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January 22, 2019

Via E-mail (regulations@dbo.ca.gov)

Mr. Mark Dyer
Regulations Coordinator
California Department of Business Oversight
1515 K Street, Suite 200
Sacramento, CA 95814-4052

Re: Comments on Proposed Rulemaking Regarding Commercial Financing Disclosures (PRO 01-18)

Dear Mr. Dyer:

We submit this letter on behalf of our client, CAN Capital, Inc. ("CAN Capital"). CAN Capital appreciates the Department of Business Oversight's ("DBO") invitation, dated December 4, 2018, to comment on rulemaking it will undertake regarding SB 1235 (the "Invitation"). Because SB 1235 represents a major change in the disclosure requirements for commercial financing in California, and because it leaves many details of the new requirements for determination by the DBO, the DBO's rulemaking will be critical to the viability and success of this new law. CAN Capital believes its experience, measured in both time in the market and total amount of financing provided, give it unique insight into the relevant issues.

Background on CAN Capital and the Commercial Financing Products it Offers to California Small Businesses

Founded in 1998 by a woman small business owner who sought to solve the problem of small business access to capital, CAN Capital is the longest tenured alternative small business finance company. CAN Capital has served small businesses in hundreds of different industries, including healthcare (doctors, dentists, and veterinarians), food retail (from "white tablecloth" to quick service restaurants), automotive, construction, spas and beauty (hair and nail salons, cosmetics), and business equipment and services, among others. For over 20 years, CAN Capital has served Main Street businesses which have been underserved by traditional lenders. In that time, CAN Capital has issued over $7 billion in financing to these businesses.

CAN Capital makes commercial loans available to small businesses through WebBank, a Utah-chartered Industrial Bank, member FDIC ("WebBank"). CAN Capital also makes working capital available to small businesses through its CAN Capital Merchant Services, Inc. ("CCMS") subsidiary by purchasing future payment card receivables at a discount; these transactions commonly are referred to as merchant cash advances ("MCAs"). The strength and predictability of CAN Capital's risk and underwriting models have been tested in multiple business and credit cycles since 1998, demonstrating the value of CAN Capital's commercial financing products.

Small Business Loans Made by WebBank

As noted above, CAN Capital makes business loans available to California small businesses through its relationship with WebBank. The current form of the Business Loan Agreement ("BLA") for WebBank loans made available through CAN Capital is attached as Exhibit A.

These loans are closed-end business loans secured by assets of the business (other than real property) and personally guaranteed by one or more individuals affiliated with the business, typically the owner(s). The BLA restricts the use of the funds to business purposes such as purchase of inventory, and it prohibits use of the funds for the purchase of real estate or any consumer, personal, family, or household purpose. Most WebBank loans made available through CAN Capital are fully amortizing term loans requiring fixed loan payments on each business day during the term.

Merchant Cash Advances

CCMS purchases future payment card receivables from California small businesses in MCA transactions. In these transactions, CCMS purchases a specified amount of the business's future payment card receivables at a discount. Under the terms of the governing Future Receivables Purchase and Sale Agreement ("FRPSA"), CCMS is entitled to receive a fixed percentage of the business's payment card receivables each business day until the entire purchased amount has been delivered, either directly from the business's payment card processor or through ACH debits from the business bank account into which the card processor deposits card receivables. The primary benefit of this product is that receivables are delivered to CCMS as they are generated by the business, aligning with the business's cash flow. Thus, merchants do not risk default when fluctuations in the business's revenue make it difficult to make minimum payments or otherwise comply with the requirements of a typical business loan. The form of the FRPSA currently being used in California is attached as Exhibit B.

The MCAs offered by CCMS are true sales of payment card revenue streams, not loans, as they have no fixed term, payment due dates, maturity date, or minimum payment amounts.[1] There is no repayment obligation in these transactions; instead, the business is simply obligated to allow CCMS to collect its fixed percentage of receivables as they are generated in the ordinary course of business (e.g., the business cannot stop accepting payment cards, change payment processors without notice, or engage in other specified acts that would deny CCMS the benefit of its bargain). One or more individuals affiliated with the business (typically the owner(s)) guarantee performance of these "benefit of the bargain" covenants, but not that CCMS ultimately will collect the receivables it purchased. The business also pledges collateral (not including real property) to secure performance of these covenants, but not for any other purpose. The guarantors do not personally pledge any collateral. CCMS has no recourse against merchants who go out of business in the ordinary course.

Origination Channels

Particularly because it impacts the complexity of implementing SB 1235's disclosure requirements, it is important to discuss the channels through which CAN Capital (and other commercial financing companies) acquire customers and facilitate the consummation of commercial financing transactions.

Currently, CAN Capital uses two primary origination channels: a direct channel and through independent sales organizations ("ISOs") acting as brokers or sub-brokers. Merchants seeking financing directly through CAN Capital may do so by contacting the company by telephone or electronic mail. They are asked to provide some preliminary information such as the legal name of the business, business telephone number, type of business, annual revenue, time in business, and when funds are needed. Based on this information, CAN Capital typically is able to provide to the merchant the amount of funding the business may qualify for, subject to further underwriting. Once the merchant selects a product and key terms, CAN Capital provides the merchant with a completed agreement (BLA or FRPSA) and other documents depending on the nature of the transaction and the situation, such as bank statements, proof of ownership documents, and tax returns. The merchant submits the executed agreement, together with the additional documents needed for underwriting. The deal is then underwritten by CCMS or WebBank and, if approved, funded to consummate the transaction.

When merchants seek financing through an ISO, the process is similar from CAN Capital's perspective, but the merchant is dealing with the ISO rather than CAN Capital directly, and

[1] The legislative history of SB 197, which amended the CFL, states that MCAs are not loans and therefore may be offered without a license in California. *See* Senate Rules Committee, Office of Senate Floor Analyses, September 9, 2015 SB 197 Analysis.

the ISO may be discussing funding options through other companies in addition to CAN Capital.

* * *

Based on our experience in the industry, we respectfully offer the following comments regarding the DBO's rulemaking to implement SB 1235:

Definitions

SB 1235 defines terms relating to the commercial financing products that are subject to SB 1235's disclosures and entities that are exempt from making the disclosures. Are additional definitions needed? For the terms already defined, are any definitions unclear; and if so, why? Can the definitions be read to encompass transactions, individuals, or entities not intended to be regulated by the disclosure requirements? Does any definition result in ambiguity regarding whether a transaction, individual, or entity is subject to the disclosure requirements?

SB 1235 defines "provider" as a "person who extends *a specific offer of commercial financing* to a recipient," or that "arrange[s] for the extension of commercial financing by [a] depository institution to a recipient via an online lending platform administered by the" person. California Financial Code Section 22800(m).[2] It requires these providers to make certain disclosures "at the time of extending a specific commercial financing offer to that recipient, and [to] obtain the recipient's signature on such a disclosure before consummating the commercial financing transaction." *See* Sections 22802-22803. CAN Capital believes there are at least two issues arising from the definition of provider and the disclosure requirement itself that should be addressed through regulations.

