreement create an absolute obligation to pay the purchase price?
3. Does the seller have a right to excess collections?
4. Does the seller retain an option to repurchase the accounts?
5. Can the buyer unilaterally alter the pricing terms?
6. Does the seller have the absolute power to alter or compromise the terms of the underlying assets?
7. What is the direct benefit to the seller? Indirect benefit?

B. WHAT ARE THE TERMS OF THE AGREEMENT?

1. Origination Fee.
2. Holdback.
3. Payment—when? how much?
4. Who collects receivables?
5. Security interest? In what?
6. Is there a forum selection clause in the agreement? If so, is it mandatory, permissive or ambiguous?
7. Is there a choice of law provision in the agreement? Is it substantive v procedural?
8. Which states law most benefits the client?

C. IS LENDER HOLDING AN INTEREST IN PROPERTY OF THE ESTATE?

1. Is there a UCC-1?
2. Blanket or specific lien to receivables purchased?
3. Security interest in all accounts or specific accounts or a percentage of accounts?
4. Date of filing in relation to other UCC-1s and in particular to traditional secured lenders

D. OTHER MCA'S WITH THE SAME DEBTOR? / STACKING?

1. Any potential §523 issues for client / principal?
2. Do you have copies of the applications?
3. Are the MCA's related (if multiple)?
4. Did the client disclose all MCAs?

² Based on the checklist included with the article by Barron, Barbara M. and Sather, Stephen W. (2019 July/August/September). Why MCA? Adding Havoc to Chaos. *Commercial Law World*, 8.

E. IS THE MCA REGISTERED WITH VIRGINIA?

1. Sales-based Financing provider registration required.

F. IS THE CREDITOR A CREDITOR FOR PURPOSES OF AVOIDABLE PREFERENCES?

1. Who benefited?
2. Antecedent debt.
3. How much received in comparison to hypothetical chapter 7?
4. Transfers made in ordinary course of business?

VII. Attachments.

- A. Dischargeability Complaint / Allegations.
- B. Example Motion Re Enforcing Stay / Testing Characterization of Transaction.
- C. Special Notice of First Day Motions example.

EXHIBIT

A

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

IN RE:

[REDACTED]

Debtor.

Case No.: [REDACTED]

Chapter 13

[REDACTED], INC.,
as servicing agent for [REDACTED]
[REDACTED],

Adversary Proceeding No. _____

Plaintiff,

v.

[REDACTED],

Defendant.

**COMPLAINT TO DETERMINE NONDISCHARGEABILITY OF
DEBT OWED TO [REDACTED], INC.**

[REDACTED], Inc., as servicing provider for [REDACTED]
("Colonial" or "Plaintiff"), by its undersigned attorneys, files this Complaint under Section 523
of Title 11 of the United States Code (the "Bankruptcy Code") objecting to the dischargeability
of a pre-petition debt owed by Defendant [REDACTED], Debtor herein ("Debtor"),
and in support thereof alleges as follows:

JURISDICTION AND VENUE

1. This is a core proceeding under 28 U.S.C. §157(b)(2)(I) and is brought pursuant

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Telephone
[REDACTED] Facsimile
thennigan@nhnlawfirm.com

to 11 U.S.C. § 523(a) and Rule 4007 of the Federal Rules of Bankruptcy Procedure.

2. Subject matter jurisdiction is conferred upon this Court by 28 U.S.C. §§ 157, 1334 and 523.

3. Venue over the instant action properly lies in this Court pursuant to 28 U.S.C. §1409(a) because this Complaint arises in Debtor's Chapter 13 bankruptcy case.

4. If the Court should find that this is not a core proceeding, Colonial consents to entry of final judgment by the Court.

5. This Adversary Proceeding relates to *In re* [REDACTED], Case No. [REDACTED] (Bankr. WDVA) (Chapter 13), now pending in this Court (the "Bankruptcy Case").

THE PARTIES

6. Plaintiff, Colonial, is and was, at all relevant times, a Virginia Corporation.

7. At all times relevant to the instant Complaint Colonial's principal place of business was located at 211-D Bulifants Blvd., Williamsburg, Virginia 23188. Colonial's principal place of business has since moved to 2500 Wilson Blvd. Suite 350, Arlington, VA 22201.

8. Upon information and belief, Debtor is an individual residing in the Commonwealth of Virginia at [REDACTED] (Warren County).

9. Upon information and belief, Debtor is and was at all relevant times the owner and guarantor of [REDACTED] ("Diversified").

10. Colonial is scheduled as an unsecured creditor in Debtor's bankruptcy Schedules; however, Colonial is a secured creditor based on a judgment lien created by a foreign judgment which was docketed in the Warren County Circuit Court on February 20,

[REDACTED], Esq. VSB # [REDACTED]
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2018 as instrument JD180000124 (the “Judgment”). A copy of the Judgment is attached hereto as “Exhibit A”.

11. Colonial’s claim against Debtor, in the amount of at least One Hundred Sixty-Two Thousand, Two Hundred Sixty Dollars and 40/100 (\$162,260.40) (plus additional costs, fees, expenses and interest), pursuant to a certain personal guarantee dated August 22, 2016 (the “Guaranty”) of the performance of Diversified’s obligations under a Revenue Based Factoring Agreement dated August 22, 2016 (the “Agreement”) executed by Diversified and Debtor as more fully detailed below. A copy of the Agreement, including the Guaranty is attached hereto as “Exhibit B” and is incorporated by reference herein in full.

GENERAL ALLEGATIONS

12. Debtor filed for bankruptcy under Chapter 13 of the Bankruptcy Code on April 17, 2018 (the “Petition Date”).

13. Prior to the Petition Date, Diversified filed a Chapter 11 bankruptcy on April 13, 2018 (the “Chapter 11”).

14. Debtor signed the Chapter 11 petition on behalf of Diversified, as well as all statements and schedules filed in the Chapter 11.

15. Pursuant to docket entry number 5 in the Bankruptcy Case the deadline to object to discharge was established to be August 13, 2018.

16. Accordingly, this Complaint is timely filed.

SPECIFIC FACTUAL ALLEGATIONS

17. On or about August 18, 2016, Debtor executed a Funding Application (the “Application”) as part of the application process for the funding under the Agreement. A true and correct copy of the Application is attached hereto as “Exhibit C”.

18. In the Application, a signed, written statement, Debtor was asked if Diversified

[REDACTED], Esq. VSB # [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Telephone

[REDACTED] Facsimile

[REDACTED]

had “any open MCA or loan accts” and to list any such accounts and their balances. (The abbreviation “MCA” stands for Merchant Cash Advance.)

19. In the Application, Debtor indicated that Diversified had two (2) such accounts, one with Can Capital and one with LG Funding.

20. By way of the Agreement (Exhibit B), Debtor represented, warranted and covenanted the following in writing:

II. REPRESENTATIONS, WARRANTIES AND COVENANTS. Merchant represents, warrants and covenants that as of this date and during the term of this Agreement:

2.1 Financial Condition and Financial Information. Its bank and financial statements, copies of which have been furnished to FUNDER, and future statements which will be furnished hereafter at the direction of FUNDER, fairly represent the financial condition of Merchant at such dates, and since those dates there has been no material changes, financial or otherwise, in such condition, operation or ownership of Merchant. Merchant has a continuing, affirmative obligation to advise FUNDER of any material change in its financial condition, operation or ownership. ...

...

2.9 No Bankruptcy or Insolvency. As of the date of this Agreement, Merchant represents that it is not Insolvent and 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 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 and marketable title to all Receipts, 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

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contemplated with or adverse to the interest of FUNDER.

2.12 Business Purpose. Merchant is a valid business in good standing under the laws of the jurisdictions in which it is organized and/or operates, and Merchant is entering into this Agreement for business purposes and not as a consumer for personal, family or household purposes.

21. The Agreement also included the following notification in bold text “**ANY MISREPRESENTATION MADE BY MERCHANT OR OWNER IN CONNECTION WITH THIS AGREEMENT MAY CONSTITUTE A SEPARATE CAUSE OF ACTION FOR FRAUD OR INTENTIONAL FRAUDULENT INDUCEMENT TO OBTAIN FINANCING.**”

22. The Agreement included a security interest in “all personal property of [Diversified], including all accounts, chattel paper, cash, deposits, accounts, documents, equipment, general intangibles, investments, inventory, or investment paper”.

23. Pursuant to the security agreement, Plaintiff was to have a first priority security interest in Diversified’s assets.

24. In addition to guaranteeing that Diversified’s receipts were unencumbered (paragraph 2.11), Diversified and Debtor also agreed that they would “not create, incur, assume, or permit to exist, directly or indirectly, any additional cash advances, loans, lien, or other encumbrance on or with respect to any of the Collateral or Additional Collateral, as applicable without written permission of FUNDER.”

25. During a recorded phone call conducted as the last component of due diligence upon which Plaintiff materially relied to determine to provide funding under the Agreement (the “Funding Call”) Debtor was asked if Diversified had “a balance with any other merchant cash advance provider.”

26. In response, Debtor indicated that there was a balance with LG Funding, but

[REDACTED], Esq. VSB # [REDACTED]

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did not disclose any other balances or accounts.

27. Debtor entered into the Agreement in his official capacity on behalf of Diversified, and personally as a guarantor, agreeing to be bound by all terms of the Agreement.

28. Contemporaneous with the execution of the Agreement Debtor also executed a "Personal Guaranty of Performance" whereby he personally guaranteed that he would not take any action, nor permit Diversified to take any action that would breach the Agreement.

29. In reliance on the representations made by Diversified and Debtor in the Application, Funding Call and Agreement, Plaintiff agreed to enter into the Agreement with Diversified and Debtor.

30. The Agreement provides for the purchase and sale of Diversified's future receivables. Specifically, in exchange for an upfront advance of Ninety-Eight Thousand Dollars (\$98,000.00) (the "Funds") Coconut Funding and Colonial would be entitled to Diversified's future receivables in the amount of One Hundred Thirty-Nine Thousand, One Hundred Sixty Dollars (\$139,160.00) (the "Purchased Receivables").

31. Under the terms of the Agreement Diversified and Debtor were to use only one (1) bank account approved by Colonial (the "Agreed Account") to deposit Diversified's receivables. Diversified and Debtor were also to irrevocably authorized Colonial to collect the Purchased Receivables by withdrawing ACH (Automatic Clearing House) payments from the Agreed Account in the daily amount of Five Hundred Seventy-Five Dollars (\$575.00).

32. On or about August 29, 2016, Colonial advanced the Funds to Diversified, less deductions for any fees and expenses required under the Agreement.

33. As a condition of funding required by Plaintiff, Diversified and Debtor used a portion of the Funds to pay off their balance with LG Funding. Therefore, when the Funds

[REDACTED], Esq. VSB # [REDACTED]

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were advanced Fifty-Three Thousand, Seven Hundred Seventeen Dollars (\$53,717.00) of the Funds were paid directly to LG Funding and the remainder of the funding was remitted to Diversified.

34. Diversified's first ACH payment was drafted on or about August 30, 2016.

35. Before making any further payments Diversified submitted a request to substitute a different bank account as the Agreed Account.

36. The next five (5) payments were drafted from the new Agreed Account from August 31, 2016 through September 7, 2016, bringing the total amount paid to Three Thousand, Three Hundred Seventy-Five Dollars (\$3,375.00).

37. Each of the next three (3) payments was rejected and returned with an indication that the bank account had been closed.

38. As a result of these three (3) failed transactions Colonial charged a fee of Fifty Dollars (\$50.00) pursuant to the terms of Appendix A of the Agreement for a total of One Hundred Fifty Dollars (\$150.00).

39. No further payments have been made to Colonial by Diversified or Debtor since the September 7, 2016.

40. Upon learning of the returned payments Colonial tried to reach Diversified and Debtor by telephone and in writing. In fact, from September 13, 2016 through December 15, 2016 Colonial attempted to reach Diversified and/or Debtor by phone almost every business day.

41. Despite these efforts Diversified and Debtor refused to discuss the breach with Colonial. Instead, each time Colonial called Diversified and Debtor either refused to answer, or hung up immediately.

42. On the few occasions Colonial's call was answered, an employee of

[REDACTED], Esq. VSB # [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

Diversified expressly would deny that Diversified had any relationship, account or balance with Colonial.

43. In December of 2016, after months of evasive behavior by Diversified and Debtor, Colonial filed a lawsuit (the “Lawsuit”) against Diversified and Debtor.

44. The Lawsuit was filed in the Supreme Court of the State of New York, County of New York, pursuant to paragraph 4.5 of the Agreement which specifies jurisdiction and venue in New York.

45. On July 5, 2017 Colonial was granted judgment against Diversified and Debtor in the Lawsuit in the amount of One Hundred Fifty-One Thousand, Six Hundred Seventy-Six Dollars and 32/100 (\$151,676.32). (See attached Exhibit A.)

46. As indicated in Colonial’s Proof of Claim (Claim 16, filed on July 18, 2018), the balance owed as of the Petition Date is One Hundred Sixty-Two Thousand, Two Hundred Sixty Dollars and 40/100 (\$162,260.40).

47. As stated above, at the time the Agreement was being applied for and negotiated Debtor represented that Diversified had only one or two balances with other merchant cash advance companies; however, Schedule D filed in Diversified’s Chapter 11 (attached hereto as “Exhibit D”) reveals these representations were false.

48. Specifically, Diversified’s Schedule D reveals that at the time the time Debtor made these false representations Diversified had balances with at least three (3) other merchant cash advance companies:

- a. Montville Funding, incurred in 2011
- b. Small Business Term Loans, Inc., incurred in 2012, and
- c. World Business Lenders, incurred in 2012

49. Additionally, despite Debtor’s representations that Diversified’s receivables

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were unencumbered and that Diversified and Debtor would not create, nor allow to exist, any liens adverse to Colonial's first priority security interest, Diversified's Schedule D reveals that there were at least five (5) creditors with blanket liens on Diversified's assets at the time these false representations were made:

- a. Lennox Industries, Inc., incurred in 2012
- b. Montville Funding, incurred in 2011
- c. Small Business Team Loans, Inc., incurred in 2012
- d. One "Unknown Creditor" with a UCC statement filed in 2014, and
- e. World Business Lenders, incurred in 2012

50. Upon information and belief, at the time the Agreement was being applied for and negotiated, both Diversified and Debtor were aware of the above referenced, pre-existing balances and liens, but knowingly and intentionally withheld this information.

51. Upon information and belief, at the time the Agreement was being applied for and negotiated, Diversified's financial condition was such that the sum of its debts was greater than all of its property at fair valuation exclusive of property transferred, concealed, or removed with intent to hinder, delay, or defraud creditors and exclusive of property exempt from a bankruptcy estate under 11 U.S.C. §522.

52. Therefore, despite Debtor's representations to the contrary, Diversified was in fact insolvent at the time the Agreement was being applied for and negotiated.

53. Upon information and belief, at the time the Agreement was being applied for and negotiated, Diversified's financial condition was also such that it was not able to pay its debts as they came due.

54. Upon information and belief, the documents provided to Plaintiff by Diversified and Debtor did not accurately reflect Diversified's financial condition at the time

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the Agreement was being applied for and negotiated.

55. Upon information and belief, at the time the Agreement was being applied for and negotiated Diversified and Debtor did not intend to perform their obligations under the Agreement. Specifically, Diversified did not intend to use only the Agreed Account for collection and remittance of the Purchased Receivables. Instead Diversified and the Debtor intended to divert the Funds and the Purchased Receivables away from the Agreed Account and to withhold payment due and owing to Plaintiff under the Agreement. Moreover, Debtor did not actually intend to guaranty the Agreement.

56. Despite Diversified and Debtor's refusal to remit the Purchased Receivables, Diversified continued to operate and to have receivables after breaching the Agreement.

57. Despite defaulting under the Agreement after only six (6) payments and despite demand on Diversified and Debtor by Colonial, Diversified and Debtor have refused to remit the Purchased Receivables in accordance with the terms of the Agreement, and Debtor has refused to honor the Guaranty.

58. Upon information and belief, all of the acts and omissions that constitute a breach or default of the Agreement were preformed or omitted by, at the direction of or with the consent of Debtor.

FIRST CLAIM FOR RELIEF

(Nondischargeability of Debt Pursuant to 11 U.S.C. § 523(a)(2)(A))

59. Plaintiff repeats and realleges the above allegations set forth in Paragraph 1 through 58 and incorporates the same herein as though more fully stated at length.

60. Debtor's liability to Colonial, as alleged herein, is a debt for money owed and services provided within the meaning of 11 U.S.C. § 523(a)(2).

61. Debtor obtained money and services by false pretenses, false representations,

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and/or actual fraud within the meaning of 11 U.S.C. § 523(a)(2)(A).

62. Pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, a debt in which a debtor obtains money by false pretenses, false statements, or actual fraud shall not be dischargeable.

63. Plaintiff believes and alleges that Debtor knowingly and intentionally made false representations with the specific intent to induce the Plaintiff to enter into the Agreement and to induce Plaintiff to advance the Funds.

64. Upon information and belief, at the time the Agreement was being applied for, negotiated and executed Diversified and Debtor did not intend to honor their obligations under the Agreement or to use only the Agreed Account for the collection and remittance of the Purchased Receivables. Moreover, Debtor did not intend to honor the Guaranty, but intended to divert the Funds and the Purchased Receivables away to be used for non-business purposes.

65. Debtor also engaged in the following:

- a) On or about August 18, 2016 Debtor completed the Application in which he falsely and fraudulently represented that Diversified had only two (2) balances with other merchant cash advance companies.
- b) On August 22, 2016, Debtor executed the Agreement in which he falsely and fraudulently represented that Diversified was not insolvent.
- c) On or about August 29, 2016 during the Funding Call Debtor falsely and fraudulently represented that Diversified's only merchant cash advance balance was with LG Funding.
- d) On or about August 29, 2016, Diversified and Debtor received money from Plaintiff based on Debtor's false and fraudulent statements and acts.

66. Upon information and belief, as fully detailed above, at the time the false

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representations and/or material omissions were made, Debtor knew his representations and omissions were false, untrue and misleading, and, as a direct and proximate cause of these intentional misrepresentations and omissions, Debtor knew that Plaintiff would be induced to enter into the Agreement and to advance Funds to Diversified and Debtor.

67. Upon information and belief, Debtor intended to induce Plaintiff to act or refrain from acting upon his misrepresentations and/or material omissions, and Plaintiff justifiably relied upon such false representations and omissions.

68. Colonial suffered damages as a direct and proximate consequence of the misrepresentations made by Debtor.

69. As a result of misrepresentations and fraud by Debtor, Debtor obtained from Plaintiff, *inter alia*, money which would not have been authorized by Plaintiff if the misrepresentations had not been made, or if material facts that were omitted and concealed, were actually disclosed.

70. Debtor's statements and acts described above constitute conduct to obtain money by false pretenses, false statements or actual fraud.

71. Debtor's obligation to Plaintiff is a debt for money, property, services, or an extension, renewal, or refinancing of credit, obtained by false pretenses, a false representation, or actual fraud

72. Thus, Colonial is entitled to an Order from this Court declaring that, pursuant to 11 U.S.C. § 523(a)(2)(A), Debtor's debt to Colonial is non-dischargeable, and a judgment for money damages as may be proven at trial.

SECOND CLAIM FOR RELIEF

(Nondischargeability of Debt Pursuant to 11 U.S.C. §523(a)(2)(B))

73. Plaintiff repeats and realleges the above allegations set forth in Paragraph 1

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through 72 and incorporates the same herein as though more fully stated at length.

74. Debtor's liability to Colonial, as alleged herein, is a debt for money owed and services provided within the meaning of 11 U.S.C. § 523(a)(2).

75. Pursuant to 11 U.S.C. §523(a)(2)(B), a debt in which a debtor obtains money by a statement in writing that is materially false respecting Debtors or an insider's financial condition, on which the creditor reasonably relied, and which Debtor caused to be published with intent to deceive is nondischargeable.

76. Diversified is an insider of Debtor because, at the time, Debtor served as owner, managing member and/or person in control of Diversified, within the meaning of "insider" under 11 U.S.C. § 101(31)(A)(iv).

77. Diversified and Debtor did obtain money from Plaintiff by the following written, materially false statements respecting Diversified's financial condition on which Plaintiff reasonably relied, among others:

- a) On August 18, 2016, Debtor executed the Application in which he falsely and fraudulently represented that Diversified had only two (2) balances with other merchant cash advance companies.
- b) On August 22, 2016, Debtor executed the Agreement in which he falsely and fraudulently represented that Diversified had marketable title to its receivables free and clear of all liens and encumbrances.
- c) On June 30, 2016, Debtor executed the Agreement in which he falsely and fraudulently represented that Diversified was not insolvent, that he intended to use the Funds for business purposes only and not for personal, family or household purposes, that he would use only the Agreed Account for collection and remittance of the Purchased Receivables and that he intended to guaranty

[REDACTED], Esq. VSB # [REDACTED]

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the Agreement.

- d) Upon information and belief, as fully detailed above, at the same time the representations were made, Debtor knew these representations were materially false, untrue and misleading.

78. Debtor caused these false statements to be made in writing with the intent to deceive, including, but not limited to publishing such statements in the Agreement.

79. Diversified is an insider of Debtor because, at the time, Debtor served as owner, managing member and/or person in control of Diversified, within the meaning of “insider” under 11 U.S.C. § 101(31)(A)(iv).

80. Plaintiff reasonably relied on these written statements made by Debtor in deciding to enter into the Agreement with and advance funds to Diversified and Debtor.

81. Plaintiff suffered damages as a direct and proximate consequence of the materially false statements made by Debtor.

82. As a result of these materially false, written statements by Debtor, Diversified and Debtor obtained from Plaintiff, *inter alia*, money which would not have been authorized by Plaintiff if the materially false statements had not been made.

83. Debtor’s activities described above constitute obtaining money by materially false written statement regarding Debtor’s or an insider’s financial condition, on which Plaintiff relied, and which Debtor made with the intent to deceive.

84. Consequently, Debtor’s debt to Plaintiff is one for money obtained by materially false written statement regarding Debtor’s or an insider’s financial condition, on which Plaintiff relied, and which Debtor made with intent to deceive, and Colonial is therefore entitled to an Order from this Court declaring that Debtor’s debt to Colonial is non-dischargeable and a judgment for money damages as may be proven at trial .

[REDACTED], Esq. VSB # [REDACTED]

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THIRD CLAIM FOR RELIEF

(Declaratory Relief – 11 U.S.C. § 523(a)(4) – fraud or defalcation while acting in a fiduciary capacity, embezzlement or larceny)

85. Plaintiff repeats and realleges the above allegations set forth in Paragraph 1 through 84 and incorporates the same herein as though more fully stated at length.

86. There is an actual controversy between Colonial on the one hand, and Debtor on the other hand which is within the jurisdiction of the United States Bankruptcy Court, and the Court may declare the rights and other legal relations of the parties to this action and enter further necessary or proper relief based on its declaratory judgment.

87. Debtor's liability to Colonial as alleged herein, is a debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny" within the meaning of 11 U.S.C. § 523(a)(4).

88. Debtor, obtained funds by committing fraud and defalcation while acting in a fiduciary capacity as an owner, shareholder, officer and/or director of Diversified.

89. Upon information and belief, Debtor misappropriated significant portions of the Funds and/or the Purchased Receivables for his own benefit by fraudulent intent or deceit.

90. Upon information and belief, Debtor transferred the Funds and/or the Purchased Receivables into accounts accessible only to Debtor which constitutes larceny.

91. Debtor used and/or disbursed the Funds and/or the Purchased Receivables without explanation, reason or purpose relating to Diversified's business.

92. Alternatively, Debtor's misappropriation of the Funds and/or the Purchased Receivables was embezzlement because Diversified entrusted Debtor with the Funds and/or the Purchased Receivables and because Debtor may have obtained control over such Funds and/or the Purchased Receivables without Diversified's authorization.

93. Colonial sustained damages as a result of Debtor's fraud and defalcation while

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acting as a fiduciary, his embezzlement and/or his larceny of the Funds and/or the Purchased Receivables.

94. Thus, Colonial is entitled to an Order from this Court declaring that, pursuant to 11 U.S.C. § 523(a)(4), Debtor's debt to Colonial is non-dischargeable, and a judgment for money damages as may be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Debtor as follows:

A. On its First Claim for Relief, for judgment against Debtor determining that the amount owed by Debtor to Colonial is not dischargeable in the Bankruptcy Case, in any other chapter under Title 11 to which this case may be converted, and in any future bankruptcy case filed by or against Debtor, and for money judgment according to proof;

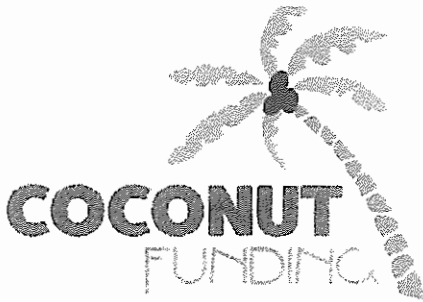
B. On its Second Claim for Relief for judgment against Debtor determining that the amount owed by Debtor to Colonial is not dischargeable in the Bankruptcy Case, in any other chapter under Title 11 to which this case may be converted, and in any future bankruptcy case filed by or against Debtor, and for money judgment according to proof;

C. On its Third Claim for Relief for judgment against Debtor determining that the amount owed by Debtor to Colonial is not dischargeable in the Bankruptcy Case, in any other chapter under Title 11 to which this case may be converted, and in any future bankruptcy case filed by or against Debtor, and for money judgment according to proof;

D. Granting attorneys' fees and costs herein incurred; and

E. Granting such other and further relief as this Court may deem just and proper.

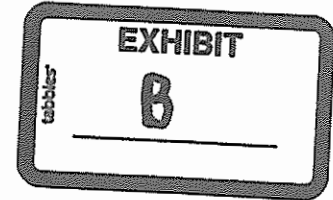
[REDACTED], Esq. VSB # [REDACTED]
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thennigan@nhnlawfirm.com



Phone: (808) 237-2443

Contract ID# 1014702

Sales Partner: [REDACTED]



REVENUE BASED FACTORING (RBF/ACH) AGREEMENT

Agreement dated AUGUST 22, 2016 between [REDACTED] ("FUNDER") and the merchant listed below ("the Merchant").

MERCHANT INFORMATION

Merchant's Legal Name: [REDACTED] INC

[REDACTED]

Type of entity: (X) Corporation () Limited Liability Company () Limited Partnership () Limited Liability Partnership () Sole Proprietor

City: FRONT ROYAL

City: [REDACTED]

State of Incorporation / Organization: VA

State: VA

State: [REDACTED]

Zip: 22630

Zip: [REDACTED]

PURCHASE AND SALE OF FUTURE RECEIVABLES

Merchant hereby sells, assigns and transfers to Funder, as the lead purchaser for itself and co-investors [making Funder on behalf of itself and all co-investors (collectively the Funders), the absolute owner] in consideration of the funds provided ("Purchase Price") specified below, all of Merchant's future receipts, accounts, contract rights and other obligations arising from or relating to the payment of monies from Merchant's customers' and/or other third party payors (collectively the "Receipts" defined as all payments made by cash, check, electronic transfer or other form of monetary payment in the ordinary course of the merchant's business), until such time as the "Receipts Purchased Amount" has been delivered by Merchant to FUNDER. The Receipts Purchased Amount shall be paid to FUNDER by the Merchant irrevocably authorizing only one depositing account acceptable to FUNDER (the "Account") to remit the percentage specified below (the "Specified Percentage") of the Merchant's Receipts, until such time as FUNDER receives payment in full of the Receipts Purchased Amount. In consideration of servicing the account, the Merchant hereby authorizes FUNDER to ACH Debit the "Specified Daily Amount" from the merchant's bank account as the base payment credited against the Specified Percentage due. It is the Merchant's responsibility to provide bank statements for any and all bank accounts held by the Merchant to reconcile the daily payments made against the Specified Percentage permitting FUNDER to debit or credit the difference to the merchant so that payment equals the Specified Percentage. Failure to provide all of their bank statements in a timely manner or missing a month shall forfeit all rights to future reconciliations. FUNDER may, upon Merchant's request, adjust the amount of any payment due under this Agreement at FUNDER's sole discretion and as it deems appropriate in servicing this Agreement. Merchant understands that it is responsible for ensuring that funds adequate to cover amount to be debited by FUNDER remains in the account. Merchant will be held responsible for any fees incurred by FUNDER resulting from a rejected ACH attempt or an event of default. (See Appendix A) FUNDER is not responsible for any overdrafts or rejected transactions in the Merchant's account which may result from FUNDER's scheduled ACH debit under the terms of this agreement. Notwithstanding anything to the contrary in this Agreement or any other agreement between FUNDER and Merchant, upon the violation of any provision contained in Section 1.11 of the MERCHANT AGREEMENT TERMS AND CONDITIONS or the occurrence of an Event of Default under Section 3 of the MERCHANT AGREEMENT TERMS AND CONDITIONS, the Specified Percentage shall equal 100%. A list of all fees applicable under this agreement is contained in Appendix A.

Purchase Price: \$98,000.00

Specified Percentage: 10%

Specific Daily Amount: \$575.00

Receipts Purchased Amount: \$139,160.00

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH ON PAGE 2, THE "MERCHANT SECURITY AGREEMENT" AND "ADMINISTRATIVE FORM HEREOF ARE HEREBY INCORPORATED IN AND MADE A PART OF THIS MERCHANT AGREEMENT.

MERCHANT #2

By [REDACTED]

OWNER/GUARANTOR #2

By [REDACTED]

(Print Name and Title)

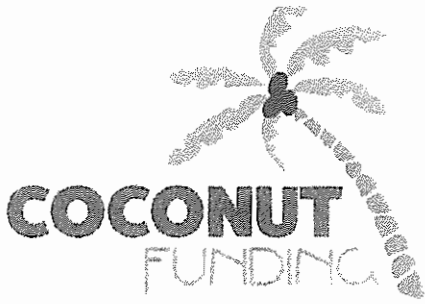
(Signature)

By [REDACTED]

(Company Officer)

(Signature)

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, including the Additional Terms set forth below. Each of above-signed Merchant and Owner(s) represents that he or she is authorized to sign this Agreement for Merchant, legally binding said Merchant to repay this obligation and that the information provided herein and in all of FUNDER documents, forms and recorded interviews is true, accurate and complete in all respects. If any such information is false or misleading, Merchant shall be deemed in material breach of all agreements between Merchant and FUNDER and FUNDER shall be entitled to all remedies available under law. Merchant and each of the above-signed Owners authorize FUNDER, its agents and representatives and any credit reporting agency engaged by FUNDER, to (i) investigate any references given or any other statements



Phone: (808) 237-2443

Contract ID# 1014702

Sales Partner: [REDACTED]

or data obtained from or about Merchant or any of its Owners for the purpose of this Agreement, and (ii) obtain credit report at any time now or for so long as Merchant and/or Owners(s) continue to have any obligation owed to FUNDER.

ANY MISREPRESENTATION MADE BY MERCHANT OR OWNER IN CONNECTION WITH THIS AGREEMENT MAY CONSTITUTE A SEPARATE CAUSE OF ACTION FOR FRAUD OR INTENTIONAL FRAUDULENT INDUCEMENT TO OBTAIN FINANCING.

MERCHANT AGREEMENT TERMS AND CONDITIONS

I. TERMS OF ENROLLMENT IN PROGRAM

1.1 Merchant Deposit Agreement. Merchant shall execute an agreement (the "Merchant Deposit Agreement") acceptable to FUNDER, with a Bank acceptable to FUNDER, to obtain electronic fund transfer services. Merchant shall provide FUNDER and/or its authorized agent with all of the information, authorizations necessary for verifying Merchant's receivables, receipts and deposits into the account. Merchant shall authorize FUNDER and/or its agent to deduct the amounts owed to FUNDER for the Receipts as specified herein from settlement amounts which would otherwise be due to Merchant by permitting FUNDER to withdraw the specific daily amount credited against the specified percentages by ACH debit of the Merchant account. The authorization shall be irrevocable without the written consent of FUNDER.

1.2 Term of Agreement. This Agreement shall have an indefinite term that shall last either until all the Merchant's obligations to FUNDER are fully satisfied. This shall include but not be limited to any renewals, outstanding fees or costs.

1.3 Future Purchases. FUNDER reserves the right to rescind the offer to make any purchase payments hereunder, in its sole discretion.

1.4 Financial Condition. Merchant and Guarantor(s) authorize FUNDER and its agents to investigate their financial responsibility and history, and will provide to FUNDER any bank or financial statements, tax returns, etc., as FUNDER 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. FUNDER is authorized to update such information and financial profiles from time to time as it deems appropriate.

1.5 Transactional History. Merchant authorizes their bank to provide FUNDER with Merchant's banking or processing history to determine qualification or continuation in this program.

1.6 Indemnification. Merchant and Guarantor(s) jointly and severally indemnify and hold harmless Processor/Bank, its officers, directors and shareholders against all losses, damages, claims, liabilities and expenses (including reasonable attorney's fees) incurred by Processor resulting from (a) claims asserted by FUNDER for monies owed to FUNDER from Merchant and (b) actions taken by Processor in reliance upon information or instructions provided by FUNDER.

1.7 No Liability. In no event will FUNDER (or any of the Funders) be liable for any claims asserted by 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 Merchant and Guarantor(s).

1.8 Reliance on Terms. Section 1.1, 1.7, 1.8 and 2.5 of this Agreement are agreed to for the benefit of Merchant, FUNDER and Processor, and notwithstanding the fact that Processor is not a party of this Agreement, Processor may rely upon their terms and raise them as a defense in any action.

1.9 Sale of Receipts. Merchant and FUNDER agree that the Purchase Price under this Agreement is in exchange for the Purchased Amount and that such Purchase Price is not intended to be, nor shall it be construed as a loan from FUNDER to Merchant. Merchant agrees that the Purchase Price is in exchange for the sale of future Receipts pursuant to this Agreement equals the fair market value of such Receipts. FUNDER has purchased and shall own all the Receipts described in this Agreement up to the

full Purchased Amount as the Receipts are created. Payments made to FUNDER 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 Merchant's customers in the manner provided in Section 1.1. In no event shall the aggregate of all amounts be deemed as interest hereunder and charged or collected hereunder exceed the highest rate permissible at law. In the event that a court determines that FUNDER 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 FUNDER shall promptly refund to Merchant any interest received by FUNDER in excess of the maximum lawful rate, it being intended that Merchant not pay or contract to pay, and that FUNDER not receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by Merchant under applicable law.