First, it is important to define the term "specific offer" to ensure that all providers of commercial financing are required to make the disclosures contemplated by SB 1235 when the merchant is choosing a particular transaction. CAN Capital (and likely other providers of commercial financing) structures its transactions so that it is the merchant which makes the contractual "offer" by submitting a signed BLA or FRPSA. *See, e.g.*, FRPSA at 1 ("By signing this Agreement you are making an offer to sell Future Receivables to us. This Agreement is not binding on us, and therefore not accepted by us, unless and until we deliver the Purchase Price to you."); BLA § 1 (stating that the agreement begins "on the date we accept it at our home office in Utah by signing it or sending you the Principal Amount" and that "[w]e may accept this Agreement without signing it by sending you the Principal Amount."); *City of Moorpark v. Moorpark Unified Sch. Dist.*, 54 Cal. 3d 921, 930, 1 Cal. Rptr. 2d 896, 819 P.2d 854 (1991) ("An offer is the manifestation of willingness to enter into

[2] All statutory references below are to the Financial Code unless otherwise specified.

a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.").

Absent a definition of "specific offer" making clear that this term is not limited to contractual offers, a company that uses this sequence of offer and acceptance could attempt to avoid the disclosure requirement on the basis that the company did not make an "offer." This would defeat the purpose of SB 1235, which is to allow merchants to compare and understand financing terms before proceeding with a transaction. Disclosures should be required when a company provides financing terms that are sufficiently specific to allow a transaction to be consummated, which should be when a contract is generated, regardless of whether the provision of that contract constitutes a contractual "offer" or not.

Second, the second part of the definition of provider clearly is intended to cover companies that act as marketing and servicing agents for banks. However, the definition is underinclusive because not all of these companies use "an online lending platform" to arrange for the extension of commercial financing by the bank. In order to ensure a level playing field and cover all commercial lending done through bank partnerships, this definition should be expanded in the regulations to cover companies whose operations are minimally or not at all conducted through "an online lending platform."

Types of Commercial Financing

The Commissioner invites stakeholders to provide examples of commercial financing transactions subject to SB 1235 other than fixed-rate, fixed-payment financing. Examples of such transactions may include those with variable interest rates, multiple, flexible or contingent repayment options, merchant cash advances, open-end credit plans, and recourse and non-recourse factoring. What obstacles do stakeholders anticipate in complying with SB 1235 with respect to such transactions, and how can the Commissioner's rules address those obstacles?

and

Explanatory and Qualifying Language in Connection with Estimated Terms and Estimated Annualized Rates

What explanatory and qualifying language should providers include when disclosing estimated terms or estimated annualized rates? How can such language minimize potential confusion for the financing applicant and assist the applicant in understanding how the provider calculated the estimate?

and

Reliance Upon Internal Underwriting Criteria to Calculate Estimated Terms and Estimated Annualized Rates

For certain products where disclosure of an estimated term and estimated annualized rate may be appropriate, should the calculation methodology established by the Commissioner require that provider to rely upon internal assumptions or calculations the provider used to underwrite the transaction? For example, in a commercial financing transaction with payments set as a percentage of the business's gross receipts, should the estimated term incorporate the provider's internal calculation of the business's future gross receipts that the provider relied upon in underwriting the transaction? Why or why not?

and

Prepayment Policies

What types of prepayment policies and charges are common for different commercial financing transactions subject to SB 1235? How are these policies characterized to customers today?

Compliance Obstacles

Section 22802 requires that "providers" make certain disclosures to the "recipient" of a "commercial financing offer"[3] at the time of extending the offer, including: the dollar cost of the financing, the term, the frequency of payments, a description of prepayment policies, and the total cost of financing expressed as an annualized rate. For providers offering "factoring" or "asset-based lending," but not for other providers, Section 22803 allows these disclosures to be made based on an example of a transaction that could occur for a given amount of receivables as an alternative.

The Commissioner raises a critically important issue, because it is not possible for all of the disclosures required by Section 22802 to be made for many types of products before the transaction is fully performed. MCAs, for example, do not have a term or payment schedule. Although companies offering MCAs can predict how long they believe it will take for a merchant to deliver all of the receivables sold to the MCA company based on historical data, the reality is that these predictions may be inaccurate and vary depending on many factors (e.g., seasonality, business conditions, market factors, etc.). A company with strong revenue during the period of time evaluated during underwriting could have that revenue decline precipitously when the economy slows down or the business struggles due to changes in demand for its products or services, loss of key personnel, or other factors. If this occurs, the actual "term" of an MCA (i.e., the amount of time it takes for all of the purchased receivables to be delivered) could be significantly longer than predicted. By the same token, business could improve based on a better economy, stronger demand, or other factors, resulting in the "term" being significantly shorter than predicted.

[3] These quoted terms are defined in Section 22800.

For the same reasons, it is not possible to disclose in advance the total cost of MCA financing expressed as an annualized rate. An APR, as that term is used in Regulation Z, can only be calculated with knowledge of the amount and timing of all payments. Because MCAs have no payment schedule, and instead simply require a fixed percentage of the merchant's receivables to be delivered to the financing company as they are generated in the ordinary course of the merchant's business, the amount and timing of these deliveries (or remittances) will ebb and flow based on the revenue of the merchant's business. Neither financing companies nor merchants can predict this revenue with any precision in advance, and even if they could, different types of businesses (and even different businesses within merchant categories) will have different revenue patterns. For example, many businesses are highly seasonal. An ice cream shop at the beach generally will have more revenue during the summer than in winter months, given greater beach usage (and ice cream demand) when it is warm. And even during the summer, there can be bad weather or other reasons why beach traffic and ice cream demand may vary. Similarly, most restaurants will have more revenue on Fridays and Saturdays than on Mondays, but a sports bar and grill might have its strongest revenue on Mondays during football season due to the popularity of Monday Night Football. Small business revenue also can spike based on external events, such as if a political party convention or major sporting event like the Super Bowl is in town, and conversely it can be impacted very negatively by events such as the recent California wildfires.

MCAs also have another issue, which is that the concept of a "prepayment policy" does not apply to them. In an MCA, there simply are no payments required. There is, however, an analogous concept of "repurchase," wherein some MCA providers allow the merchant to buy back the balance of receivables they sold to the MCA company, with repurchase pricing ordinarily specified in the MCA agreement. CAN Capital's FRPSA does not permit repurchases absent a separate agreement by the parties. *See* FRPSA, § 3.2.

<u>How the Regulations Might Address these Obstacles</u>

SB 1235 appears to have recognized the foregoing issues in Section 22803, which allows an alternative disclosure of "an example of a transaction that could occur under the general agreement for a given amount of accounts receivables." However, Section 22803 allows this alternative disclosure only for "a provider who offers commercial financing that is factoring or asset-based lending," presumably due to a drafting error or an incomplete legislative understanding of which types of transactions necessitate disclosures by way of example.

CAN Capital believes it is possible to make disclosures that will allow merchants to compare the cost of MCA financing with loan financing, but that this can only be done by example using assumptions. The regulations therefore could seek to expand the availability of

Section 22803's alternative disclosures to MCAs and other transactions facing similar compliance obstacles.[4]

Disclosure by way of example, while potentially valuable for merchants seeking to compare financing options, creates a significant risk that companies making such disclosures could be accused of misleading borrowers by making disclosures they know are based on unrealistic assumptions. CAN Capital therefore submits that it is critically important for the regulations to require qualifying language to ensure that borrowers understand what assumptions are being made, and how those assumptions may differ from the actual performance of the transaction. In order to protect financing companies from the costs of litigation attacking the use of the required disclosures, CAN Capital submits that the regulations also should create safe harbors for the use of approved qualifying language as discussed below.

For example, the SMARTBox™ disclosure created by the Innovative Lending Platform Association for MCAs is done by example using the assumptions that (1) the merchant will remit the same amount of receivables each business day (or other remittance period called for by the applicable agreement), and (2) the period of time in which the merchant will deliver all of the purchased receivables (i.e., the "term") will be the same period of time predicted internally by the MCA company during underwriting.[5] The disclosure begins with the following qualifying and explanatory language, which CAN Capital submits is a good example of the type of language that should be required for MCA disclosures under the DBO's regulations:

> This tool is provided to help you understand and assess the cost of your small business finance product.
>
> This Merchant Cash Advance ("MCA") is a purchase of future receivables ("Receivables"), not a loan. If you take this MCA, you will deliver Receivables to us as they are generated by your business (and only if they are generated by your business), and not on any set schedule. There are no fixed

[4] We note that there are serious questions regarding the DBO's authority to cure the errors in SB 1235, and that the Legislature may have to address these issues through amendment of the statute. *See, e.g.*, Cal. Gov't Code § 11342.2 ("Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless *consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute*.") (emphasis added).

[5] The regulations should address how to select a predicted term if the company uses multiple predictions in underwriting (e.g., best case, worst case, likely case), or if it predicts a range. They also should require periodic adjustments to disclosures of predicted term based on historical experience, no less than annually, to prevent rogue companies from attempting to generate understated annualized rates by using terms that are longer than justifiable based on historical experience.

> or minimum payment amounts and no term or maturity date. In order to compare the cost of this MCA to a loan, SMARTBox provides the calculations below based on several assumptions, including that you will deliver the same amount of Receivables each period and that you will deliver all of the Receivables you sold within a predicted period of time. In practice, these amounts will vary. Unlike a loan, the MCA has no payment schedule and no interest rate; your obligation will be to deliver Receivables as your business generates them.

For the dollar cost of MCA financing, MCA companies should be required to disclose the difference in dollars between the amount of receivables purchased and the purchase price of those receivables, plus the amount(s) of any up-front fees as further discussed below.

For the "term," MCA companies should be required to disclose the amount of time the company predicted in underwriting that it will take for the merchant to deliver all of the purchased receivables. This should not be described as the "term," but rather as "predicted term," with explanation of what this means, such as "This is the period of time in which we predict that you will deliver all of the receivables we are purchasing, based on historical data you provided. The actual time required may vary significantly."

For the "frequency of payments," the disclosure for MCAs should reflect that there are no "payments," but rather an assignment of a specified percentage of the merchant's receivables. MCA companies should be required to disclose the frequency of remittances under the applicable agreement, such as "each business day" or "each banking day." Explanatory language could be based on the relevant agreement. For example, under the FRPSA, an appropriate explanation would be "You are not obligated to make 'payments,' but you authorize [your card processor to remit to us] or [us to deduct from your business bank account by ACH debit] our share of your 'Daily Receivables' on each day your business operates until we have received the entire 'Specified Amount.' On days when banks are not open, our share of your Daily Receivables will be delivered to us on the next banking day. For example, our share for Friday, Saturday, and Sunday will be remitted on the following Monday."

For a "description of prepayment policies," MCA companies should be required to disclose whether the merchant has a right to repurchase the balance of receivables sold and, if so, the pricing.

For the "total cost of financing expressed as an annualized rate," see the discussion below.

Safe Harbors

CAN Capital requests that the regulations create two safe harbors to protect MCA companies against the risks and potential costs created by the SB 1235 disclosure regime.

First, the regulations should specify that the fact that an MCA company has made the disclosures required by the regulations shall not constitute evidence that the MCA is a disguised loan, rather than a true sale of future receivables. This will ensure that SB 1235 is not used to undermine well-established case law confirming that MCAs are not loans for the reasons discussed above. *See, e.g.*, *Express Working Capital, LLC v. One World Cuisine Grp., LLC*, Civil Action No. 3:15-CV-3792-S, 2018 U.S. Dist. LEXIS 151070, at *28-29 (N.D. Tex. Aug. 16, 2018) (MCA is not a loan because it does "not state an interest rate, maturity date, or repayment term."); *Rapid Capital Fin., LLC v. Natures Mkt. Corp.*, 66 N.Y.S.3d 797, 801 (2017) ("Under a receivables purchase, the time in which the collection of a percentage of the merchant's sales proceeds will be complete is contingent upon the merchant generating sales and those sales resulting in the collection of revenue[.]"); *Merch. Cash & Capital, LLC v. Ethnicity Inc.*, 2016 NY Slip Op 32593(U), ¶ 2 (Sup. Ct.) (it is "mathematically impossible to calculate a rate of interest" for a purchase of future receivables); *Fast Trak Inv. Co., LLC v. Sax*, No. 4:17-cv-00257-KAW, 2018 U.S. Dist. LEXIS 81045, at *15 (N.D. Cal. May 11, 2018) (explaining that an MCA agreement made "allowance for the possibility that repayment may take many years . . . [and] there was no end date by which payment was required."); *see also Milana v. Credit Discount Co.*, 27 Cal. 2d 335, 339-40, 163 P.2d 869 (1945) (distinguishing between sales and loans).

Second, the regulations should specify that the fact that an MCA company has made the disclosures required by the regulations, including providing calculations based on specified assumptions, may not be used as the basis for any civil claim against the financing company based on the claim that the assumptions were known to be unrealistic or simplified when made, provided that the assumptions were disclosed in the manner required by the regulations.

Annualized Rate Disclosure

The version of SB 1235 that was introduced on February 25, 2018 required an annualized rate disclosure as an Annual Percentage Rate (APR) calculated according to provisions of the federal Truth in Lending Act and Regulation Z. A later version required a calculation called Annualized Cost of Capital (ACC). The proposed ACC disclosure would have been calculated as follows:

> ***(Total Dollar Cost of Financing ÷ Total Amount of Funds Provided) × 365 ÷ (Term or Estimated Term) × 100***

SB 1235, as enacted, requires the Commissioner to select the appropriate method to express the annualized rate disclosure. Should the Commissioner's rules require APR, ACC, or some other annualized rate disclosure? What are the benefits and drawbacks of each annualized rate disclosure? If disclosing an annualized rate may confuse financing applicants, what measures could the Commissioner require to reduce potential confusion for that disclosure?

Regardless of whether the DBO adopts the APR or ACC method of calculation, the DBO should consider requiring a disclosure warning merchants that an annualized rate disclosure should not be the sole metric used when evaluating a financing option. A number of small business loan products have a relatively short actual or anticipated term, some as short as three months. An annualized cost measure for such products would be misleading given the short term. Merchants should instead be cautioned to consider and compare all cost and term information, including the total cost of financing and the actual or anticipated term, before selecting a financing product. Although shorter-term products may have a higher APR or ACC than a longer-term product, these products may be better for the business owner in light of other factors, such as lower overall dollar cost and shorter term.

CAN Capital also suggests requiring that any fees charged at origination be included in any annualized rate calculation. This would prevent providers from obfuscating the costs of their products by charging other up-front fees or unavoidable add-on service fees that are not included in the calculation but which otherwise make the financing more expensive. Any regulation setting forth what charges are included in the annualized rate calculation should be broad for this reason. For example, charges directly or indirectly payable by the merchant and imposed directly or indirectly by the provider (including affiliates) as an incident to or condition to providing capital should be included. So too should charges assessed by a third party if the creditor requires the use of the third party or if the charges are shared with the creditor or an affiliate of a creditor. Conversely, charges that are payable in a comparable transaction where there is no extension of credit should not be included in such a disclosure, such as fees for unexpected events like returned payment or late fees.