1.10 Power of Attorney Merchant irrevocably appoints FUNDER as its agent and attorney-in-fact with full authority to take any action or execute any instrument or document to settle all obligations due to FUNDER from Processor/Bank, or in the case of a violation by Merchant of Section 1.12 or the occurrence of an Event of Default under Section 4 hereof, from Merchant, under this Agreement, 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; (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 FUNDER; and (v) to file any claims or take any action or institute any proceeding which FUNDER may deem necessary for the collection of any of the unpaid Purchased Amount from the Collateral, or otherwise to enforce its rights with respect to payment of the Purchased Amount.

1.11 Protections Against Default. The following Protections 1 through 7 may be invoked by FUNDER, immediately and without notice to Merchant in the event (a) Merchant changes its arrangements with Processor/Bank in any way that is adverse to FUNDER; (b) Merchant changes the deposit account through which the Receipts are settled, or permits any event to occur that could cause diversion of any of Merchant's transactions to another account; (c) Merchant interrupts the operation of this business (other than adverse weather, natural disasters or acts of God) transfers, moves, sells, disposes, transfers or otherwise conveys its business or assets without (i) the express prior written consent of FUNDER, and (ii) the written agreement of any purchaser or transferee to the assumption of all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to FUNDER; or (d) 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 checks that are settled through Processor. These protections are in addition to any other remedies available to FUNDER at law, in equity or otherwise pursuant to this Agreement.

Protection 1. The full uncollected Purchase Amount plus all fees due under this Agreement and the

attached Security Agreement become due and payable in full immediately

Protection 2. FUNDER may enforce the provisions of the Personal Guarantee of Performance against the Guarantor.

Protection 3. Merchant shall, upon execution of this Agreement, deliver to FUNDER an executed confession of judgment in favor of FUNDER in the amount of the Purchase Amount stated in the Agreement. Upon breach of any provision in this paragraph 1.11, FUNDER may enter that confession of judgment as a judgment with the Clerk of the Court and execute thereon.

Protection 4. FUNDER may enforce its security interest in the Collateral identified in Article III hereof.

Protection 5. The entire Purchase Amount shall become immediately refundable to FUNDER from Merchant.

Protection 6. FUNDER may proceed to protect and enforce its rights and remedies by lawsuit. In any such lawsuit, in which FUNDER shall recover judgment against Merchant, Merchant shall be liable for all of FUNDER's costs of lawsuit, including but not limited to all reasonable attorneys' fees and court costs.

Protection 7. Merchant shall, upon execution of this Agreement, deliver to FUNDER an executed assignment of lease of Merchant's premises in favor of FUNDER. Upon breach of any provision in this paragraph 1.12, FUNDER may exercise its rights under such assignment of lease.

Protection 8. FUNDER 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.

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

1.13 Confidentiality. Merchant understands and agrees that the terms and conditions of the products and services offered by FUNDER, including this Agreement and any other FUNDER documentations (collectively, "Confidential Information") are proprietary and confidential information of FUNDER. Accordingly unless disclosure is required by law or court order, Merchant shall not disclose Confidential Information of FUNDER 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 1.13.

1.14 Publicity. Merchant and each Owner only authorizes FUNDER to use its, his or her name in a listing of clients and in advertising and marketing materials with their express written consent.

1.15 D/B/A's. Merchant hereby acknowledges and agrees that FUNDER may be using "doing business

as" or "d/b/a" names in connection with various matters relating to the transaction between FUNDER and Merchant, including the filing of UCC-1 financing statements and other notices or filings.

II. REPRESENTATIONS, WARRANTIES AND COVENANTS Merchant represents, warrants and covenants that as of this date and during the term of this Agreement:

2.1 Financial Condition and Financial Information.

Its bank and financial statements, copies of which have been furnished to FUNDER, and future statements which will be furnished hereafter at the discretion of FUNDER, fairly represent the financial condition of Merchant 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 has a continuing, affirmative obligation to advise FUNDER of any material adverse change in its financial condition, operation or ownership. FUNDER may request statements at any time during the performance of this Agreement and the Merchant shall provide them to FUNDER within 5 business days. Merchant's failure to do so is a material breach of this Agreement.

2.2 Governmental Approvals. Merchant 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.

2.3 Authorization. Merchant, and the person(s) signing this Agreement on behalf of Merchant, have full power and authority to incur and perform the obligations under this Agreement, all of which have been duly authorized.

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

2.5 Intentionally omitted

2.6 Change of Name or Location. Merchant will not conduct Merchant's businesses under any name other than as disclosed to the Processor and FUNDER or change any of its places of business.

2.7 Daily Batch Out. Merchant will batch out receipts with the Processor on a daily basis.

2.8 Estoppel Certificate. Merchant will at any time, and from time to time, upon at least one (1) day's prior notice from FUNDER to Merchant, execute, acknowledge and deliver to FUNDER and/or to any other person, person firm or corporation specified by FUNDER, 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 repaid.

2.9 No Bankruptcy or Insolvency. As of the date of this Agreement, Merchant represents that it is not insolvent and 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 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. In the event that the Merchant files for bankruptcy protection or is placed under an involuntary filing Protections 2 and 3 are immediately invoked.

2.10 Additional Financing. Merchant shall not enter into any arrangement, agreement or commitment for any additional financing, whether in the form

of a purchase of receivables or a loan to the business with any party other than FUNDER without their written permission.

2.11 Unencumbered Receipts. Merchant has good, complete and marketable title to all Receipts, 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 FUNDER.

2.12 Business Purpose. Merchant is a valid business in good standing under the laws of the jurisdictions in which it is organized and/or operates, and Merchant is entering into this Agreement for business purposes and not as a consumer for personal, family or household purposes.

2.13 Default 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.

III. EVENTS OF DEFAULT AND REMEDIES

3.1 Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" hereunder: (a) Merchant shall violate any term or covenant in this Agreement; (b) Any representation or warranty by Merchant in this Agreement shall prove to have been incorrect, false or misleading in any material respect when made; (c) Merchant shall admit in writing its inability to pay its debts, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against Merchant seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, or composition of it or its debts; (d) the sending of notice of termination by Guarantor; (e) Merchant shall transport, move, interrupt, suspend, dissolve or terminate its business; (f) Merchant shall transfer or sell all or substantially all of its assets; (g) Merchant shall make or send notice of any intended bulk sale or transfer by Merchant; (h) Merchant shall use multiple depository accounts without the prior written consent of FUNDER; (i) Merchant shall change its depositing account without the prior written consent of FUNDER; (j) Merchant shall perform any act that reduces the value of any Collateral granted under this Agreement; or (k) Merchant shall default under any of the terms, covenants and conditions of any other agreement with FUNDER.

3.2 Remedies. In case any Event of Default occurs and is not waived pursuant to Section 4.4.1 hereof, FUNDER on its own and on behalf of the Funders 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 Merchant's obligations hereunder (including the Personal Guarantee) or any other legal or equitable right or remedy. All rights, powers and remedies of FUNDER in connection with this Agreement may be exercised at any time by FUNDER 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.

3.3 Costs. Merchant shall pay to FUNDER all reasonable costs associated with (a) a breach by Merchant of the Covenants in this Agreement and the enforcement thereof, and (b) the enforcement of FUNDER's remedies set forth in Section 4.2 above,

including but not limited to court costs and attorneys' fees.

3.4 Required Notifications. Merchant is required to give FUNDER written notice within 24 hours of any filing under Title 11 of the United States Code. Merchant is required to give FUNDER seven days' written notice prior to the closing of any sale of all or substantially all of the Merchant's assets or stock.

IV. MISCELLANEOUS

4.1 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 FUNDER.

4.2 Assignment. Merchant acknowledges and understands that FUNDER is acting on its own behalf and as the administrator and lead investor for a group of independent participants a list of which can be provided to Merchant after funding and upon written notice to FUNDER. FUNDER may assign, transfer or sell its rights to receive the Purchased Amount or delegate its duties hereunder, either in whole or in part.

4.3 Notices. All notices, requests, consent, 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 and shall become effective only upon receipt.

4.4 Waiver Remedies. No failure on the part of FUNDER 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.

4.5 Binding Effect; Governing Law, Venue and Jurisdiction. This Agreement shall be binding upon and inure to the benefit of Merchant, FUNDER (and its Participants) and their respective successors and assigns. FUNDER's Participants shall be third party beneficiaries of all such agreements, except that Merchant shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of FUNDER which consent may be withheld in FUNDER's sole discretion. FUNDER reserves the rights to assign this Agreement with or without prior written notice to Merchant. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regards to any applicable principals of conflicts of law. Any suit, action or proceeding arising hereunder, or the interpretation, performance or breach hereof, shall, if FUNDER so elects, be instituted in any court sitting in New York. (the "Acceptable Forums"). Merchant agrees that the Acceptable Forums are convenient to it, and submits to the jurisdiction of the Acceptable Forums and waives any and all objections to jurisdiction or venue. Should such proceeding be initiated in any other forum, Merchant waives any right to oppose any motion or application made by FUNDER to transfer such proceeding to an Acceptable Forum.

4.6 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.

4.7 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.

4.8 Entire Agreement. Any provision hereof prohibited by law shall be ineffective only to the extent of such prohibition without invalidating the remaining provisions hereof. This Agreement and Security Agreement hereto embody the entire agreement between Merchant and FUNDER and supersede all prior agreements and understandings relating to the subject matter hereof.

4.9 JURY TRIAL WAIVER. THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING IN CONNECTION WITH OR IN ANY WAY RELATED TO THE TRANSACTIONS OF WHICH THIS AGREEMENT IS A PART OR THE ENFORCEMENT HEREOF. 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

4.12. ARBITRATION. PLEASE READ THIS PROVISION OF THE AGREEMENT CAREFULLY. THIS SECTION PROVIDES THAT DISPUTES MAY BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, HAVE A JURY TRIAL OR INITIATE OR PARTICIPATE IN A CLASS ACTION. IN ARBITRATION, DISPUTES ARE RESOLVED BY AN ARBITRATOR, NOT A JUDGE OR JURY. ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN IN COURT. THIS ARBITRATION PROVISION IS GOVERNED BY THE FEDERAL ARBITRATION ACT (FAA), AND SHALL BE INTERPRETED IN THE BROADEST WAY THE LAW WILL ALLOW.

Covered claims

- You or we may arbitrate any claim, dispute or controversy between you and us arising out of or related to your account, a previous related account or our relationship (called "Claims").
- If arbitration is chosen by any party, neither you nor we will have the right to litigate that Claim in court or have a jury trial on that Claim.
- Except as stated below, all Claims are subject to arbitration, no matter what legal theory they're based on or what remedy (damages, or injunctive or declaratory relief) they seek, including Claims based on contract, tort (including intentional tort), fraud, agency, your or our negligence, statutory or regulatory provisions, or any other sources of law; Claims made as counterclaims, cross-claims, third-party claims, interpleaders or otherwise; Claims made regarding past, present, or future conduct; and Claims made independently or with other claims. This also includes Claims made by or against anyone connected with us or you or claiming through us or you, or by someone making a claim through us or you, such as a co-applicant, authorized user, employee, agent, representative or an affiliated/parent/subsidiary company.

Arbitration limits

- Individual Claims filed in a small claims court are not subject to arbitration, as long as the matter stays in small claims court.

- We won't initiate arbitration to collect a debt from you unless you choose to arbitrate or assert a Claim against us. If you assert a Claim against us, we can choose to arbitrate, including actions to collect a debt from you. You may arbitrate on an individual basis Claims brought against you, including Claims to collect a debt.
- Claims brought as part of a class action, private attorney general or other representative action can be arbitrated only on an individual basis. The arbitrator has no authority to arbitrate any claim on a class or representative basis and may award relief only on an individual basis. If arbitration is chosen by any party, neither you nor we may pursue a Claim as part of a class action or other representative action. Claims of 2 or more persons may not be combined in the same arbitration. However, applicants, co-applicants, authorized users on a single account and/or related accounts, or corporate affiliates are here considered as one person.

How arbitration works

- Arbitration shall be conducted by the American Arbitration Association ("AAA") according to this arbitration provision and the applicable AAA arbitration rules in effect when the claim is filed ("AAA Rules"), except where those rules conflict with this arbitration provision. You can obtain copies of the AAA Rules at the AAA's website (www.adr.org) or by calling 800-778-7879. You or we may choose to have a hearing, appear at any hearing by phone or other electronic means, and/or be represented by counsel. Any in-person hearing will be held in the same city as the U.S. District Court closest to your billing address.
- Arbitration may be requested any time, even where there is a pending lawsuit, unless a trial has begun or a final judgment entered. Neither you nor we waive the right to arbitrate by filing or serving a complaint, answer, counterclaim, motion, or discovery in a court lawsuit. To choose arbitration, a party may file a motion to compel arbitration in a pending matter and/or commence arbitration by submitting the required AAA forms and requisite filing fees to the AAA.
- The arbitration shall be conducted by a single arbitrator in accord with this arbitration provision and the AAA Rules, which may limit discovery. The arbitrator shall not apply any federal or state rules of civil procedure for discovery, but the arbitrator shall honor claims of privilege recognized at law and shall take reasonable steps to protect account information and other confidential information of either party if requested to do so. The arbitrator shall apply applicable substantive law consistent with the FAA and applicable statute of limitations, and may award damages or other relief under applicable law.
- The arbitrator shall make any award in writing and, if requested by you or us, may provide a brief statement of the reasons for the award. An arbitration award shall decide the rights and obligations only of the parties named in the arbitration, and shall not have any bearing on any other person or dispute.

Paying for arbitration fees

- We will pay your share of the arbitration fee for an arbitration of Claims of \$75,000 or less if they are unrelated to debt collection. Otherwise, arbitration fees will be allocated according to the applicable AAA Rules. If we prevail, we may not recover our arbitration fees, unless the arbitrator

decides you Claim was frivolous. All parties are responsible for their own attorney's fees, expert fees and any other expenses, unless the arbitrator awards such fees or expenses to you or us based on applicable law.

The final award

- Any award by an arbitrator is final unless a party appeals it in writing to the AAA within 30 days of notice of the award. The arbitration appeal shall be determined by a panel of 3 arbitrators. The panel will consider all facts and legal issues anew based on the same evidence presented in the prior arbitration, and will make decisions based on a majority vote. Arbitration fees for the arbitration appeal shall be allocated according to the applicable AAA Rules. An award by a panel on appeal is final. A final award is subject to judicial review as provided by applicable law.

Survival and Severability of Terms

- This arbitration provision shall survive changes in this Agreement and termination of the account or the relationship between you and us, including the bankruptcy of any party and any sale of your account, or amounts owed on your account, to another person or entity. If any part of this arbitration provision is deemed invalid or unenforceable, the other terms shall remain in force, except that there can be no arbitration of a class or representative Claim. This arbitration provision may not be amended, severed or waived, except as provided in this Agreement or in a written agreement between you and us.

4.11 Counterparts; Facsimile and PDF Acceptance.

This Agreement and the Merchant Security Agreement and Guaranty may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one instrument. Signatures on this Agreement and the Merchant Security Agreement and Guaranty sent by facsimile or PDF will be treated as original signatures for all purposes.

INITIAL

[REDACTED] - SECURITY AGREEMENT AND GUARANTY

SECURITY AGREEMENT

Security Interest. To secure Merchant's payment and performance obligations to FUNDER and its affiliates or the Funders, a list of which may be provided to the Merchant if requested in writing after the funding of the purchase closes under the Merchant Cash Advance Agreement between Merchant and FUNDER (the "Merchant Agreement"). Merchant hereby grants to FUNDER a security interest in all personal property of Merchant, including all accounts, chattel paper, cash, deposit accounts, documents, equipment, general intangibles, instruments, inventory, or investment property, as those terms are defined in Article 9 of the Uniform Commercial Code of the State of New York as amended (the "UCC"), whether now or hereafter owned or acquired by Merchant and wherever located; and all proceeds of such property, as that term is defined in Article 9 of the UCC (collectively, the "Collateral"). If the Merchant Agreement identifies more than one Merchant, this Security Agreement applies to each Merchant, jointly and severally.

Merchant acknowledges and agrees that any security interest granted to FUNDER under any other agreement between Merchant and FUNDER will secure the obligations hereunder, and that the Merchant's payment and performance obligations secured by this Security Agreement, and the Collateral granted hereunder, shall be perfected under any previously filed UCC-1 or UCC-3 statement, perfecting FUNDER's interest in the Collateral.

Merchant further acknowledges and agrees that, if Merchant enters into future Agreements with FUNDER, any security interest granted to FUNDER under such future Agreements will relate back to this Security Agreement, and that the Merchant's payment and performance obligations, and the Collateral granted, under such future Agreements, shall relate back to, be perfected under, and made a part of, any previously filed UCC-1 or UCC-3 statement, perfecting FUNDER's interest in the Collateral.