Disclosure Formatting

SB 1235 authorizes the Commissioner to establish rules concerning the formatting of disclosures provided to financing applicants. What, if any, of the information that SB 1235 requires to be disclosed should the disclosure form(s) highlight or prioritize? Should certain disclosures appear at the top of the form(s) in larger or bold font, etc.?

Standardizing the format and timing of the disclosures required by Sections 22802 and 22803 will be important because a central purpose of SB 1235 is to allow merchants to compare different financing options. These disclosures should be easy for recipients to understand, and also relatively easy for commercial financing companies to provide.

CAN Capital anticipates providing the disclosure with its BLA or FRPSA when provided to a merchant for execution, and suggests that the disclosure document should be required to precede the financing agreement when presented to the merchant (by placing it on top of the agreement and stapling them together or scanning them together so that the disclosure document is the page immediately prior to the agreement in the scanned agreement). This will ensure that the disclosure is presented in a prominent manner, without prohibiting other documents such as an instruction sheet or document checklist from preceding the disclosure document.

Given the increasing frequency of online transactions, CAN Capital submits that the DBO should make clear in its regulations that disclosures under SB 1235 may be provided electronically, and that those disclosures may be signed electronically before consummation as required by Section 22802. This would eliminate any argument that California's Uniform Electronic Transactions Act does not permit the use of electronic signatures on the disclosures required by SB 1235. *See* Cal. Civ. Code § 1633.3(b)(4), (c).

Effective Date

As noted by the Invitation, SB 1235 does not require covered entities to comply with its disclosure requirements until the DBO's final regulations become effective. Financing companies such as CAN Capital will need substantial time to implement the final regulations for several reasons. In CAN Capital's case, the company will be contractually required to obtain third-party approvals for its disclosures, including from WebBank and CAN Capital's own capital providers, and it will need to design and implement policies, procedures, and systems for ensuring that the disclosures are calculated and provided in compliance with the final regulations. If APR is used as a disclosure metric, third-party consultants will need to be engaged to assist the company in performing the required calculations because the company does not have the internal capacity to do so.

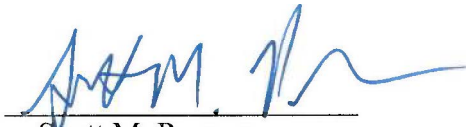
Given the importance of ensuring that commercial financing providers are able to comply with the regulations, the final regulations should not take effect for at least 180 days after they are adopted.

* * *

CAN Capital appreciates the opportunity to share its views on these important matters. It would welcome the opportunity to participate in further discussions regarding these regulations after the DBO has had sufficient time to digest and consider comments from all stakeholders.

Respectfully submitted,

BALLARD SPAHR LLP

By: 
Scott M. Pearson

Attorneys for CAN CAPITAL, INC.

Attachments

cc: Charles Carriere

EXHIBIT A

Agreement #:

Account ID:

BUSINESS LOAN AGREEMENT

This Business Loan Agreement (this "**Agreement**") dated _____ is between **WebBank** ("**Lender**") and the borrower listed below ("**Borrower**").

A. BORROWER INFORMATION

BUSINESS LEGAL NAME	**D/B/A**		
FEDERAL TAX ID#	**STATE OF INCORPORATION / ORGANIZATION**		
PHYSICAL ADDRESS (BUSINESS LOCATION)	**CITY**	**STATE**	**ZIP**
MAILING ADDRESS (FOR STATEMENTS)	**CITY**	**STATE**	**ZIP**
BUSINESS START DATE (MM/YY)	**BUSINESS ENTITY TYPE** (check one): Corporation ☐ Limited Liability Company ☐ Partnership ☐ Limited Partnership ☐ Limited Liability Partnership ☐ Sole Proprietorship ☐		

B. SIGNING PRINCIPAL/GUARANTOR INFORMATION

NAME	**BUSINESS TITLE**		
RESIDENTIAL ADDRESS	**CITY**	**STATE**	**ZIP**

C. PAYMENT INFORMATION

Principal Amount	
Repayment Amount	

Weekday Payment Amount	
We will begin to debit the Weekday Payment Amount from your Designated Account on the first non-bank holiday weekday immediately following the day that we transfer the Principal Amount to you.	
Total Number of Payments	
Calendar Days to Maturity	

D. CONTACT INFORMATION

EMAIL ADDRESS	**PHONE NUMBER**

E. OPTIONAL INFORMATION

WEBSITE	**FAX**

F. KEY TERMS & CONDITIONS

You should read this entire Agreement before signing it, but we want you to be aware of the following terms and conditions:

1. ARBITRATION: *Section 19* gives you and us the right to require any dispute to be resolved through BINDING INDIVIDUAL ARBITRATION rather than in court. Individual arbitration means that neither you nor we can assert claims on behalf of a class or in a representative capacity. You can opt out of this provision, without penalty, for a limited time.

2. FEES: *Section 5.5* requires you to pay certain fees and charges in addition to the Repayment Amount. These fees and charges include, but are not limited to, an Origination Fee equal to _____% of the Principal Amount (excluding any portion of the Principal Amount being applied to repay an existing loan balance owed to us or our Assignees), late fees, dishonored payment fees and site visit fees.

3. PREPAYMENT: *Section 6* gives you the right to prepay your remaining obligation under this Agreement once 90 days have passed from the Effective Date. If you choose to exercise this right, you will receive a 6% discount off of the unpaid portion of your Repayment Amount.

4. CREDIT REPORTS: Among other things, *Section 10.11* allows us to pull your credit reports in connection with this loan and to determine your eligibility for other financial products.

5. COLLATERAL: *Section 9* grants us a lien on your properties, assets and rights, which we may secure by the filing of a financing statement, and *Section 21* restricts what you can do with such Collateral.

6. SIMULTANEOUS FUNDING RESTRICTION: *Section 22* restricts your ability to seek certain types of additional financing before you have paid off your obligation to us.

7. TELEPHONE CONTACT: *Section 14* allows us to contact you in certain ways and to record our telephone calls with you.

8. BANK HOLIDAYS: *Section 5.3* states, among other things, that on the first Weekday after a bank holiday we will debit the Designated Account to make up for the payment(s) missed because of the bank holiday, in addition to the payment otherwise due on that Weekday, which will result in multiple payments debited in a single day on such occasions.

PLEASE READ THESE PROVISIONS CAREFULLY.

1. PARTIES. In this Agreement, the words "**you**" and "**your**" refer to Borrower. The words "**we**", "**us**" and "**our**" refer to Lender and its successors or assigns, including any "**Assignee**" as defined in *Section 11*. "**Principal**" refers to each one of Borrower's owners, shareholders, partners, members, principals, officers, directors and employees. "**Signing Principal**" refers to the Principal that has executed this Agreement or a Personal Guaranty of this Agreement.

2. EFFECTIVE DATE; TERM. The term of this Agreement (the "**Term**") begins on the date we accept it at our home office in Utah by signing it or sending you the Principal Amount, whichever is earlier (the "**Effective Date**"). We may accept this Agreement without signing it by sending you the Principal Amount. You understand and agree that we are not required to send you the Principal Amount until: (a) you have provided us with all documents and fully met all conditions required by this Agreement; and (b) the security interests we are entitled to receive under this Agreement have been perfected. If there is a delay in your receipt of the Principal Amount for these or any other reasons, you agree that there will be no adverse consequence to you or us. The Term ends on the Maturity Date, unless we elect to extend the Term to collect unpaid fees and other charges under *Section 5.5* below, in which case the Term shall end when we have collected the Repayment Amount and all other amounts due under this Agreement. In addition, if you pay us the Repayment Amount and all other amounts due under this Agreement prior to the Maturity Date, and you have done everything else you are required to do under this Agreement, the Term will end and you will have no further obligations to us under this Agreement except as otherwise stated below. The "**Maturity Date**" is calculated starting with the day after the Effective Date and adding the number of days stated in the "*Calendar Days to Maturity*" box set forth on *page 1, Table C*.

3. PRINCIPAL AMOUNT; USE OF LOAN PROCEEDS. You represent to us and agree that the Principal Amount will be used only: (a) to buy merchandise, inventory or related goods you will rent or sell to your customers, (b) to buy equipment or other goods for use in your business, (c) for training or other services needed by your business, and/or (d) to make improvements to your business location (but not to buy real estate). REGARDLESS OF ANYTHING ELSE STATED IN THIS AGREEMENT, YOU ACKNOWLEDGE AND AGREE THAT: (A) YOU WILL USE THE PRINCIPAL AMOUNT (AND THE GOODS OR SERVICES YOU BUY WITH THE PRINCIPAL AMOUNT) **SOLELY FOR BUSINESS PURPOSES** AND NOT FOR CONSUMER, PERSONAL, FAMILY OR HOUSEHOLD PURPOSES; (B) YOU WILL NOT USE THE PRINCIPAL AMOUNT TO FUND DIVIDENDS OR DISTRIBUTIONS TO ANY OF YOUR SHAREHOLDERS, PARTNERS, MEMBERS OR ANY OTHER OWNER OF ANY EQUITY INTEREST IN YOUR BUSINESS OR TO PURCHASE STOCK OR OTHER SECURITIES OF ANY KIND; AND (C) THE LOAN DOCUMENTED BY THIS AGREEMENT IS **NOT** A "CONSUMER TRANSACTION" AS DEFINED IN THE UNIFORM COMMERCIAL CODE ("**UCC**").

4. PROMISE TO PAY. In exchange for us loaning you the Principal Amount, you unconditionally promise to pay us the Repayment Amount and all other amounts this Agreement requires you to pay. You agree to make payments to us in the manner stated in *Section 5* of this Agreement. As part of your agreement to repay us without conditions, you waive (both as to

the original loan and any renewal, extension, refinancing, modification or consolidation of the loan): (a) protest, demand and presentment: (b) notice of dishonor, protest or suit; (c) all other notices or requirements necessary to hold you liable hereunder; and (d) all rights of exemption under the constitution or laws of any state as to real or personal property. **YOU AGREE THAT YOUR OBLIGATIONS UNDER THIS AGREEMENT ARE ABSOLUTE AND UNCONDITIONAL, MAY NOT BE PREPAID EXCEPT AS SPECIFICALLY STATED HEREIN, AND SHALL CONTINUE IN FULL FORCE AND EFFECT REGARDLESS OF ANY CIRCUMSTANCE WHATSOEVER, AND THAT SUCH OBLIGATIONS SHALL NOT BE AFFECTED BY ANY COUNTERCLAIM, SET-OFF, RECOUPMENT, OFFSET, DEFENSE OR OTHER ALLEGED RIGHT AGAINST US.**

5. METHOD OF REPAYMENT.

5.1 ***Designated Account***. The "**Designated Account**" is the account into which we deposit the Principal Amount based on the business bank account information you provide us by way of a voided check or bank notice, or any successor account(s) to such account of which you provide us notice, subject to our approval. You represent, warrant and agree that the Designated Account (i) is and shall be a business bank account during the Term of this Agreement, (ii) is not and will not be during the Term of this Agreement an account established primarily for personal, family or household purposes or otherwise an "account" as defined in 15 U.S.C. 1693a and Regulation E, and (iii) shall have sufficient funds during the Term of this Agreement for all debits and other withdrawals contemplated by this Agreement to be made on our behalf. If the Designated Account at any time lacks sufficient funds for any debit or other withdrawal required by this Agreement to be made on our behalf, you agree to immediately transfer sufficient funds to the Designated Account or pay to us such funds.

5.2 ***Payment through Weekday ACH Debits***. Except as set forth in *Section 5.3*, you shall pay us the Weekday Payment Amount (set forth under *"Payment Information"* on *page 1, Table C*) on every Monday through Friday, inclusive (each a "**Weekday**"), by authorizing and allowing Lender and/or Operator (defined below) to debit or otherwise withdraw the Weekday Payment Amount from the Designated Account on each Weekday. Borrower hereby authorizes and requests Lender and/or each Operator to debit or otherwise withdraw the Weekday Payment Amounts from the Designated Account on each Weekday until we have received the entire Repayment Amount and all amounts due and/or owed under this Agreement, including without limitation each Weekday Payment Amount and all late fees, taxes, non-sufficient funds charges, reimbursements and other amounts due pursuant to this Agreement. Borrower further: (a) authorizes Lender and each Operator to deliver a copy of this Agreement to the Bank as evidence of Borrower's authorization, and (b) agrees that, except to the extent prohibited by applicable law, Borrower's authorizations to Lender and each Operator hereunder may be revoked only with Lender's prior written consent. For purposes of this Agreement, the term "**Operator**" shall mean any person or entity we designate to debit or otherwise withdraw (via the Automated Clearing House ("**ACH**") system, electronic checks, wires, or otherwise) any amounts from your accounts as authorized or permitted by this Agreement.

5.3 ***Bank Holidays and Other Exceptions***. Lender and/or Operator will debit the Designated Account for Weekday Payment Amounts only on Weekdays on which the Bank is open and able to process ACH transactions. On the Weekday immediately following any Weekday or Weekdays on which the Bank was not open or was not able to process ACH transactions for reasons other than an insufficient Designated Account balance, Lender or Operator will debit the Designated Account for an amount equal to the sum of: (i) the Weekday Payment Amount due on that Weekday, plus (ii) the Weekday Payment Amount(s) due on the preceding Weekday(s) when the Bank was not open or could not process ACH transactions.

5.4 ***Authorization to Access and Withdraw from Designated Account***. You authorize and request Lender and/or Operator to debit or otherwise withdraw (via the ACH system, electronic checks, wires or otherwise) the Weekday Payment Amounts from the Designated Account each Weekday until we have received the entire Repayment Amount and all other amounts you owe to us under this Agreement. You agree that, except to the extent prohibited by applicable law, you will not revoke this authorization and instruction without our prior written consent. In the event a withdrawal fails for non-sufficient funds in your Designated Account, Lender and/or Operator reserve the right to resubmit the ACH payment request, and you hereby authorize us to either reinitiate that debit up to two additional times until the debit is paid, and, to the extent such debit remains unpaid, to add all or a portion of the Weekday Payment Amount associated with the unpaid debit to a debit for a subsequent Weekday Payment Amount. You acknowledge and agree that we and Operator may issue pre-notifications to your Bank with respect to such debits, withdrawals and other transactions. You agree that Operator may rely upon our instructions, without any independent verification, in making the transactions described above. You waive any claim for damages you may have against Operator in connection with actions taken based on our instructions, unless such damages were due to Operator's failure to follow our instructions. You acknowledge and agree that (a) Operator will be acting on our behalf with respect to the Designated Account, (b) Operator may or may not be our affiliate, and (c) we are not responsible and shall not be liable for, and you agree to hold us harmless for, the actions of Operator. You understand and agree that this Agreement allows us to access the Designated Account. Within two business days of any request by us, you shall provide, or cause Operator or the Bank to provide, us with records and/or other information regarding the Designated Account. You hereby authorize and direct the Bank to provide us with all such information.