Cross-Collateral. To secure Guarantor's payment and performance obligations to FUNDER (and the Funders) under this Merchant Security Agreement and Guaranty (this "Agreement"), each Guarantor hereby grants FUNDER, for itself and its participants, a security interest in (the "Additional Collateral"). Each Guarantor agrees and acknowledges that FUNDER will have a security interest in the aforesaid Additional Collateral upon execution of this Agreement.

Guarantor acknowledges and agrees that any security interest granted to FUNDER under any other agreement between Guarantor and FUNDER will secure the obligations hereunder, and that the Guarantor's payment and performance obligations under this Agreement, and the Additional Collateral granted hereunder, shall be perfected under any previously filed UCC-1 or UCC-3 statement, perfecting FUNDER's interest in the Additional Collateral.

Guarantor further acknowledges and agrees that, if Guarantor enters into future Agreements with FUNDER, any security interest granted to FUNDER under such future Agreements will relate back to this Agreement, and that the Guarantor's payment and performance obligations, and the Additional Collateral granted, under such future Agreements, shall relate back to, be perfected under, and made a part of, any previously filed UCC-1 or UCC-3 statement, perfecting FUNDER's interest in the Additional Collateral.

Each of Merchant and each Guarantor agrees to execute any documents or take any action in connection with this Agreement as FUNDER deems necessary to perfect or maintain FUNDER's first priority security interest in the Collateral and Additional Collateral, including the execution of any control agreements. Each of Merchant and each Guarantor hereby authorizes FUNDER to file any financing statements deemed necessary by FUNDER to perfect or maintain FUNDER's security interest, which financing statements may contain notification that Merchant and each Guarantor have granted a negative pledge to FUNDER with respect to the Collateral and Additional Collateral, and that any subsequent lender or lienor may be tortiously interfering with FUNDER's rights. Merchant and each Guarantor shall be jointly and severally liable for and shall pay to FUNDER upon demand all costs and expenses, including but not limited to attorneys' fees, which may be incurred by FUNDER in protecting, preserving and enforcing FUNDER's security interest and rights.

Negative Pledge. Each of Merchant and each Guarantor agrees not to create, incur, assume, or permit to exist, directly or indirectly, any additional cash advances, loans, lien or other encumbrance on or with respect to any of the Collateral or Additional Collateral, as applicable without written permission of FUNDER.

Consent to Enter Premises and Assign Lease. FUNDER shall have the right to cure Merchant's default in the payment of rent for the Premises on the following terms. In the event Merchant is served with papers in an action against Merchant for nonpayment of rent or for summary eviction, FUNDER may execute its rights and remedies under the Assignment of Lease. Merchant also agrees that FUNDER may enter into an agreement with Merchant's landlord giving FUNDER the right: (a) to enter the Premises and to take possession of the fixtures and equipment therein for the purpose of protecting and preserving same; and (b) to assign Merchant's lease to another qualified merchant capable of operating a business comparable to Merchant's at the Premises.

Remedies. Upon any Event of Default, FUNDER 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 FUNDER, whether by acceleration or otherwise.

GUARANTY

Personal Guaranty of Performance. The undersigned Guarantor(s) hereby guarantees to FUNDER, and its affiliates or the Funders, Merchant's performance of all of the representations, warranties, covenants made by Merchant in this Agreement and the Merchant Agreement, as each agreement may be renewed, amended, extended or otherwise modified (the "Guaranteed Obligations"). Guarantor's obligations are due (i) at the time of any breach by Merchant of any representation, warranty, or covenant made by Merchant in this Agreement and the Merchant Agreement, and (ii) at the time Merchant admits its inability to pay its debts, or makes a general assignment for the benefit of creditors, or any proceeding shall be instituted by or against Merchant seeking to adjudicate it bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, or composition of it or its debts. (It is understood by all parties that this Guaranty is not an absolute personal guaranty of payment and that the signors are only guaranteeing that they will not take any action or permit the merchant to take any action that is a breach of this agreement.)

Guarantor Waivers. In the event that Merchant fails to make a payment or perform any obligation when due under the Merchant Agreement, FUNDER may enforce its rights under this Agreement without first seeking to obtain payment from Merchant, any other guarantor, or any Collateral, Additional Collateral or Cross-Collateral. FUNDER may hold pursuant to this Agreement or any other guaranty.

FUNDER does not have to notify Guarantor of any of the following events and Guarantor will not be released from its obligations under this Agreement if it is not notified of: (i) Merchant's failure to pay timely any amount owed 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; (iv) FUNDER's acceptance of this Agreement; and (v) any renewal, extension or other modification of the Merchant Agreement or Merchant's other obligations to FUNDER. In addition, FUNDER 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 Merchant Agreement or Merchant's other obligations to FUNDER; (ii) release Merchant from its obligations to FUNDER; (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 this Agreement. Until the Merchant Amount plus any accrued but unpaid interest and Merchant's other obligations to FUNDER under the Merchant Agreement and 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 Agreement. 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 Agreement: (i) subrogation; (ii) reimbursement; (iii) performance; (iv) indemnification; or (v) contribution. In the event that FUNDER 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 Agreement shall include that amount.

Guarantor Acknowledgement. Guarantor acknowledges that: (i) He/She understands the seriousness of the provisions of this Agreement; (ii) He/She has had a full opportunity to consult with counsel of his/her choice; and (iii) He/She has consulted with counsel of its choice or has decided not to avail himself/herself of that opportunity.

Joint and Several Liability. The obligations hereunder of the persons or entities constituting Guarantor under this Agreement are joint and several.

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH IN THE "MERCHANT AGREEMENT", INCLUDING THE "TERMS AND CONDITIONS", ARE HEREBY INCORPORATED IN AND MADE A PART OF THIS SECURITY AGREEMENT AND GUARANTY. CAPITALIZED TERMS NOT DEFINED IN THIS SECURITY AGREEMENT AND GUARANTY, SHALL HAVE THE MEANING SET FORTH IN THE MERCHANT AGREEMENT, INCLUDING THE TERMS AND CONDITIONS.

MERCHANTS AND OWNERS/GUARANTORS ACKNOWLEDGE THAT THIS WRITING REPRESENTS THE ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO. IT IS UNDERSTOOD THAT ANY REPRESENTATIONS OR ALLEGED PROMISES BY INDEPENDENT BROKERS OR AGENTS OF ANY PARTY IF NOT INCLUDED IN THIS WRITTEN AGREEMENT ARE CONSIDERED NULL AND VOID. ANY MODIFICATION OR OTHER ALTERATION TO THE AGREEMENT MUST BE IN WRITING AND EXECUTED BY THE

MERCHANT #1
By [REDACTED]
(Print Name and Title)

SS# REDACTED

MERCHANT #2
By [REDACTED]
(Print Name and Title)

SS#

OWNER/GUARANTOR #1
By [REDACTED]
(Print Name and Title)

SS# REDACTED

OWNER/GUARANTOR #2
By [REDACTED]
(Print Name and Title)

SS#

(Signature)

(Signature)

Drivers License Number:

AUTHORIZED SERVICING AGENT - [REDACTED], Inc.

[REDACTED], Inc. (Colonial) is the Authorized Servicing Agent of the funder for this contract providing administrative, bookkeeping, reporting and support services for the funder and the Merchant. Colonial is not affiliated or owned by the funder and is acting as independent agent for services including but not limited to background checks, credit checks, general underwriting review, filing UCC-1 security interests, cash management, account reporting and remit capture. Colonial may at its sole discretion participate in this financing by providing a small portion of the funds for this transaction directly to the funder. Colonial is not a credit card processor, or in the business of processing credit cards. Merchant hereby acknowledges that in no event will Colonial be liable for any claims made against the funder or the Processor under any legal theory for lost profits, lost revenues, lost business opportunity, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is waived by the Merchant and Owner/Guarantor.

MERCHANT #1
By [REDACTED]
(Print Name and Title)

(Signature)



APPENDIX A: THE FEE STRUCTURE:

A. Origination Fee		To cover underwriting and related expenses
<u>Amount Funded</u>	<u>Origination Fee</u>	
Up to \$7,500.00	\$199.00	
\$7,501.00-\$25,000.00	\$295.00	
\$25,001.00-\$50,000.00	\$395.00	
\$50,001.00-\$100,000.00	\$595.00	
\$100,001.00-\$250,000.00	\$795.00	
Over \$250,000.00	\$995.00	
Due Diligence Fee	<u>\$0.00</u>	
B. ACH Program Fee	\$395.00	ACH's are labor intensive and are not an automated process ,requiring us to charge this fee to cover costs
C. NSF Fee (Standard)	\$50.00ea	Up to FOUR TIMES ONLY before a default is declared
D. Rejected ACH		When the merchant directs the bank to Reject our Debit ACH
Daily ACH Program		
<u>Amount Funded</u>	<u>Reject Fee</u>	
Up to \$7,500.00	\$25.00	
\$7,501.00-\$50,000.00	\$35.00	
\$50,001.00-\$100,000.00	\$50.00	
\$100,001.00-\$250,000.00	\$75.00	
Over \$250,000.00	\$100.00	
Weekly ACH Program		
<u>Amount Funded</u>	<u>Reject Fee</u>	
Up to \$7,500.00	\$75.00	
\$7,501.00-\$50,000.00	\$99.00	
\$50,001.00-\$100,000.00	\$175.00	
\$100,001.00-\$250,000.00	\$275.00	
Over \$250,000.00	\$395.00	
E. Bank Change Fee	\$75.00	When Merchant requires a change of account to be Debited requiring us to adjust our system
F. Blocked Account	\$2,500.00	When Merchant BLOCKS account from our Debit ACH, which places them in default (per contract)
G. Default Fee	\$5,000.00	When Merchant changes bank account cutting us off from our Collections
H. UCC Termination Fee	\$150.00	When Merchant request a UCC termination
I. Administrative Fee	<u>\$0.00</u>	

Miscellaneous Service Fees. Merchant shall pay to Colonial certain fees Merchant funding is done electronically to their designated bank account and charged a fee of \$35.00 for a Fed Wire or \$15.00 for an ACH. The fee for underwriting and origination is paid from the funded amount in accordance with the schedule below. If Merchant is utilizing a Bridge / Control Account, there is an upfront fee of \$395.00 for the bank fees and administrative costs of maintaining such account for each cash advance agreement with Merchant. Fund transfers from Bridge / Control Accounts to Merchant's operating bank account will be charged \$10.95 per month via ACH. This fee will continue if the bridge account remains open after the RTR is paid. Merchant will be charged \$50.00 for each change of its operating bank account once active with Colonial. Any administrative adjustments associated with changes to the Specified Percentage will incur a fee of \$75.00 per occurrence. (All fees are subject to change)

MERCHANT INITIALS: 

EXHIBIT

B

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**

In re:	:	Chapter 11
	:	
VPR, LLC, ¹	:	Case No. 24-50315
	:	
Debtor.	:	

VPR, LLC,

Movant,

v.

VOX FUNDING, LLC,

Respondent.

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2024, I filed the following documents using the CM/ECF filing system, causing service by electronic notice upon all parties requesting electronic notice:

Document	Dkt No.
Interim Order Granting Motion for Order Enforcing Automatic Stay and Setting Further Hearing	24

¹ The Debtor in this Chapter 11 Case and the last four digits of its taxpayer identification number are as follows: VPR, LLC (0580). The Debtor's headquarters are located at 2023 Hudson Hollow Rd, Stephens City, Virginia 22655.

On June 13, 2024, I served by email the following parties with the document noted above at Dkt Nos. 24:

Party	Contact Name	Address
FIRST BANK	Hannah Hutman, Esq.	HHutman@hooverpenrod.com
	Andy Bolt, Esq.	ABolt@hooverpenrod.com
U.S. SMALL BUSINESS ADMINISTRATION	Juan Romero-Sanchesz	juan.romero-sanchesz@sba.org
	Garrett Lenox	garrett.lenox@sba.gov
	General Inquiry mailbox from other proofs of claim	paymentservices@sba.gov
VOX FUNDING, LLC	Anthony Stephens, Recovery Specialist	astephens@voxfunding.com
	Abigail Jackson	ajackson@voxfunding.com
	Alexander Hwang, Esq.	ahwang@platzerlaw.com
	General Inquiry mailbox	support@voxfunding.com
NATIONAL FUNDING, INC.	Tara Muren, In-House Counsel	znaritelli@nationalfunding.com
	Zach Naritelli	tmuren@nationalfunding.com

I also certify that on June 13, 2024, I provided the following notice to Vox Funding, LLC, through these means: (a) Instagram, direct message, @voxfunding; (b) Facebook, message, @VOX Funding; and (c) Online messaging portal, <https://www.voxfunding.com/contact/>

NOTICE: PLEASE BE ADVISED THAT AN ORDER WAS ENTERED JUNE 13, 2024, BY THE U.S. BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF VIRGINIA THAT MAY IMPACT YOUR RIGHTS WITH RESPECT TO THE CHAPTER 11 DEBTOR IN POSSESSION, VPR, LLC, OR PROPERTY OF ITS ESTATE. PLEASE CONTACT DAVID COX, COUNSEL FOR THE DEBTOR AT DAVID@COXLAWGROUP.COM TO REQUEST A COPY OF THE ORDER OR CONTACT THE COURT DIRECTLY FOR THE SAME.

I further certify that on June 13, 2024, I served by First Class Mail to all creditors on the Creditor Matrix not receiving the same by electronic service, as well as to the following additional addresses the document noted above at Dkt No. 24:

National Funding, Inc.
9530 Towne Centre Drive, Suite 120
San Diego, CA 92121

Vox Funding, LLC
1395 Brickell Avenue, Suite 800
Miami, FL 33131


EXHIBIT

C



SIGNED THIS 13th day of June, 2024

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.


Rebecca B. Connelly
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA

In re:	:
	:
VPR, LLC,	:
	:
Debtor.	:

	:
VPR, LLC,	:
	:
Movant,	:
	:
v.	:
	:
VOX FUNDING, LLC,	:
	:
Respondent.	:

INTERIM ORDER GRANTING MOTION FOR ORDER ENFORCING
AUTOMATIC STAY AS TO DEBTOR’S ACCOUNTS RECEIVABLE AND
REQUEST FOR EXPEDITED HEARING AND RELATED RELIEF

The matter before the Court is the motion (the “Motion”) [Doc. #7] of VPR, LLC, the debtor and debtor-in-possession (the “Debtor”) requesting entry of an order that: (i) the

respondent, Vox Funding, LLC (the “Respondent”), as set forth in the Motion, is prohibited by the automatic stay provisions of 11 U.S.C. § 362(a) from making demands for payment from the accounts receivable generated by the business of the Debtor (the “Receivables”); (ii) that authorizes the Debtor’s customers to distribute amounts owed to the Debtor free of any payment demands or actions by the Respondent; (iii) that grants such stay without prejudice to the Respondent to seek subsequent relief and/or orders of the Court with respect to the automatic stay; and (iv) that grants the requested and other relief on an expedited/emergency hearing basis pursuant to Bankruptcy Rule 9006. The Debtor, by counsel, presented and argued its Motion at the hearing held on June 12, 2024. Counsel for the Office of the United States Trustee, counsel for First Bank, and the Subchapter V Trustee each appeared and were heard at the hearing as well.

Upon hearing the Motion and reviewing the record, the Court finds that the Debtor has an interest in and a claim to the Receivables, and that the automatic stay of 11 U.S.C. § 362(a) applies such that any action that would affect the Debtor’s interest in or claim to the Receivables is prohibited. The Court makes no finding or determination at this time as to whether the Debtor is the owner of the Receivables or whether the agreement between the Debtor and Respondent constitutes a sale of the receivables or a loan. By this Order, the Court provides notice to all parties who may claim an interest in the Receivables, including Respondent, that Court intends to address and determine at the July 18, 2024 hearing in this matter, as part of the Debtor’s requested relief in its Motion, the issues of whether the Debtor owns the Receivables and whether the Debtor’s transaction with Respondent was a sale of Receivables or a loan.

Therefore, having considered the Debtor’s Motion and the relief requested therein,

including its request for expedited hearing, and finding cause shown for the expedited hearing, with notice provided as indicated in the certificate of service as filed by Debtor's counsel at Dkt No. 10 and confirmed by such counsel at the hearing, and after the hearing having been held, and for reasons stated in open court, the following is hereby ORDERED:

1. The hearing is permitted on an expedited basis as requested in the Motion, the Motion is granted on an interim basis, in part, subject to entry of a final order, and a further hearing is scheduled for July 18, 2024, as noted herein.

2. The Debtor has an interest in and a claim to the Receivables, and any act to obtain possession or control of the Receivables is barred by the automatic stay provisions of 11 U.S.C. § 362(a).

3. All creditors, including the Respondent, are ordered to immediately cease any attempts to: (i) make demands against the Debtor's Receivables or (ii) take any other actions to enforce an asserted claim, demand or interest in the Receivables or any other property in which the Debtor has an interest or to which the Debtor has a claim, or to take any action to assert dominion or control over the Receivables, absent further order of the Court.