5.5 ***Fees***. In addition to the Repayment Amount, you agree to pay us the following fees and charges: (a) a one-time, non-refundable Origination Fee in the amount set forth in the "Key Terms and Conditions" on *page 2*, *Table F*; (b) a fee of $25 (or such lesser amount as permitted by applicable law) for each

returned, rejected or dishonored payment, ACH debit, or wire transfer withdrawal, it being understood that we have the right to receive such fee for each business day on which we or our designee attempted and were unable to debit or otherwise withdraw from your accounts the amount we were entitled to receive as of such date; (c) the cost of any site visit that confirms a violation of this Agreement, not to exceed $500 for each such visit; (d) a monthly late fee equal to $50.00 if the balance of all Weekday Payment Amount(s) due but unpaid as of the last day of the month exceeds $500.00, with such late fee due and debited on the first day of the following month; and (e) charges for providing copies and other documentation you request from us (a list of such charges will be made available upon request or online). Borrower hereby authorizes and requests Lender and/or each Operator to withdraw the Origination Fee and Administrative Fee from the Designated Account on or after the Effective Date. **If any fees, charges or other amounts owed under this Agreement are due and unpaid on the Maturity Date, we may elect to extend the Term (without notice to you) and continue to withdraw the Weekday Payment Amount from the Designated Account each Weekday until all amounts due to us under this Agreement have been paid in full.** WE MAY PAY A REFERRAL FEE TO ANY BROKER YOU HAVE USED IN CONNECTION WITH ACQUIRING THE LOAN, BUT **WE DO NOT PERMIT BROKERS TO CHARGE ANY FEES DIRECTLY TO YOU**; PLEASE NOTIFY US IMMEDIATELY IF YOUR BROKER CHARGED YOU ANY FEES IN CONNECTION WITH YOUR LOAN.

6. PREPAYMENT. Beginning 90 calendar days after the Effective Date, you may, upon notice and request to us, prepay in full all of your remaining obligations under this Agreement by paying us the amount communicated to you by us (the "**Early Repayment Amount**"), which will represent: (a) the unpaid portion of the Repayment Amount as of the date of the request, less a 6% percentage discount; plus (b) any accrued or unpaid payments, fees and charges due as of the date of the request; provided, however, that the Early Repayment Amount must be paid from the Designated Account. Any excess payment will be handled in accordance with *Section 8.3*. EXCEPT AS SET FORTH IN THE PRECEDING SENTENCE IMMEDIATELY ABOVE IN THIS PARAGRAPH, NO PAYMENTS YOU MAKE TO US IN ADDITION TO WEEKDAY PAYMENT AMOUNTS WILL RESULT IN A DISCOUNTED PAYOFF OF YOUR OBLIGATIONS UNDER THIS AGREEMENT.

7. DEFAULT; REMEDIES.

7.1 ***Events of Default***. Each of the following shall constitute an "**Event of Default**" under this Agreement: (a) at any given time during the Term of the Agreement a sum amount equivalent to seven (7) Weekday Payment Amounts has become due but remains unpaid; (b) you fail to pay any amount you owe us under this Agreement (other than Weekday Payment Amounts) within 30 days after we request in writing that you do so; (c) you revoke or cancel any authorization for Lender or Operator to debit or otherwise withdraw from or access the Designated Account (but only to the extent that the prohibition on your revoking or canceling such authorization contained in this Agreement is not prohibited by applicable law); (d) you fail to maintain insurance required hereunder; (e) any warranty, representation or statement made or furnished to us by you or Signing Principal or on your or Signing Principal's behalf under this Agreement is or becomes false or misleading in any material respect; (f) this Agreement ceases to be in full force and effect at any time and for any reason (including failure to create a validly perfected security interest or Lien); (g) you: (i) legally dissolve, are adjudicated insolvent or bankrupt or cease to pay your debts as they mature, (ii) make a general assignment for the benefit of or enter into an arrangement with creditors, (iii) apply for or consent to the appointment of a receiver, trustee or liquidator of you or a substantial part of your property, (iv) take action to dissolve or terminate your legal existence, or authorize or file a voluntary petition in bankruptcy or under any similar law, consent to such a petition, or suffer such a petition or proceeding to be instituted against you which remains undismissed for a period of 60 days; or (v) if an individual, die or become legally incompetent; (h) commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any of your creditors or by any governmental agency against any Collateral (as defined in *Section 9*), including a garnishment of any of your accounts or deposit accounts; (i) you fail to perform or comply with any other term, provision, condition, covenant or agreement contained in this Agreement or any other documentation related to this Agreement; (j) you default under any other agreement with us, any Assignee or any affiliate of either us or any Assignee, or under any agreement with any third party material to your business or providing for the lease of real or personal property or the repayment of money borrowed; (k) we reasonably deem ourselves insecure with respect to your performance hereunder or in our rights with respect to the Collateral; and (l) any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of your obligations hereunder.

7.2 ***Remedies***. Upon the occurrence of an Event of Default, we shall have the right, but not the obligation, to declare the unpaid balance of the Repayment Amount and all other amounts you owe us under this Agreement to be immediately due and payable. We shall have and may exercise all the rights and remedies of a secured creditor under the UCC. In addition, we shall have and may exercise any and all other rights and remedies available to us at law, in equity, or otherwise. Except as may be prohibited by applicable law, all of our rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by us to pursue any remedy will not constitute a waiver of our rights to pursue other remedies. No forbearance or delay by us shall be deemed to waive any of our rights or remedies or create a course of dealing between or among the parties hereto. Any election by us to make expenditures or to take action to perform one or more of your obligations under this Agreement, after your failure to perform, shall not affect our right to declare an Event of Default and exercise our remedies.

8. ADDITIONAL REPAYMENT TERMS.

8.1 ***Other Payment Methods***. You may make payments to us in addition to Weekday Payment Amounts to satisfy your obligations under this Agreement. All such payments must be made in immediately available funds and U. S. Dollars paid by check, money order, wire transfer, ACH credit or any pay-by-phone or on-line service that we offer. Any payments sent by mail or overnight courier must be addressed to WebBank, c/o CAN Capital, Inc. at the address set forth in *Section 15*, Attn: Other Payments Personnel. You acknowledge and agree that payments sent to any other address may not be timely processed or credited. Any payments made pursuant to this *Section 8.1* shall not affect in any way your obligation to pay Weekday Payment Amounts. We may accept late, postdated or partial payments without losing any of our rights under this Agreement or otherwise. We have no obligation to hold postdated checks and may process any postdated check on the date we receive it without being liable to you for any damages or other claims you may assert, which you hereby expressly waive. You agree not to mark any partial payment "paid in full," "without recourse," "in full satisfaction" or with any similar language, and you agree that any such notations shall have no force or effect and that we will not lose any of our rights under this Agreement if we accept any such payments.