4. The Debtor's customers, including Roofsimple, are authorized and directed to distribute to the Debtor any funds owed to the Debtor, including the Receivables, notwithstanding any turnover demands or other payment assertions or claims of the Respondent. With respect to the funds currently held by the Debtor's customer, Roofsimple, and owed to the Debtor, once those funds are paid to the Debtor, the Debtor shall hold the same pending further order of the Court. At the July 18, 2024, hearing, the Court will consider release of those funds directly to the Debtor subject to any appropriate limitations or

any other order that may be necessary. To the extent that any party may wish to be heard regarding the Debtor's assertion, pursuant to its Motion, of its ownership of those funds, such party must file a timely objection with the Court and appear at the July 18, 2024, hearing as required below.

5. Any party wishing to object to the relief requested in the Motion must file an objection with the Court and serve the same on Debtor's counsel on or before July 11, 2024. The failure to file an objection by this deadline may result in the Court treating the Motion as uncontested, entering an order granting the Motion prior to the hearing, cancelling the hearing described herein. A final hearing on the Motion is scheduled for July 18, 2024, at 11:00 A.M. All timely filed objections will be heard at that time. The hearing shall be held by Zoom video conference: Meeting ID: 160 369 2643; URL: <https://vawb-uscourts.gov.zoomgov.com/j/1603692643>.

6. The relief granted herein is without prejudice to any party, including the Respondent, seeking further orders of this Court for relief from the automatic stay or other relief.

7. The Debtor's counsel shall, within 1 day of the entry of this Order, serve a copy of the same by U.S. Mail and by email on the Respondent and on all parties who may have or may have asserted an interest in the accounts receivable generated by the Debtor's business. Immediately thereafter, Debtor's counsel shall file with the Court a and shall certificate indicating the date and manner of such service and notice.

END OF ORDER

EXHIBIT

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**

In re:	:	Chapter 11
	:	
VPR, LLC, ¹	:	Case No. 24-50315
	:	
Debtor.	:	

VPR, LLC,
Movant,
v.
VOX FUNDING, LLC,
Respondent.

**MOTION FOR ORDER ENFORCING (i) AUTOMATIC STAY
AS TO THE DEBTOR’S ACCOUNTS RECEIVABLE AND
(ii) REQUEST FOR EXPEDITED HEARING AND RELATED RELIEF**

NOW comes VPR, LLC, the debtor and debtor-in-possession (the “Debtor”), by and through its proposed counsel, and hereby submits this motion (the “Motion”) for entry of an order that: (i) prohibits the respondent, Vox Funding, LLC, (“Vox” or the “Respondent”) by the automatic stay provisions of 11 U.S.C. §362(a) from making demands for payment from or of the accounts receivable of the Debtor; (ii) authorizes the Debtor’s customers to distribute funds otherwise payable to the Debtor free of any turnover demands or assertions by the Respondent; (iii) grants the relief described herein without prejudice to the Respondent to seek subsequent

¹ The Debtor in this Chapter 11 Case and the last four digits of its taxpayer identification number are as follows: VPR, LLC (0580). The Debtor’s headquarters are located at 2023 Hudson Hollow Rd, Stephens City, Virginia 22655.

relief and orders of the Court to modify the automatic stay or otherwise grant it relief from the same; and (iv) grants the requested and other relief on an expedited/emergency hearing (the “Expedited Hearing”) basis pursuant to Bankruptcy Rule 9006. In support of the Motion, the Debtor states the following:

1. The Debtor filed this Chapter 11 proceeding on June 10, 2024, and is acting as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §1408. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (E), (G), and (K). The statutory and legal predicates for the relief requested herein are sections 105(a), 362, and 541(c) of the Bankruptcy Code.

3. The appointment of a Subchapter V trustee is pending, as the Debtor has made a Subchapter V election.

4. The Debtor is a Virginia limited liability company, whose members are Joseph Eshelman and Sheila Eshelman. The Debtor is a roofing contractor, with seven (7) employees, including the two owners. A description of the Debtors’ business, the events leading to bankruptcy, and the facts and circumstances supporting this Motion are set forth in the “Declaration of Joseph Eshelman in Support of Petition and First Day Motions” (the “Supporting Declaration”), attached hereto as **Exhibit B** and incorporated herein by reference.

5. The continued use of deposit accounts and collection of accounts receivable, free from creditor interference, is a necessity for the Debtor to remain a going concern for the benefit of the bankruptcy estate.

6. Upon information and belief, the Respondent extended credit to the Debtor through a debt facility commonly known as a “merchant cash advance” (“MCA Agreement”), whereby

funds are loaned based on a volume or percentage of anticipated accounts receivable rather than assigning (or factoring) specific accounts receivable. The Respondent purported to secure the loan through the execution of the MCA Agreement and by the filing of UCC-1 financing statement with the Clerk of the Virginia State Corporation Commission as follows.

Creditor	UCC Filing Date & Filing Number	Collateral Description on UCC-1
Vox Funding, LLC	Filing Number: 202310020028909 Filing Date and Time: 10/2/2023 10:01:18 AM	“all of Debtor's present and future accounts, chattel paper, deposit accounts, documents, personal property, assets and fixtures, general intangibles, instruments and inventory whenever located, equipment, and proceeds now or hereafter owned or acquired by Debtor.”

The MCA Agreement is a Loan

7. The Debtor asserts that the transaction with Respondent, as with each of the Lenders, is in fact, a loan and not a sale of receivables.

8. The issue of whether a transaction is a true sale or a secured loan is a threshold issue in determining the rights of parties to the cash collateral of the debtor as well as to defining that cash collateral itself.

9. Some courts have developed a holistic, multifactor framework to analyze these transactions in order to determine whether they are treated as true sales or as financing agreements, regardless of the stated intent of the parties set forth in the transaction documents. See *CapCall, LLC v. Foster (In re Shoot the Moon, LLC)*, 635 B.R. 797 (Bankr. D. Mont. 2021).

The following are the factors often considered:

- (1) whether the buyer has a right of recourse against the seller;
- (2) whether the seller continues to service the accounts and commingles receipts with its operating funds;
- (3) whether there was an independent investigation by the buyer of the account debtor;
- (4) whether the seller has a right to excess collections;
- (5) whether the seller retains an option to repurchase accounts;

- (6) whether the buyer can unilaterally alter the pricing terms;
 - (7) whether the seller has the absolute power to alter or compromise the terms of the underlying asset; and
 - (8) the language of the agreement and the conduct of the parties.
- Id.* at 813 (citing Robert D. Alcher & William J. Fellerhoff, “Characterization of a Transfer of Receivables as a Sale or a Secured Loan Upon Bankruptcy of the Transferor,” 65 Am Bankr. L.J. 181, 186-94 (1991)).

10. The transaction documents between the Debtor and Respondent contain terms and characteristics that the Debtor asserts weigh in favor of the transactions being treated as a loan, such as in each instance the Debtor has continued to commingle the receipts with its operating funds, the Respondent has filed a UCC-1 financing statement asserting a secured interest in the Debtor’s assets, upon information and belief there was no independent investigation of the Debtor, and the principal of the Debtor, Mr. Joseph Eshelman, was required to serve as a guarantor.

11. Although consideration of the above-referenced factors is relevant, the essence and effect of the transaction should control. As put by the U.S. Bankruptcy Court for the Northern District of Georgia, “[i]n analyzing this question, those factors—though helpful in the analysis—are not determinative.” *GMI Grp., Inc. v. Unique Funding Sols., LLC (In re GMI Grp., Inc.)*, 606 B.R. 467, 485 (Bankr. N.D. Ga Aug 9, 2019). The *GMI* Court explained that it “must examine the actual substance rather than the form of the Agreement to determine its true nature” *Id.*, at 485, citing *Colonial Funding Network, supra*, 252 F. Supp. 3d at 280-81 (internal citations and quotations omitted). The *GMI* Court summed it up as follows. “The ultimate touchstone of whether a transaction constitutes a loan is if it provides for guaranteed repayment.” *GMI Grp., Inc. v. Unique Funding Sols., LLC (In re GMI Grp., Inc.)*, 606 B.R. 467, 485.

12. In deciding whether the transaction provided for guaranteed repayment, the *GMI* Court noted the following.

If the Debtor defaults under the Agreement, then the contingent nature of the Agreement is immediately replaced by guaranteed repayment of the Purchased Amount, plus attorneys' fees and related costs. Upon default, the Daily Amount will equal 100 percent of all of the Debtor's Future Receipts and the full, uncollected Purchased Amount will be immediately due and payable in full. Further, the protections built into the Agreement designed to protect Defendant's interests in collecting the full Purchased Amount, such as the UCC-1 financing statement and related security interest, the Confessed Judgment, and the Guaranty, will be triggered. 606 B.R. at 487.

13. Many of the same provisions cited by the *GMI* Court are part of the MCA Agreement. Paragraph 10 of the MCA Agreement grants Respondent a security interest in the receivables and other personal property; under the remedies Paragraph 18, the Specified Percentage jumps to 100% of all future receipts upon default; and Paragraphs 33, 34 and 35 address the obligations and liability of the guarantor for the borrower's performance under the MCA Agreement.

14. For all of these reasons, the Debtor's transaction with Respondent was a loan agreement and the Debtor seeks by this Motion to address the potential interests of the Lenders in the Cash Collateral.²

The Debtor's Accounts Receivable are Property of the Estate

15. Respondent has made threats of demands against the Debtor's customers allegedly based on its rights under the MCA Agreement. By letter dated December 14, 2023, and attached as **Exhibit A**, Respondent demanded of Debtor's customer, Roof Simple, that all funds Roof Simple owed to Debtor must be remitted directly to Respondent. Upon information and belief, as of the date of this Motion and based on this demand letter, Roof Simple has held and

² Although the determination of the allowance of any claim of Vox is not at issue at this time, the Debtor reserves all defenses as to the enforceability of such a loan under state or federal law.

continues to hold \$42,975.18 that is otherwise owed to the Debtor for work and services completed by the Debtor.

16. The Debtor asserts that all of its accounts receivable are property of the bankruptcy estate pursuant to 11 U.S.C. § 541. The funds that the Debtor's customers owe to the Debtor and that they would otherwise pay to the Debtor based on customer's agreements with the Debtor, including the \$42,975.18 referenced above, are property of the estate pursuant to 11 U.S.C. §541.

17. Any attempts of Respondent to collect on its prepetition claims against the Debtor through demands against the Debtor's accounts receivable or against the Debtor's customers or their accounts, without an order from this Court, would be a violation of the automatic stay provisions of 11 U.S.C. §362(a)(3), (6) and (7).

Relief Requested

18. By this Motion, the Debtors seek entry of an Order pursuant to section 105(a) of the Bankruptcy Code confirming the application of the automatic stay provisions of section 362 of the Bankruptcy Code that: (i) prohibits the Respondent from making demands for payment from or of the accounts receivable of the Debtor; (ii) authorizes the Debtor's customers to distribute funds otherwise payable to the Debtor free of any turnover demands or assertions by the Respondent; and (iii) grants the relief described herein without prejudice to the Respondent to seek subsequent relief and orders of the Court to modify the automatic stay or otherwise grant it relief from the same.

Basis for Relief

19. As a result of the commencement of this Case, and by operation of law pursuant to section 362 of the Bankruptcy Code, the automatic stay enjoins all entities from, among other things, (i) commencing or continuing any judicial, administrative or other action or proceeding

against the Debtors that was or could have been initiated before the Petition Date; (ii) recovering a claim against the Debtors that arose before the Petition Date; (iii) enforcing a judgment against the Debtors or property of their estates that was obtained before the Petition Date; (iv) exercising control over property of the estates; or (v) taking any action to collect, assess or recover a claim against the Debtors that arose before the Petition Date. See 11 U.S.C. § 362.

20. Sections 362, 365, 525 and 541(c) of the Bankruptcy Code are self-executing. They constitute fundamental protections for debtors-in-possession that, in combination with other provisions of the Bankruptcy Code, provide the Debtors with the "breathing spell" that is essential to their ability to reorganize successfully. See, *e.g.*, *St. Croix Hotel Corp.* 682 F.2d at 448 ("[Section] 362 is meant to give the debtor a breathing spell from his creditors [and] ... permit [] the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy."); *In re Ionosphere Clubs, Inc.*, 922 F.2d at 989.

21. The Court's general equitable powers are codified in section 105(a) of the Bankruptcy Code, which empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The purpose of section 105(a) is "to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of its jurisdiction." COLLIER ON BANKRUPTCY ¶ 105.01 (Richard Levin & Henry J. Sommer eds., 16th ed.); see also *United States v. Sutton*, 786 F.2d 1305, 1307 (5th Cir. 1986).

22. As the relief requested herein is necessary for the Debtor to operate, and the relief requested herein is without prejudice to the Respondent seeking further final relief, the Debtor respectfully asserts that an expedited hearing with shortened notice is necessary and appropriate.

WHEREFORE, the Debtor requests the entry of an Order that:

- A. Prohibits the Respondent from making demands for payment from or of the accounts receivable of the Debtor;
- B. Authorizes the Debtor's customers to distribute funds otherwise payable to the Debtor free of any turnover demands or assertions by the Respondent;
- C. Grants the relief described herein without prejudice to the Respondent to seek subsequent relief and orders of the Court to modify the automatic stay or otherwise grant it relief from the same;
- D. Sets a deadline by which any claim to the Debtor's accounts receivable must be filed with the Court;
- E. Grants this relief on an expedited/emergency hearing basis with shortened notice pursuant to Bankruptcy Rule 9006; and
- F. Provides the Debtor with such other and further relief as is just.

Dated: June 10, 2024

Respectfully submitted,

VPR, LLC
By Counsel

By: /s/David Cox
David Cox. VSB 38670
COX LAW GROUP, PLLC
900 Lakeside Drive
Lynchburg, VA 24501
434/845-3838 (direct)
434/845-3838 (facsimile)
Proposed Counsel for the Debtor/Movant

EXHIBIT A



December 14, 2023

ROOFSIMPLE
100 E 8th St,
Front Royal, VA 22630

ATTN: ACCOUNTS PAYABLE OR LEGAL DEPARTMENT

RE: VPR, LLC
Ein: 20-0680580
Balance: \$163,750.00

Ladies/Gentlemen:

This letter shall serve to advise you that effective immediately, pursuant to Uniform Commercial Code Sections 9-607 and 9-406, Vox Funding, LLC is the assignee of all the now owned and hereafter arising accounts receivable of VPR, LLC, all accounts payable now or hereafter are due from your company to VPR, LLC payable only to Vox Funding, LLC, and should be remitted directly to Vox Funding, LLC, if by wire transfer in accordance with the enclosed wiring instructions, or if by check made payable only to Vox Funding, LLC and mailed to: Vox Funding, LLC, 100 Park Avenue New York, NY, 10017.

Accompanying this letter is a copy of our recorded Uniform Commercial Code financing statement substantiating the security interest of Vox Funding, LLC in, among other assets, the accounts receivable of VPR, LLC. You should be advised that until such time as you receive authenticated written instructions from us to the contrary, pursuant to Uniform Commercial Code Section 9-406, you may only discharge your obligations with respect to your accounts payable VPR, LLC by making payment to Vox Funding, LLC. Should you make any payments or VPR, LLC otherwise, contrary to the directions contained in this notice, such payment may result in your failure to discharge your obligations with respect to such accounts payable and you will still be obligated to pay Vox Funding, LLC any such amounts sent to VPR, LLC

A handwritten signature in black ink, appearing to read 'Anthony Stephens', written over the words 'Very truly yours,'.

Very truly yours,

Vox Funding, LLC
Anthony Stephens
Recovery Specialist
929-263-2244
astephens@voxfunding.com



FUTURE RECEIPTS SALE AGREEMENT

This FUTURE RECEIPTS SALE AGREEMENT ("Agreement") dated 9/29/2023, is made by and between Vox Funding LLC, a Delaware limited liability company ("Purchaser"), Merchant (Merchant Information below), and the Guarantor(s)/Owner(s), as identified in the Owner/Guarantor Information below.

Merchant Information

Legal Name: VPR, LLC	DBA: VPR
Entity Type: LLC	FEIN: 20-0680580
State of Incorporation: Virginia	Bank Name: Wells Fargo
Address: 2023 Hudson Hollow Road, Stephens City, VA, 22655	Phone: (540) 533-8385

Owner/Guarantor Information (referred to individually or collectively as the "Owner")

Owner 1/Guarantor 1		
Full Name: Joseph Eshelman	Cell Phone: [REDACTED]	Social Security #: [REDACTED]
Home Address: 1966 Hudson Hollow Road	City/State: Stephens City, VA	Zip Code: 22655
Ownership %: 90.00%	Email: [REDACTED]	DOB: [REDACTED]
Owner 2/Guarantor 2		
Full Name:	Cell Phone:	Social Security #:
Home Address:	City/State:	Zip Code:
Ownership %:	Email:	DOB:

Purchase Detail

Amount Sold	\$ 196,500.00	The dollar value of the Future Receipts
Discount Factor	1.310	The risk adjustment to the Amount Sold that determines the Future Receipts Discount
Future Receipt Discount	\$ 46,500.00	The difference in value between the Purchase Price and the Amount Sold
Specified Percentage	6.000%	Percentage of Future Receipts to be remitted to Purchaser
Estimated Average Monthly Receipts	\$ 312,222.06	Future Receipts Expected Per Month based on analysis of Merchant's business and attestation from Merchant
Purchase Price	\$ 150,000.00	The dollar amount Purchaser is paying for the Amount Sold
Processing Fee	\$ 6,000.00	The dollar amount to be deducted from Purchase Price
Direct Payment to Vox Funding	\$ 0.0	Amount paid on existing Vox Funding agreements and fees
Direct Payments to Third Parties	\$ 12,800.00	Amount on third party agreements
Wire Transaction Fee	\$ 50.00	The cost to wire funds to Merchant and/or third parties
Disbursement Amount to Merchant	\$ 131,090.00	Net of fees, discount, and direct payments
Remittance Choice	ACH	Remittance can occur via ACH, Bank Transfer, Bank Wire, Payment Card, or Lockbox
Remittance Frequency	Weekly	[Daily (Each "Business Day" Monday through Friday excluding Federal Reserve holidays)] or [Weekly]
Expected Remittance Term	48	Expected term of this Agreement based on the Specified Percentage (this is only an estimate)
Remittance Transaction Fee	\$ 60.00	Transaction fee for ACH Remittance
Estimated Remittance Amount	\$ 4,093.75	Estimated Remittance Amount of Future Receipts to be collected according to the Remittance Frequency

Note: The terms in the table above shall constitute defined terms with respect to this Agreement.

As explained in more detail in the Terms and Conditions stated hereinafter, Merchant will be in default of this Agreement if Merchant does or causes to be done any of the following during the course of this Agreement (see below Section 6 for a list of additional Events of Default):

- Change or close Merchant's bank account

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[Signature]

- Change (or add) Payment Card processors
- Block Purchaser's ACH access to Merchant's bank account
- Sell Merchant's business prior to full remittance of Amount Sold of Future Receipts above without prior written consent from Purchaser
- Retain a third-party debt consolidator to negotiate a change to the terms and conditions of this Agreement
- Fail to provide Purchaser copies of and/or electronic access to all documents related to Merchant's card processing activity or financial, banking, or tax affairs within ten (10) days of a request by Purchaser
- Sell Merchant's Future Receipts to another person or entity

DISCOUNTS, FEES, AND DAMAGES. The following terms are additional costs, fees, or damages that may be incurred in connection with this Agreement upon certain circumstances, as set forth below:

- Processing Fee.** Merchant agrees to pay Purchaser the Processing Fee listed on the first page of this Agreement. Purchaser will deduct the amount of the Processing Fee from the Purchase Price that is to be paid to Merchant.
- Wire Transaction Fee.** Merchant may request to receive payment of the Purchase Price to Merchant or to third parties by wire transfer. Purchaser shall have sole discretion in determining whether it will pay the Purchase Price by wire transfer. In the event Purchaser pays the Purchase Price by wire transfer, Merchant agrees to pay Purchaser a fee of \$50.00 for each wire transfer, which covers the administrative, technological and banking costs for paying the Purchase Price by wire transfer. Purchaser will deduct the amount of the Wire Transaction Fee from the Purchase Price that is to be paid to Merchant.
- Bank Account Change Fee.** For each change of account requested, Merchant agrees to pay Purchaser a fee of \$50.00, which covers the administrative, technological and other costs for changing the Account. The Account may only be changed to another business checking account in the name of the Merchant.
- Returned Item Fee.** To the extent not prohibited by applicable law, Merchant agrees to pay Purchaser promptly upon demand a returned item fee of \$50.00 (a "Returned Item Fee") if an electronic debit is returned unpaid or cannot be processed or a check, draft or similar instrument issued by Merchant or any individual that signs this Agreement is not honored or cannot be processed (either of which is a "Returned Item Event"). Merchant and any individual that signs this Agreement authorize Purchaser to resubmit returned payments in its discretion. At Purchaser's option, Purchaser will assess this fee any time a payment is not honored or paid, even if it is later honored or paid following resubmission. Any check, draft or similar instrument may be collected electronically if returned for insufficient or uncollected funds. If Merchant is not generating sufficient receipts to satisfy the Remittance Amount, Merchant has the obligation to request an adjustment to the Remittance Amount rather than incurring repeated Returned Item Fees.
- UCC Filing and Release Fee.** Merchant agrees to pay Purchaser \$150.00 upon request from Purchaser for fees associated with filing and releasing any UCCs against Merchant in accordance with this Agreement.
- Blocked Account Damages.** If Merchant puts a block on the Approved Account or takes any intentional action that would prevent Purchaser from debiting the Approved Account as permitted by the Agreement, which action will constitute Merchant's default of the Agreement, Merchant agrees to pay Purchaser promptly on demand \$1,000 as liquidated damages. The parties agree that these damages are a good faith estimate of the damages caused by such a default of the Agreement, including the increased resources required to be expended by Purchaser to respond to the default, the increased cost of funds to Purchaser caused by the failure to receive expected funds, the risk to Purchaser's ability to request ACH payments through the NACHA system caused by initiating rejected ACHs, and other damages and expenses caused by the default.
- Stacking Damages.** Merchant agrees to pay Purchaser promptly on demand \$1,000 as liquidated damages if, subsequent to entering this Agreement, Merchant sells any Future Receipts to, or obtains a loan or other financing secured by any Future Receipts from, any other person or entity ("Stacking") without Purchaser's prior written consent before (i) Purchaser collects the entire Amount Sold or (ii) three years have passed since the date of this Agreement, whichever occurs first, which action will constitute Merchant's default of this Agreement. The parties agree that these damages are a good faith estimate of the damages caused by this default of the Agreement including the increased resources required to be expended by Purchaser to respond to the default, the increased risk to Purchaser caused by the Stacking, and other damages and expenses caused by the default.
- Default Damages.** In the event of a default of this Agreement, if such default is not cured within five days of its first occurrence, Merchant agrees to pay Purchaser promptly on demand:
 - For advances in original amount of \$10,000 or less, a default fee of the greater of \$2,500 or 10% of the undelivered Amount Sold; or
 - For advances in original amount of greater than \$10,000, a default fee of the greater of \$5,000 or 10% of the undelivered Amount Sold.

This amount will be added to the total amount to be remitted by the Merchant, effectively providing a default-based discount to the Purchaser. The parties agree that these damages are a good faith estimate of the damages caused by a default of the Agreement, including the increased resources required to be expended by Purchaser to respond to the default, as well as other damages and expenses caused by the default. **TERMS AND CONDITIONS IN ADDITION TO THE ABOVE TERMS:**

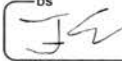
- Nonrecourse Sale of Future Receipts (THIS IS NOT A LOAN).** In consideration of the payment of the Purchase Price specified above, Merchant hereby sells, assigns, and transfers to Purchaser, without recourse, the Amount Sold and will deliver the Specified Percentage of the proceeds of each future sale made by Seller (collectively "Future Receipts") in accordance with this Agreement. "Future Receipts" includes all

payments made by cash, check, ACH or other electronic transfer, credit card, debit card, bank card, charge card (each such card shall be referred to herein as a "Payment Card") or other form of monetary payment in the ordinary course of Seller's business. Merchant agrees to remit to Purchaser in accordance with the terms of this Agreement the Specified Percentage of the Future Receipts until the Amount Sold has been forwarded to Purchaser. Purchaser purchases the Future Receipts free and clear of all claims, liens or encumbrances of any kind whatsoever. Merchant agrees that this Agreement applies to Merchant's entire right, title and interest in the Future Receipts up to the Amount Sold. The terms and conditions of this Agreement shall remain in full force and effect until the Amount Sold has been delivered to Purchaser subject to the terms of this Agreement. Merchant and Purchaser agree that this sale and purchase is final and Merchant has no right to repurchase or resell the Future Receipts or any portion thereof. Merchant, any individual signing this Agreement as a Guarantor/Owner and Purchaser (each individually referred to herein as "Party" and collectively referred to herein as "Parties") agree that the Purchase Price paid to Merchant is the price paid to purchase Merchant's Future Receipts and that the transaction contemplated by this Agreement is a purchase and sale of the Future Receipts. The Parties hereby agree that the transaction contemplated by this Agreement is not a loan, a forbearance of money lent or any similar loan or lending transaction. Merchant understands, agrees and represents that this transaction is made for business or commercial purposes only. Merchant agrees that it will treat the Purchase Price and Amount Sold in a manner consistent with a sale in its accounting records and tax returns. Merchant agrees that Purchaser is entitled to audit Merchant's accounting records upon reasonable notice in order to verify compliance. Merchant waives any rights of privacy, confidentiality or taxpayer privilege in any such litigation or arbitration in which Merchant asserts that this transaction is anything other than a sale of Future Receipts.

2. **Changes to the Estimated Remittance Amount (IMPORTANT PROTECTION FOR MERCHANT).**

- a. **Requesting a Reconciliation Review.** The Estimated Remittance Amount is intended to represent the Specified Percentage of Merchant's daily or weekly Future Receipts. Either Purchaser or Merchant may give written notice to the other party requesting a reconciliation to determine whether Purchaser received an amount greater or less than the Purchased Percentage of Merchant's Future Receipts. Any written request made by Merchant to Purchaser under this Section shall be sent to VOX Funding, 14 E. 44th Street, 4th Floor, New York, NY 10017 or at reconciliations@voxfunding.com. Each reconciliation review period is limited to Merchant's Future Receipts for the calendar month immediately preceding the request. Notice of the reconciliation request must be given by the last calendar day of the month following the calendar month for which the request is being made. Merchant shall either provide Purchaser with online access to its Bank Account or, at Purchaser's request, provide bank statements showing the activity related to the Bank Account within ten (10) days after any request. Merchant also hereby authorizes Purchaser to obtain any bank statement directly from the Merchant's Bank.
 - b. **Adjusting the Estimated Remittance Amount.** Upon reasonable verification of Merchant's actual Future Receipts for the month under review, Purchaser shall adjust the Estimated Remittance Amount on a going-forward basis to more closely reflect the Merchant's actual Future Receipts times the Specified Percentage. If the Estimated Remittance Amount will increase, Purchaser will give Merchant notice five days prior to any such adjustment. After each adjustment made pursuant to this Section, the new dollar amount shall be deemed the Estimated Remittance Amount until any subsequent adjustment.
3. **Method of Remittance.** Merchant hereby agrees to deliver the Amount Sold to Purchaser as (i) the Estimated Remittance Amount (based on the Specified Percentage) of Future Receipts by Purchaser periodically debiting the Estimated Remittance Amount from Merchant's Account via ACH transaction (a "Direct Debit"); (ii) as the Specified Percentage of each day's Payment Card Receipts directly from Merchant's card processor (a "Payment Card Split"); or (iii) the Estimated Remittance Amount (based on the Specified Percentage) of Future Receipts directly through a Lockbox arrangement (a "Lockbox"). **Purchaser may, in its sole discretion select the method by which it will accept remittance of the Amount Sold and, upon written notice to Merchant, change the method by which it will accept remittance of the Amount Sold, and provide Merchant with updated remittance instructions.** The following details each remittance type:

- a. **Direct Debit.** If Purchaser chooses to receive the remittance of the Amount Sold via a periodic Direct Debit of the Estimated Remittance Amount (based on the Specified Percentage) then Merchant agrees as follows:
 1. **Bank Account.** Merchant shall deposit all of Merchant's Future Receipts into a bank account approved by Purchaser (the "Account").
 2. **Automated Clearinghouse for Estimated Remittance Amount.** Merchant hereby authorizes Purchaser and its agents to initiate Automated Clearinghouse ("ACH") payments equal to the Estimated Remittance Amount until Purchaser has received Future Receipts equal to the Amount Sold.
 3. **Merchant to Maintain the Account.** Merchant will be held responsible for any fees incurred by Purchaser resulting from a rejected ACH attempt or an Event of Default.
 4. **Overdraft or Rejected Transactions the Responsibility of Merchant.** The Purchaser is not responsible for any overdrafts.
 5. **ACH authorization.** The Merchant shall provide all necessary ACH authorizations to the Purchaser as set forth in Appendix A to this Agreement.
 6. **Change in Remittance Frequency.** If the Remittance Frequency is weekly or bi-weekly, Purchaser may change the Remittance Frequency to daily if Merchant's weekly or bi-weekly remittance is rejected for insufficient funds two or more times during the course of this Agreement.

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- b. **Payment Card Split.** If Purchaser chooses to accept the remittance of the Specified Percentage of the Amount Sold through a Payment Card Split, Merchant will enter into an agreement with a card processor ("Processor") acceptable to Purchaser, and authorize Processor to pay the Specified Percentage directly to Purchaser until Purchaser receives the total Amount Sold. Merchant acknowledges that Processor will be acting on behalf of Purchaser to collect the Specified Percentage. Merchant irrevocably grants Processor the right to hold the Specified Percentage and to pay Purchaser directly (at, before or after the time Processor credits or remits to Merchant the balance of the receipts not sold by Merchant to Purchaser) until Purchaser receives the entire Amount Sold. Processor may provide Purchaser with all information Purchaser deems pertinent. Merchant agrees to hold Purchaser harmless for the Processor's actions or omissions.
- c. **Lockbox.** If Purchaser chooses to accept the remittance through a Lockbox, Purchaser is authorized by Merchant to receive remittance from the Lockbox. Merchant agrees to deposit all Future Receipts into the Lockbox and shall instruct Merchant's Processor to deposit all receipts directly into the Lockbox. This Authorization shall continue until the Purchaser has received an amount equal to the Amount Sold.
4. **Sale of Additional Future Receipts.** Purchaser and Merchant may agree to additional sale of Future Receipts (each, an "Additional Sale"). For each Additional Sale, Purchaser and Merchant will determine: (a) the amount of additional Future Receipts (the "Additional Amount Sold"), (b) the purchase price for such Additional Amount Sold (the "Additional Purchase Price"), and (c) an adjustment to the Estimated Remittance Amount to reflect a Specified Percentage of the Merchant's Future Receipts based on the sum of the Initial Amount Sold and each Additional Amount Sold. Purchaser and Merchant agree that each Additional Sale may be documented and signed in electronic form and shall be deemed to have occurred immediately upon Purchaser's payment of the Additional Purchase Price. Merchant is under no obligation to sell and Purchaser is under no obligation to buy any additional Future Receipts. Purchaser and Merchant will conduct an Additional Sale only if the terms of the Additional Sale are acceptable to each party. If this Agreement includes an Additional Sale the terms of the Additional Purchase Offer are set forth in Appendix B to this Agreement.
5. **Purchase of Future Receipts from Affiliated Merchants.** If there is more than one Merchant identified in this Agreement then the term "Merchant" includes all identified Merchants and the Amount Sold means the aggregate amount of Future Receipts sold to Purchaser from such Merchants ("Aggregate Future Receipts"). The Specified Percentage will be calculated using the Aggregate Future Receipts, without regard to the actual Future Receipts of any individual Merchant. Purchaser is authorized to obtain the full amount of Aggregate Future Receipts from any bank account owned or controlled by any Merchant.
6. **Events of Default.** The occurrence of any of the following events shall constitute an "Event of Default": (a) Merchant intentionally interferes with Purchaser's right to collect the Specified Percentage; (b) Merchant violates any term, representation, warranty or covenant in this Agreement; (c) Merchant uses multiple Payment Card processors without the prior written consent of Purchaser; (d) Merchant changes its Payment Card processor without the prior written consent of Purchaser; or (e) Merchant defaults under any other agreement with Purchaser, or breaches any of the terms, covenants and conditions of any other agreement with Purchaser.
7. **Timing, Payment of Purchase Price, Processing Trial.** Purchaser shall pay the Purchase Price or any portion thereof to Merchant only at a time, and through a method, acceptable to Purchaser and at Purchaser's sole discretion. Purchaser, in its sole discretion, may refuse to pay the Purchase Price or any portion thereof to Merchant and cancel this Agreement at any time prior to the Purchase Price being paid. Prior to paying the Purchase Price, to the extent that Purchaser chooses to receive its Amount Sold pursuant to a Payment Card Split, as described above, Purchaser may conduct a site inspection and shall conduct a processing trial (the "Processing Trial") to determine whether the Specified Percentage will be correctly processed and/or reported by Merchant's card processor or bank to Purchaser. In the event Purchaser elects to conduct a Processing Trial, Merchant acknowledges and agrees that Purchaser will make its final decision, in its sole and absolute discretion, whether to purchase the Future Receipts after completion of the Processing Trial. If Purchaser conducts a Processing Trial and determines not to purchase the Future Receipts, any receipts remitted to Purchaser during the Processing Trial shall be returned to Merchant.
8. **Application of Amounts Received by Purchaser.** Purchaser reserves the right to apply amounts received by it under this Agreement to any fees or other charges due to Purchaser from Merchant prior to applying such amounts to reduce the amount of any outstanding Amount Sold.
9. **Waiver.** There shall be effected no waiver by failure on the part of Purchaser to exercise, or delay in exercising, any right under this Agreement, nor shall any single or partial exercise by Purchaser of any right under this Agreement preclude any other future exercise of any right. Subject to arbitration as provided in Section 31 of this Agreement, the remedies provided hereunder are cumulative and not exclusive of any remedies provided by law or equity.
10. **Acknowledgment of Security Interest and Security Agreement.** The Future Receipts sold by Merchant to Purchaser pursuant to this Agreement are "accounts" or "payment intangibles" as those terms are defined in the Uniform Commercial Code as in effect in the state in which the Merchant is located (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 Future Receipts free and clear of any liens and encumbrances, from Merchant to Purchaser. To the extent the Future Receipts are "accounts" or "payment intangibles" then (i) the sale of the Future 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 such Future Receipts. Merchant further agrees that, with or without an Event of Default, Purchaser may notify account debtors, or other persons obligated on the Future Receipts or holding the Future Receipts of Merchant's sale of the Future Receipts and may instruct them to make payment or otherwise render performance to or for the benefit of Purchaser. Merchant hereby grants Purchaser a security interest in, and authorizes Purchaser to file a UCC financing statement covering, all of Merchant's present and future accounts, chattel paper,

deposit accounts, documents, personal property, assets and fixtures, general intangibles, instruments, equipment, inventory wherever located, and proceeds now or hereafter owned or acquired by Merchant.