8.2 ***Application of Payments***. Weekday Payment Amounts will be applied first to any Weekday Payment Amounts due, and then in the same manner as a payment other than a Weekday Payment Amount. If you make a payment other than a Weekday Payment Amount, we generally will apply payments first to any items we have asked you to pay, then to any other fees you owe us, then to other amounts you owe us (such as for amounts we incur in performing your obligations pursuant to *Section 12*), and then to the balance of the Repayment Amount. However, we reserve the right to apply payments in any order or manner we choose, in our sole discretion.

8.3 ***Excess Cash***. In the event the amount of cash remitted by you pursuant to this Agreement exceeds the sum of the Repayment Amount and any other amounts we are entitled to receive hereunder (such excess being the "**Excess Cash**") by at least $20.00, we agree to pay the full amount of such Excess Cash to you within 30 days after our receipt thereof. In the event the Excess Cash is less than $20.00, you agree to forfeit such Excess Cash to us in consideration for administrative costs associated with handling Excess Cash. You acknowledge and agree that we have no obligation to take any action (including against Operator) with respect to any cash being held by Operator, which will become Excess Cash once it is paid by Operator to us, prior to our receipt of such Excess Cash.

8.4 ***Reliance on Terms***. The provisions of this Agreement are for the benefit of you, Signing Principal, us, and Operator. Notwithstanding the fact that Operator is not a party to this Agreement, Operator may rely upon the terms of this Agreement and raise them as defenses in any action by you or Signing Principal.

8.5 ***Indemnification; Limitation of Liability***. You shall indemnify and hold each of us, Operator, its and our respective officers, directors, affiliates, employees, agents, representatives, successors and assigns (the "**Indemnified Parties**") harmless from and against all losses, damages, claims, liabilities, obligations, penalties, suits, actions, controversies, or proceedings of any kind, imposed upon, incurred by, or asserted against any of the Indemnified Parties, in any way arising from, in connection with, relating to, or incident to your breach of this Agreement or any and all actions taken by Operator in reliance upon information or instructions provided to Operator by us, including the payment of all costs and expenses of every kind for the enforcement of our rights and remedies hereunder, including reasonable attorneys' fees, costs of any trial, arbitration, appellate court proceeding, administrative proceeding, or any negotiations or consultations (the "**Indemnified Amounts**"). Such Indemnified Amounts will bear interest at the rate for prejudgment interest prevailing in your jurisdiction until paid. IN NO EVENT WILL WE OR ANY OPERATOR BE LIABLE FOR ANY CLAIMS ASSERTED BY YOU UNDER ANY THEORY OF LAW, INCLUDING ANY TORT OR CONTRACT THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH YOU HEREBY EXPRESSLY WAIVE.

9. GRANT OF SECURITY INTEREST. Capitalized terms used in this *Section 9* without definition which are not defined elsewhere in this Agreement have the meanings defined in the UCC. For valuable consideration and to secure the prompt payment and performance in full of all of your, any Principal's or any of your affiliates' indebtedness, liabilities and obligations to us, whether direct or indirect, joint or several, absolute or contingent, due or to become due, now existing or hereafter arising, whether or not such indebtedness, liabilities and obligations relate to the loan described in this Agreement and whether or not contemplated by the parties hereto at the time of the granting of this security interest, regardless of how they arise or by what agreement or instrument they may be evidenced or whether evidenced by any agreement or instrument and including obligations to perform acts and refrain from taking action as well as obligations to pay money, including all principal, interest, other fees and expenses, you hereby grant to us a security interest in the following properties, assets and rights (the "**Collateral**"), wherever located, whether now owned or hereafter acquired or arising and howsoever your interest therein may arise or appear (whether by ownership, lease, security interest, claim, or otherwise): (a) any and all amounts owing to you now or in the future from any merchant processor; (b) all Accounts; (c) all Chattel Paper (including Tangible Chattel Paper and Electronic Chattel Paper); (d) all Instruments; (e) all Goods, including, without limitation, Equipment, motor vehicles, Inventory, Farm Products, Accessions, and As Extracted Collateral; (f) all Documents; (g) all General Intangibles (including, without limitation, Payment Intangibles and software); (h) all Deposit Accounts; (i) all Letter of Credit Rights; (j) all Investment Property; (k) all Supporting Obligations; (l) all trademarks, trade names, service marks, logos and other sources of business identifiers, and all registrations, recordings and applications with the U. S. Patent and Trademark Office

("**USPTO**") and all renewals, reissues and extensions thereof (collectively "**IP**"); (m) any records and data relating to any of the foregoing, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of your right, title and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media; and (n) any and all proceeds of any of the foregoing, including insurance proceeds or other proceeds from the sale, destruction, loss, or other disposition of any of the foregoing, and sums due from a third party who has damaged or destroyed any of the foregoing or from that party's insurer, whether due to judgment, settlement or other process. You irrevocably authorize us and our designees at any time and from time to time to file: (i) in any filing office in any jurisdiction any initial financing statements and amendments thereto that indicate the collateral therein as all of your assets or words of similar effect, regardless of whether such description is greater in scope than the Collateral pledged to us hereunder; and (ii) such recordations with the USPTO we deem necessary or desirable to evidence the security interest in IP described above.

10. REPRESENTATIONS, WARRANTIES AND COVENANTS. You and Signing Principal represent, warrant and covenant the following as of the Effective Date and during the Term of this Agreement:

10.1 ***Your Business and Operations***. You shall: (a) not materially change the nature of your business from what was originally disclosed to us in connection with this Agreement; and (b) not sell or otherwise transfer your business without: (i) our express prior written consent, which we may withhold in our sole discretion for any reason or no reason, and (ii) the assumption by transferee of all of your obligations under this Agreement using documentation reasonably satisfactory to us, provided such assumption will not release you from liability under this Agreement.

10.2 ***Name, Location, Authority, Etc***. (a) You are and shall remain duly organized, licensed, validly existing and in good standing under the laws of your state or jurisdiction of organization and are and shall remain duly qualified, licensed and in good standing in each and every other state and jurisdiction in which the failure to do so could have a material adverse effect on your financial condition, business or operations; (b) your exact legal name set forth under *"Borrower Information"* on *page 1*, *Table A*, is true and correct and you do not and shall not conduct your business under any other name; (c) you shall not change your place of business, your legal name, entity type or state or jurisdiction of organization, unless you have provided us with at least 60 days' prior written notice and you, at your sole cost and expense, provide such documents, agreements and information we request and take such other actions as we deem necessary or desirable to protect our interests hereunder and in the Collateral; (d) you are authorized and permitted, by law, your organizational documents, contracts to which you or Signing Principal is a party and otherwise, to execute, deliver and perform this Agreement and all related documents; (e) all of your organizational and formation documents and all amendments thereto have been duly filed and are in proper order and any capital stock, membership interests or other ownership interest issued by you and outstanding was and is properly issued and all of your books and records are accurate and up to date and will be so maintained; (f) you are subject to no charter, corporate or other legal restriction, or any judgment, award, decree, order, governmental rule or regulation or contractual restriction that could have a material adverse effect on your financial condition, business or prospects; (g) you are and will continue to be in compliance with your organizational and formation documents, all contractual requirements by which you may be bound, and all applicable federal, state and local laws, statutes, regulations, ordinances and rules pertaining to the conduct of your business, including without limitation the regulations of card associations and payment networks; (h) there is no action, suit, proceeding or investigation pending or, to your knowledge, threatened against or affecting you or any of your assets before or by any court or other governmental authority which, if determined adversely to you, would have a material adverse effect on your financial condition, business or prospects or the value of the Collateral; and (i) you possess and are in compliance with all permits, licenses, approvals, consents, registrations and other authorizations necessary to own, operate and/or lease your properties and to conduct your business.