11. **Authorization to File Notice of Sale and Security Interest.** Merchant hereby authorizes Purchaser to file one or more financing statements pursuant to the Uniform Commercial Code (UCC) to evidence and perfect Purchaser's security interest and any continuation statements or amendments thereto. The UCC financing statement may state that the sale of the Future Receipts is intended to be a sale and not an assignment for security and that the Merchant is prohibited from obtaining any financing that impairs the value of the Future Receipts or Purchaser's right to collect same. Merchant authorizes Processor to remit to Purchaser all costs incurred by Purchaser associated with the filing, amendment or termination of any UCC filings.
12. **Power of Attorney.** Merchant irrevocably appoints Purchaser as its agent and attorney-in-fact with full authority to take any action or execute any instrument or document to settle all obligations due to Purchaser from any third party or an Event of Default, 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; (iii) to receive, endorse and collect any checks, notes, drafts, instruments, documents or chattel paper in connection with clause (i) or (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 Purchaser; and (v) to file any claims or take any action or institute any proceeding which Purchaser may deem necessary for the collection of any of the undelivered Amount Sold, or otherwise to enforce its rights with respect to the delivery of the Amount Sold.
13. **Broker Fees, Damages, and Purchaser's Risk.** PURCHASER DOES NOT CHARGE ANY BROKER FEES. If Merchant is charged such a fee, it is not being charged by Purchaser or an agent of Purchaser. Additionally, because this is not a loan, Purchaser does not charge any interest, finance charges, points, late fees or similar fees (except as permitted by applicable law in connection with civil judgments). Purchaser is purchasing the Future Receipts at a discount. Because the transaction evidenced by this Agreement is not a loan, there are no specific scheduled payments and no repayment term. If Merchant's business slows down and Merchant's Future Receipts decrease or if Merchant closes its business or ceases to process Payment Cards and Merchant has not violated any of the representations, warranties and covenants provided in Section 16 below, there shall be no default of this Agreement. Purchaser assumes the risk that Merchant's business may fail or be adversely affected by conditions outside the control of Merchant provided Merchant has not breached a representation, warranty or covenant set forth in Section 16 below.
14. **Right to Cancel.** Merchant may cancel this transaction at any time prior to midnight of the fifth day after Purchaser forwards the Disbursement Amount to Merchant. In order to cancel the transaction, Merchant must provide notice to Purchaser and return the full Disbursement Amount to Purchaser within five days of receipt of the Disbursement Amount. Purchaser shall retain the Processing Fee, but Merchant shall not be responsible for any other costs if this Agreement is cancelled pursuant to this Section.
15. **Right of Access.** In order to ensure that Merchant is complying with the terms of this Agreement, Purchaser shall have the right 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 the Processor and to ensure that Merchant has not violated any other provision of this Agreement, and (ii) Merchant shall provide reasonable access to its employees and records and all other items as requested by Purchaser, and (iii) Merchant shall provide information about its business operations, banking relationships, vendors, landlord and other information to allow Purchaser to interview any relevant parties.
16. **Merchant's Representations, Warranties and Covenants.** Merchant represents, warrants and covenants that as of the date of this Agreement and unless expressly stated otherwise during the course of this Agreement: (i) the Future Receipts are not subject to any claims, charges, liens, restrictions, encumbrances or security interests of any nature whatsoever unless otherwise disclosed to Purchaser in writing prior to payment of the Disbursement Amount to Merchant; (ii) Merchant will not sell the Future Receipts to another person or entity; (iii) Merchant will not conduct business under any name other than as disclosed herein, shall not change its business location without the prior written consent of Purchaser, and shall not temporarily close its business for renovations or other purposes unless 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; (iv) Merchant will not voluntarily sell, dispose, transfer or otherwise convey all or substantially all of its business or assets without the express prior written consent of Purchaser, and the written agreement of any purchaser or transferee assuming all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to Purchaser; (v) Merchant will not change or add Payment Card processors or change the Account without the prior written approval of Purchaser; (vi) Merchant will not take any action to intentionally discourage the use of Payment Cards; (vii) Merchant will not undertake any transaction involving the sale of Merchant, either by an issuance, sale or transfer of ownership interests in Merchant that results in a change in ownership or voting control of Merchant, or by a sale or transfer of substantially all of the assets of Merchant; (viii) Merchant will not voluntarily permit another person or company, including without limitation a franchisor company (if Merchant is franchisee), to assume or take over the operation and/or control of the Merchant's business or business locations; (ix) as of the date of this Agreement Merchant is not currently contemplating the filing of a bankruptcy proceeding or closing Merchant's business and as of the date of this Agreement Merchant has not retained any attorney, other consultant or professional to provide any advice, assistance or planning with respect to the filing of a bankruptcy; (x) all information provided by Merchant to Purchaser in this Agreement, application, interview with Purchaser or otherwise, and all of Merchant's financial statements and other financial documents provided to Purchaser are true and correct and accurately reflect Merchant's financial condition and results of operations; (xi) Merchant will be truthful in all future statements to Purchaser and will provide Purchaser with accurate and complete information regarding Merchant's business as required by this Agreement; (xii) Merchant will possess and maintain insurance in such amounts and against such risks as are customary and necessary to protect its business and shall show proof of such insurance upon demand; (xiii) Merchant has all permits, licenses, approvals, consents and authorizations necessary to conduct its business and will promptly pay all necessary taxes, including but not limited to employment and sales and use taxes; (xiv) Merchant and the person(s) signing this Agreement on

behalf of Merchant have full power and authority to enter into and perform the obligations under this Agreement; (xv) Merchant will provide Purchaser copies of and/or electronic access to all documents related to Merchant's card processing activity or financial, banking, or tax affairs within five (5) days of a request by Purchaser; (xvi) Merchant will not take any action to cause the Future Receipts to be settled or delivered to any bank account other than the bank account that the Future Receipts are being settled or delivered to as of the date of this Agreement and in accordance with the terms of this Agreement; (xvii) Merchant will not enter into any financing agreement wherein and whereby the repayment terms of the agreement require Merchant to make daily or weekly payments (NO "STACKING") and Purchaser may share information regarding this Agreement with any third party in order to determine whether Merchant is in compliance with this provision; (xviii) Merchant'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 Merchant is subject, including any agreement that prohibits the sale or pledge of Merchant's Future Receipts; (xix) Merchant will conduct its business consistent with past practice and shall not take any action that would have an adverse effect on the use, acceptance, or authorization of any Payment Card for the purchase of Merchant's products or services; (xx) Merchant has not, will not and is not contemplating retaining/paying in any way a third-party debt consolidator, nor has the Purchaser consulted with nor will the Purchaser retain a third-party debt consolidator in contemplation of negotiating a change to the terms and conditions of this Agreement; (xxi) Merchant will not voluntarily block Purchaser from receiving/requesting ACH remittances from Merchant's Account; (xxii) Merchant is a sophisticated business entity familiar with the kind of transaction covered by the Agreement, and was represented by counsel or had full opportunity to consult with counsel; and (xxiii) as of the date of this Agreement Merchant has disclosed any condition that has resulted in or would result in a material adverse change to Merchant's business and currently knows of no condition that is likely to result in a material adverse change to its business. Merchant will notify Purchaser immediately if any of the above representations, warranties, or covenants become false or inaccurate.

17. **Telephone Monitoring, Recording and Contacts.** Purchaser may choose to monitor and/or record telephone calls with Merchant and its Owners, employees or agents. These calls are monitored and/or recorded solely for evaluation by supervisors, training, monitoring for compliance purposes, collections, and quality control. By signing this Agreement, Merchant agrees that any call between Purchaser and Merchant or a representative of Merchant may be monitored and/or recorded for these purposes. Merchant further agrees that: (i) it has an established business relationship with Purchaser and may be contacted from time to time regarding transactions with Purchaser by telephone, text message or email; (ii) such contacts are not considered unsolicited or inconvenient; and (iii) any such contact may be made using any wireless, mobile cellular or other number Merchant or its representative gave Purchaser, using any e-mail address Merchant or its representative gave Purchaser, or using an automated dialing and announcing or similar device, unless prohibited by law. This authorization is binding upon Merchant upon signing this Agreement and shall not be deemed withdrawn or revoked should Purchaser determine not to purchase the Future Receipts from Merchant. Merchant authorizes Purchaser, its affiliates, agents and independent contractors to contact Merchant at any telephone number Merchant provides to Purchaser or from which Merchant places a call to Purchaser, or any telephone number where Purchaser believes it may reach Merchant, using any means of communication, including but not limited to calls or text messages to mobile, cellular, wireless or similar devices or calls or text messages using an automated telephone dialing system and/or artificial voices or prerecorded messages, even if Merchant incurs charges for receiving such communications. Merchant also agrees that Purchaser, its affiliates, agents and independent contractors, may use any other medium not prohibited by law including, but not limited to, mail, e-mail and facsimile, to contact Merchant. Merchant expressly consents to conduct business by electronic means.
18. **Remedies.** Upon an Event of Default, the Specified Percentage shall equal 100% of all Future Receipts and Purchaser shall be entitled to all remedies available under law, subject to arbitration as provided in Section 31 of this Agreement. In any action for damages, Purchaser shall be entitled to damages equal to the undelivered portion of the Amount Sold plus all fees and charges (including legal fees) assessed under this Agreement. Merchant and the individuals signing this Agreement hereby agree that upon an Event of Default, Purchaser may electronically debit from any of Merchant's bank accounts via ACH or otherwise, or may instruct Merchant's processor to forward to Purchaser, all or any portion of the sums due to Purchaser.
19. **Attorney's Fees and Costs.** Upon an Event of Default, Purchaser shall be entitled to recover from Merchant and Guarantors all costs of collection, including reasonable attorney's fees and third-party collection costs.
20. **Publicity.** Merchant hereby authorizes Purchaser to use its name in listings of clients and in advertising and marketing materials.
21. **Reporting and Other Authorizations.** By signing this Agreement, Merchant and any individual Owner signing below authorizes Purchaser, its agents and representatives, and any credit reporting agency engaged by Purchaser (i) to investigate any references given or any other statements or data obtained from or about Merchant and any of its Owners for the purpose of this Agreement, (ii) to obtain a consumer or business credit report or any background report on the Merchant and any individual that signs this Agreement deemed necessary by Purchaser for purposes of deciding whether to approve the purchase of the Amount Sold or for any update, renewal, or for evaluating the qualification of Merchant for other products of Purchaser or Affiliated Entities and for any other lawful purpose; and (iii) to contact personal and business references provided by the Merchant in the any application, at any time now or for so long as Merchant continues to have any obligation owed to Purchaser as a consequence of this Agreement or for Purchaser's ability to determine Merchant's eligibility to enter into any future agreement with Purchaser. The report Purchaser obtains may include, but is not limited to, the business' or individuals' credit history or similar characteristics, employment and education verifications, social security verification, criminal and civil history, Department of Motor Vehicle records, any other public records, and any other information Purchaser deems relevant to determine if it will proceed with the Purchase of the Future Receipts from Merchant.
22. **Financial Information.** Merchant authorizes Purchaser and its agents to investigate its financial responsibility and history, and will provide to Purchaser any authorizations, bank or financial statements, tax returns, etc., as Purchaser deems necessary in its sole discretion prior to or at any time after execution of this Agreement. A photocopy of this authorization will be deemed acceptable as an authorization for release of

financial and credit information. Purchaser is authorized to update such information and financial and credit profiles from time to time as it deems appropriate. Merchant waives, to the maximum extent permitted by law, any claim for damages against Purchaser or any of its affiliates relating to any investigation undertaken by or on behalf of Purchaser as permitted by this Agreement or disclosure of information as permitted by this Agreement.

23. **Authorization to Contact Current and Prior Processors.** Merchant hereby authorizes Purchaser to contact any of Merchant's banks, brokers, or current or prior Processors in order to obtain whatever information it may require regarding Merchant's transactions to determine qualification or continuation under this Agreement, or for collections upon an Event of Default. Such information may include but is not limited to, information necessary to verify the amount of Future Receipts previously processed on behalf of Merchant and any chargebacks that may have been charged by the Processor. In addition, Merchant authorizes Purchaser to contact any current or prior processor of the Merchant in order to confirm that Merchant is exclusively using the Processor identified above, or any other payment card processor approved by Purchaser for the processing of payment cards.
24. **Confidentiality.** The terms and conditions of this Agreement are proprietary and confidential. Unless required by law, Merchant shall not disclose this information to anyone other than its attorney, accountant or similar service provider and then only to the extent such person uses the information solely for purpose of advising Merchant and first agrees in writing to be bound by the terms of this Section. A default of this Section entitles Purchaser to damages and legal fees as well as temporary restraining order and preliminary injunction without bond.
25. **Notices.** Purchaser may send any notices, disclosures, terms and conditions, other documents, and any future changes to Merchant by regular mail or by e-mail, at Purchaser's option and Merchant consents to such electronic delivery. Notices sent by e-mail are effective when sent. Notices sent by regular mail become effective three days after mailing to Merchant's address set forth in this Agreement. Merchant may send any notices to Purchaser by e-mail only upon the prior written consent of Purchaser, which consent may be withheld or revoked at any time in Purchaser's sole discretion. Otherwise, any notices or other communications from Merchant to Purchaser must be delivered by certified mail, return receipt requested, to Purchaser's address set forth in this Agreement. Notices sent to Purchaser shall become effective only upon receipt by Purchaser.
26. **Miscellaneous.** This Agreement constitutes the entire Agreement between the Parties, and no representations, agreements, or understandings of any kind, either written or oral, shall be binding upon the Parties unless expressly contained herein. All Parties hereto have had the opportunity to review this Agreement with an attorney of their own choosing and have either relied only on their own attorney's guidance and advice or have been provided sufficient opportunity to have an attorney of their choosing review the Agreement. No construction determinations shall be made against either Party hereto as drafter. This Agreement is a complete and exhaustive statement of the terms of the Parties' agreement, which may not be explained or supplemented by evidence of consistent or inconsistent additional terms or contradicted by evidence of any prior or contemporaneous agreement. The Parties may change any of the terms of this Agreement or amend this Agreement, but any such changes or amendments shall not be effective unless they are in writing, agreed to by all Parties, and signed by Merchant and/or Guarantor(s) as applicable. If any of the provisions of this Agreement are determined to be invalid, illegal or unenforceable in any respect, the remaining provisions shall not be affected in any manner. All Parties hereby acknowledge having the full power and authority to enter into and perform the obligations under this Agreement. Merchant and Guarantor(s) agree to execute such further and additional documents, instruments, and writings as may be necessary, proper, required, desirable, or convenient for the purpose of fully effectuating the terms and provisions of this Agreement. Purchaser may assign, transfer or sell its rights to receive the Amount Sold or delegate its duties hereunder, either in whole or in part, with or without prior written notice to Merchant. The signatures to this Agreement may be evidenced by facsimile copies or other electronic means reflecting the Party's signature hereto, and any such copy or signature shall be sufficient if it were an original signature. In lieu of a signature, Purchaser shall be deemed to have accepted the terms of this Agreement upon payment of the Disbursement Amount to Merchant. Sections 17 through 18 and 27 through 33 shall survive any termination, satisfaction or cancellation of this Agreement.
27. **Binding Effect; Governing Law, Venue, and Jurisdiction.** This Agreement shall be binding upon Merchant as well as its successors, assigns, related companies and Affiliated Entity (as defined below) as well as any company or person (or group of persons working together) that purchases substantially all of the Merchant's assets or a majority of its voting interests and/or control over the Merchant. This Agreement shall inure to the benefit of Purchaser, its successors and assigns. This Agreement, all transactions it contemplates, the entire relationship between the Parties, and all Claims (as defined in Section 28 below), whether such Claims are based in tort, contract or arise under statute or in equity, including all Claims involving an Affiliated Entity of Purchaser, shall be governed by and enforced in accordance with: (i) the laws of the State of New York without regard to principles of conflicts of laws that would require the application of any other law; and (ii) federal law for the limited purpose of the Arbitration Agreement (Section 31 below). Merchant understands and agrees that (i) Purchaser is located in New York; (ii) Purchaser makes all decisions from Purchaser's office in New York; (iii) the Agreement is made in New York (that is, no binding contract will be formed until Purchaser receives and accepts Merchant's signed Agreement in New York); and (iv) Merchant's payments are not accepted until received by Purchaser in New York. Any suit, action or proceeding arising hereunder, or the interpretation, performance, or default of this Agreement, shall, if Purchaser so elects, be instituted in any court sitting in New York, (the "Acceptable Forums"). Merchant agrees that the Acceptable Forums are convenient to it and submits to the jurisdiction of the Acceptable Forums and waives any and all objections to jurisdiction or venue. Should such proceeding be initiated in any other forum, Merchant waives any right to oppose any motion or application made by Purchaser to transfer such proceeding to an Acceptable Forum. Purchaser and Merchant further agree that the mailing by certified or registered mail, return receipt requested, of any process required by any such court will constitute valid and lawful service of process against them, without the necessity for service by any other means provided by statute or rule of court, but without invalidating service performed in accordance with such other provisions. "Affiliated Entity" means and includes: (i) any entity or person that has owned or controlled Purchaser or any entity that has been owned or controlled by Purchaser; (ii) any predecessor or successor entities of Purchaser; (iii) any entity or person who at any time owns or holds an equity or security interest in the Future Receipts and the interest was granted by

Purchaser; and (iv) all officers, directors, owners and employees of Purchaser, its parent company or any Affiliated Entity; and (v) any parent companies of any Affiliated Entity and their subsidiaries.

28. **Disputes.** Any claim, dispute or controversy between any of the Parties or between any of the Parties and an Affiliated Entity arising from or relating in any way to the relationship between the Parties, including any relationship with an Affiliated Entity, whether such claims are based in tort, contract, or arise under statute or in equity (referred to herein as "Claim" or "Claims"), shall be resolved only as provided in this Agreement. "Claim" includes but is not limited to: any disputes regarding or relating to this Agreement or the application provided in connection with this transaction; any solicitation or advertising materials; any activities relating to the maintenance or servicing of the transaction; any disputes arising from any collection activity related to a default or alleged default of this Agreement; any disputes concerning the processing or collection of Future Receipts; any disputes regarding information obtained by Purchaser from, or reported by Purchaser to, Merchant, credit bureaus or others; and any disputes resulting from or relating to, in any way, any previous relationship, agreement or contract between the Parties or Merchant and an Affiliated Entity including but not limited to an agreement under which Merchant sold Future Receipts to Purchaser or an Affiliated Entity. The Parties hereby agree that this provision amends and supersedes any provision in a previous agreement entered into between the Parties or between Merchant and an Affiliated Entity regardless of whether the previous agreement has been satisfied, terminated or is in default. Accordingly, any Claims between the Parties or made against or by an Affiliated Entity shall no longer be governed by the dispute resolution provisions contained in a previous agreement but shall be governed by Section 20 and Sections 28 through 33 of this Agreement; provided, however, that any changes this provision makes to previous agreements between the Parties or made against or by an Affiliated Entity shall not apply in any litigation, arbitration or other proceeding commenced before the date of this Agreement.
29. **JURY WAIVER.** THE PARTIES WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING IN CONNECTION WITH OR IN ANY WAY RELATED TO THE TRANSACTIONS OF WHICH THIS AGREEMENT IS A PART OR ITS ENFORCEMENT, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW OR DEEMED BY A COURT OF LAW TO BE AGAINST PUBLIC POLICY. THE PARTIES ACKNOWLEDGE THAT EACH PARTY MAKES THIS WAIVER KNOWINGLY, WILLINGLY AND VOLUNTARILY AND WITHOUT DURESS, AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH THEIR ATTORNEYS.
30. **CLASS ACTION WAIVER.** PURCHASER, MERCHANT, AND EACH GUARANTOR 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 HERETO 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 A COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST THE OTHER, THE PARTIES AGREE 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) 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.
31. **ARBITRATION.** IF PURCHASER, MERCHANT OR ANY GUARANTOR REQUESTS, THE OTHER PARTIES AGREE TO ARBITRATE ALL DISPUTES AND CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT. IF PURCHASER, MERCHANT OR ANY GUARANTOR SEEKS TO HAVE A DISPUTE SETTLED BY ARBITRATION, THAT PARTY MUST FIRST SEND TO ALL OTHER PARTIES, BY CERTIFIED MAIL, A WRITTEN NOTICE OF INTENT TO ARBITRATE. IF PURCHASER, MERCHANT OR ANY GUARANTOR DO NOT REACH AN AGREEMENT TO RESOLVE THE CLAIM WITHIN 30 DAYS AFTER THE NOTICE IS RECEIVED, PURCHASER, MERCHANT OR ANY GUARANTOR MAY COMMENCE AN ARBITRATION PROCEEDING WITH THE AMERICAN ARBITRATION ASSOCIATION ("AAA"), JAMS, OR THE FORUM. PURCHASER WILL PROMPTLY REIMBURSE MERCHANT OR THE GUARANTOR ANY ARBITRATION FILING FEE, HOWEVER, IN THE EVENT THAT BOTH MERCHANT AND THE GUARANTOR MUST PAY FILING FEES, PURCHASER WILL ONLY REIMBURSE MERCHANT'S ARBITRATION FILING FEE AND, EXCEPT AS PROVIDED IN THE NEXT SENTENCE, PURCHASER WILL PAY ALL ADMINISTRATION AND ARBITRATOR FEES. IF THE ARBITRATOR FINDS THAT EITHER THE SUBSTANCE OF THE CLAIM RAISED BY MERCHANT OR THE GUARANTOR OR THE RELIEF SOUGHT BY MERCHANT OR THE GUARANTOR IS IMPROPER OR NOT WARRANTED, AS MEASURED BY THE STANDARDS SET FORTH IN FEDERAL RULE OF PROCEDURE 11(B), THEN PURCHASER WILL PAY THESE FEES ONLY IF REQUIRED BY THE AAA, JAMS, OR FORUM RULES. MERCHANT AND THE GUARANTOR AGREE THAT, BY ENTERING INTO THIS AGREEMENT, THEY ARE WAIVING THE RIGHT TO TRIAL BY JURY. PURCHASER, MERCHANT OR ANY GUARANTOR MAY BRING CLAIMS AGAINST ANY OTHER PARTY ONLY IN THEIR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. FURTHER, PURCHASER, MERCHANT AND ANY GUARANTOR AGREE THAT THE ARBITRATOR MAY NOT CONSOLIDATE PROCEEDINGS FOR MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING, AND THAT IF THIS SPECIFIC PROVISION DEALING WITH THE PROHIBITION ON CONSOLIDATED, CLASS OR AGGREGATED CLAIMS IS FOUND UNENFORCEABLE, THEN THE ENTIRETY OF THIS ARBITRATION CLAUSE SHALL BE NULL AND VOID. THIS AGREEMENT TO ARBITRATE IS GOVERNED BY THE FEDERAL ARBITRATION ACT AND NOT BY ANY STATE LAW REGULATING THE ARBITRATION

OF DISPUTES. THIS AGREEMENT IS FINAL AND BINDING EXCEPT TO THE EXTENT THAT AN APPEAL MAY BE MADE UNDER THE FAA. ANY ARBITRATION DECISION RENDERED PURSUANT TO THIS ARBITRATION AGREEMENT MAY BE ENFORCED IN ANY COURT WITH JURISDICTION. THE TERMS "DISPUTES" AND "CLAIMS" SHALL HAVE THE BROADEST POSSIBLE MEANING.

32. **RIGHT TO OPT OUT OF ARBITRATION.** MERCHANT AND GUARANTOR(S) MAY OPT OUT OF THE ARBITRATION PROVISION ABOVE. TO OPT OUT OF THIS ARBITRATION CLAUSE, MERCHANT AND EACH GUARANTOR MUST SEND PURCHASER A NOTICE THAT THE MERCHANT AND EACH GUARANTOR DOES NOT WANT THIS CLAUSE TO APPLY TO THIS AGREEMENT. FOR ANY OPT OUT TO BE EFFECTIVE, MERCHANT AND EACH GUARANTOR MUST SEND AN OPT OUT NOTICE TO THE FOLLOWING ADDRESS BY REGISTERED MAIL, WITHIN 14 DAYS AFTER THE DATE OF THIS AGREEMENT: VOX FUNDING – ARBITRATION OPT OUT, 132 E 43RD STREET, SUITE 311, NEW YORK, NY 10017, ATTENTION: VOX FUNDING LEGAL DEPARTMENT.
33. **PERSONAL GUARANTY OF PERFORMANCE AND INDIVIDUAL LIABILITY OF GUARANTOR(S) FOR BREACH OF REPRESENTATIONS, WARRANTIES AND COVENANTS.** Guarantor will derive direct or indirect economic benefit from this Agreement and is directly or indirectly involved in the business operations of Merchant. By signing this Agreement on behalf of Merchant AND ON THEIR OWN BEHALF (each such signer a Guarantor), the undersigned Guarantors hereby assume and, jointly and severally, guarantee to Purchaser prompt and complete performance of the following obligations of Merchant (the "Guaranteed Obligations"):
- a. Merchant's obligation to provide Purchaser copies of and/or electronic access to all documents related to Merchant's card processing activity or financial, banking, or tax affairs within ten (10) days of a request by Purchaser;
 - b. Merchant's obligation to not conduct business under any name other than as disclosed herein, to not change its business location without the prior written consent of Purchaser, and not temporarily close its business for renovations or other purposes unless 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;
 - c. Merchant's obligation to not voluntarily sell, dispose, transfer or otherwise convey all or substantially all of its business or assets without the express prior written consent of Purchaser, and the written agreement of any purchaser or transferee assuming all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to Purchaser;
 - d. Merchant's obligation to not change or add Payment Card processors or change the Account without the prior written approval of Purchaser;
 - e. Merchant's obligation to not take any action to cause the Future Receipts to be settled or delivered to any bank account other than the bank account that the Future Receipts are being settled or delivered to as of the date of this Agreement and in accordance with the terms of this Agreement;
 - f. Merchant's obligation to not enter into any financing agreement wherein and whereby the repayment terms of the agreement require Merchant to make daily or weekly payments (NO "STACKING");
 - g. Merchant's obligation to not retain or pay in any way a third-party debt consolidator in contemplation of negotiating a change to the terms and conditions of this Agreement; and
 - h. Merchant's obligation to not block Purchaser from receiving/requesting ACH remittances from Merchant's Account.
34. **Guarantor Waivers.** Purchaser does not have to notify Guarantor of any of the following events and Guarantor will not be released from its obligations under the Agreement and this Personal Guaranty of Performance if it is not notified of: (i) Merchant's failure to perform any obligation under the Agreement; (ii) any adverse change in Merchant's financial condition or business; (iii) Purchaser's acceptance of the Agreement; and (iv) any renewal, extension or other modification of the Agreement or Merchant's other obligations to Purchaser. In addition, Purchaser may take any of the following actions without releasing Guarantor from any of its obligations under the Agreement and this Personal Guaranty of Performance: (i) renew, extend or otherwise modify the Agreement or Merchant's other obligations to Purchaser; and (ii) release Merchant from its obligations to Purchaser. Guarantor shall not seek reimbursement from Merchant or any other guarantor for any amounts paid by it under the Agreement or this Personal Guaranty of Performance. Guarantor permanently waives and shall not seek to exercise any of the following rights that it may have against Merchant, or any other guarantor, for any amounts paid by it, or acts performed by it, under the Agreement or this Personal Guaranty of Performance: (i) subrogation; (ii) reimbursement; (iii) performance; (iv) indemnification; or (v) contribution. 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 the Agreement and this Personal Guaranty of Performance shall include that amount.
35. **Guarantor Acknowledgement.** Guarantor acknowledges that Guarantor understands the seriousness of the provisions of the Agreement, including the Jury Trial Waiver Class Action Waiver and Arbitration sections, and has had a full opportunity to consult with counsel their choice; and have consulted with counsel or have decided not to avail himself / herself / themselves of that opportunity.

AGREEMENT SIGNATURES

EACH PARTY ACKNOWLEDGES THAT THEY HAVE READ AND AGREE TO ALL THE FOREGOING TERMS AND CONDITIONS, INCLUDING THE CHOICE OF LAW AND ARBITRATION PROVISIONS SET FORTH ABOVE.

ACCEPTED AND AGREED

VOX FUNDING LLC:

DocuSigned by:



592EF3C9E6384E8...

(Signature)

ELNARA GAVRILOVA

(Name)

VP of Finance

(Title)

ACCEPTED AND AGREED

FOR THE MERCHANT (#1)

DocuSigned by:



873A40B832F7425...

(Signature)

Joseph Eshelman

(Name)

Owner

(Title)

ACCEPTED AND AGREED

FOR THE MERCHANT (#2)

(Signature)

(Name)

(Title)

ACCEPTED AND AGREED

FOR THE OWNER/GUARANTOR (#1)

DocuSigned by:



873A40B832F7425...

(Signature)

Joseph Eshelman

(Name)

Owner

(Title)

ACCEPTED AND AGREED

FOR THE OWNER/GUARANTOR (#2)

(Signature)

(Name)

(Title)

APPENDIX A
AUTHORIZATION AGREEMENT
FOR AUTOMATED CLEARING HOUSE TRANSACTIONS

VPR, LLC _____ ("Merchant") hereby authorizes Vox Funding LLC ("Purchaser") to present automated clearing house (ACH) debits to the following checking account in the amount of fees and other payments due to Purchaser from Merchant under the terms of that Future Receipts Sale Agreement (the "Agreement") entered into between Merchant and Purchaser, as it may be amended, supplemented or replaced 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, 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.

Transfer Funds To/From: _____ Name of Bank: Wells Fargo
Wire Routing #: _____
ABA Transit/Routing #: _____
Checking Account #: _____

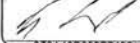
This authorization is to remain in full force and effect until Purchaser has received all amounts due or that may become due to Purchaser under the Agreement.

Merchant Information: Merchant's Name: VPR, LLC
Signature of Authorized Representative: 
Print Name: Joseph Eshelman
Title: Owner
Merchant's Tax ID: 20-0680580
Date: 9/29/2023

ACCEPTED AND AGREED:

FOR THE MERCHANT (#1)

DocuSigned by:



873A40B832F7425

(Signature)

Joseph Eshelman

(Name)

Owner

(Title)

FOR THE OWNER (#1)

DocuSigned by:



873A40B832F7425

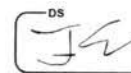
(Signature)

Joseph Eshelman

(Name)

Owner

(Title)



iLien Cover Page

Date Printed: 10/02/2023

Debtor:

VPR, LLC
106 Tyler Ct
Stephens City, VA 22655

bill code: VPR, LLC

loan num:

REF3:

REF4:

Ref5:

Ref6:

Ref7:

Law Firm Bill Code:

iLien File #: 89124030

Order Confirmation #: 95336726

UserID: 350608

UserName: AJACKSON@VOXFUNDING.COM

Number of Collateral Pages Attached: 0

Transaction Type: Original

Jurisdiction: VA, State Corporation Commission

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

Lien Solutions

Representation of filing

This filing is Completed

File Number : 202310020028909

File Date : 02-Oct-2023

A. NAME & PHONE OF CONTACT AT SUBMITTER (optional) Name: Wolters Kluwer Lien Solutions Phone: 800-331-3282 Fax: 818-662-4141	
B. E-MAIL CONTACT AT SUBMITTER (optional) uccfilingreturn@wolterskluwer.com	
C. SEND ACKNOWLEDGMENT TO: (Name and Address) Lien Solutions P.O. Box 29071 Glendale, CA 91209-9071 95336726 VAVA File with: State Corporation Commission, VA SEE BELOW FOR SECURED PARTY CONTACT INFORMATION	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME VPR, LLC				
OR				
1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
1c. MAILING ADDRESS				
106 Tyler Ct	Stephens City	VA	22655	USA

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME VPR, LLC				
OR				
2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2c. MAILING ADDRESS				
PO BOX 3336	WINCHESTER	VA	22604	USA

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME C T Corporation System, as representative				
OR				
3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3c. MAILING ADDRESS				
330 N Brand Blvd, Suite 700, Attn: SPRS	Glendale	CA	91203	USA

4. COLLATERAL: This financing statement covers the following collateral:

Secured Party has purchased certain "Future Receipts" from Debtor. "Future Receipts" means all payments made to Debtor by cash, check, ACH or other electronic transfer, credit card, debit card, bank card, charge card or other form of monetary payment in the ordinary course of Debtor's business. Notice: Pursuant to the agreement between Debtor and Secured Party, Debtor is prohibited from obtaining any financing that impairs the value of the Future Receipts or Secured Party's right to collect same. In the event that any entity is granted a security interest in Debtor's Future Receipts contrary to the above, the Secured Party asserts a claim to any proceeds thereof received by such entity. As per the FUTURE RECEIVABLES SALE AGREEMENT, the Secured Party has a security interest in all of Debtor's present and future accounts, chattel paper, deposit accounts, documents, personal property, assets and fixtures, general intangibles, instruments and inventory whenever located, equipment, and proceeds now or hereafter owned or acquired by Debtor.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensors

8. OPTIONAL FILER REFERENCE DATA:

95336726