10.3 ***Location of the Collateral***. You agree to keep the Collateral (or, to the extent the Collateral consists of intangible property such as Accounts or General Intangibles, the records concerning the Collateral) at the location(s) shown under *"Borrower Information"* on *page 1, Table A*, or at such other locations as we have agreed to in advance in writing. Upon our request, you will deliver to us in form satisfactory to us a schedule describing the Collateral in such detail as we reasonably request. You shall not remove the Collateral from its existing location without our prior written consent.

10.4 ***Repairs and Maintenance***. You shall: (a) only use Collateral in a prudent, businesslike manner for its originally-intended purpose and solely for business purposes and NOT for any consumer, personal, household or family purpose; (b) comply promptly with all applicable insurance policies, laws, ordinances, rules, regulations and requirements of all governmental authorities, now or hereafter in effect, applicable to the ownership, production or disposition thereof; and (c) pay when due all taxes and claims for work done on, or services or material furnished in connection with, the Collateral.

10.5 ***Inspection of Collateral and Place of Business***. We or our designated representatives and agents shall have the right during your normal business hours and at any other reasonable time to examine the Collateral where located and the interior and exterior of any of your places of business. During an examination of any of your places of business, we may examine, among other things, whether you (a) have a place of business that is separate from any personal residence, (b) are open for business, and (c) have sufficient inventory to conduct your business. When performing an examination, we may photograph the interior and exterior of any your places of business, including any signage, and may photograph any Principal.

10.6 ***Insurance***. You shall maintain insurance in such amounts and against such risks as are consistent with past practice and shall show proof of such insurance upon our request. You shall promptly notify us of any loss or damage to the Collateral.

10.7 ***Business Information; Reliance; Compliance***. All information (financial and other) provided by or on your or Signing Principal's behalf to us in connection with or pursuant to this Agreement is true, accurate and complete in all respects. You and Signing Principal shall furnish us and Operator such information as we may request from time to time. You acknowledge and agree that all information (financial and other) provided by or on behalf of you and/or Signing Principal has been relied upon by us in connection with our decision to loan you the Principal Amount. You acknowledge and agree that neither we nor Operator will provide you with any tax, accounting, legal or other professional or expert advice of any kind, nor will you treat or rely on any information provided to you by us or Operator as such.

10.8 ***Solvency***. You do not presently intend to close or cease operating your business, in whole or in part, temporarily or permanently. As of the date of this Agreement, you are solvent and are not contemplating any insolvency or bankruptcy proceeding. During the four months preceding the date of this Agreement, neither you nor any Principal has discussed with or among your management, with counsel, or with any other advisor or creditor, any potential insolvency, bankruptcy, receivership, or assignment for the benefit of your creditors and no such action or proceeding has been filed or is pending. Other than as disclosed to us in a writing attached to this Agreement, no eviction or foreclosure is pending or threatened against you.

10.9 ***Confidentiality***. You and Signing Principal understand and agree that the terms and conditions of the products and services we offer, including this Agreement and any other documentation provided by us ("**Confidential Information**") are our proprietary and confidential information. Accordingly, unless disclosure is required by applicable law or court order, you and Signing Principal shall not disclose (and you and Signing Principal shall cause each Principal not to disclose) Confidential Information to any person other than your attorneys, accountants, financial advisors or employees who need to know such information for the purpose of advising you ("**Advisors**"), provided that such Advisors use such information solely to advise you and first agree in writing to keep such information confidential.

10.10 ***Publicity***. You and Signing Principal authorize us to use your, his or her name in a listing of clients and in advertising and marketing materials.

10.11 ***Credit Reports and Information Sharing***. YOU AND SIGNING PRINCIPAL HEREBY AUTHORIZE US, OUR AGENTS AND REPRESENTATIVES, AND ANY CREDIT REPORTING AGENCY ENGAGED BY ANY OF THE FOREGOING, TO **(A) INVESTIGATE ANY REFERENCES GIVEN OR ANY OTHER STATEMENTS OR DATA OBTAINED FROM OR ABOUT YOU OR SIGNING PRINCIPAL FOR THE PURPOSE OF THIS AGREEMENT, AND (B) OBTAIN YOUR AND SIGNING PRINCIPAL'S BUSINESS AND PERSONAL CREDIT BUREAU REPORTS FROM TIME TO TIME,** (I) AT ANY TIME NOW OR FOR SO LONG AS YOU OR SIGNING PRINCIPAL CONTINUE TO HAVE ANY OBLIGATION TO US AS A CONSEQUENCE OF THIS AGREEMENT, OR (II) AT ANY TIME IN ORDER FOR US TO DETERMINE YOUR ELIGIBILITY FOR A FINANCIAL PRODUCT OFFERED BY US. By entering into this Agreement, you hereby authorize us to share information regarding you and/or Signing Principal and relating to your application, the loan, and the status of your account (including amount repaid, eligibility for additional funding, collections and payment statuses, etc.) to credit bureaus, our affiliates and any broker or other third party that you and/or Signing Principal may be working with or represented by (including brokers, independent sales organizations & other representatives). Such parties may use the shared information when considering whether to offer financial or other products or services in the future. You and Signing Principal hereby waive to the maximum extent permitted by law any claim for damages against us and our affiliates, agents, employees and representatives relating to (i) any investigation undertaken by such person and/or entities as permitted by this Agreement or (ii) disclosure of information as permitted by this Agreement. You also agree that we may release any such information if we believe it is required to comply with any governmental or legal action, whether or not such release is actually required, or when it is necessary or desirable in connection with a transaction or investigation of a potential loss. If you or Signing Principal fails to satisfy the terms of your respective credit obligations hereunder, we may submit a negative credit report to a credit reporting agency that adversely effects the credit score or record of you and/or the Signing Principal.

10.12 ***D/B/As and Proxies***. You and Signing Principal hereby acknowledge and agree that we may use "doing business as" or "d/b/a" names or third-party proxy services in connection with various matters relating to the transactions between you and us, including the filing of UCC-1 financing statements and other notices or filings.

10.13 ***Collection Costs and Fees***. To the extent not prohibited by applicable law, you shall pay to us any and all expenses, including collection costs, attorneys' fees and expenses, expert fees and expenses, and all other expenses which may be incurred by us in the prosecution, defense, settlement and/or other resolution of any claim, demand, action or proceeding arising out of or relating to this Agreement, the Collateral or any of our related rights or interests, regardless of whether you are a party to that action or proceeding or made aware of the claim or demand before it is resolved. Without limiting the generality of the foregoing, the expenses you shall pay to us include counsel fees and expenses incurred in any bankruptcy or insolvency proceedings and all costs and expenses (including search fees) incurred or paid by us for the purpose of administering, protecting or realizing our security under this Agreement. All amounts described in this *Section 10.13* shall be considered advances to protect our security, and shall be secured by this Agreement.

11. ASSIGNMENT. Without our prior written consent, you shall not pledge, cancel, revoke or assign this Agreement or your rights hereunder. Any prohibited assignment shall be void. No consent to an assignment by us shall release you from your obligations hereunder. We may assign, mortgage, pledge or otherwise transfer or delegate this Agreement or any of our rights or obligations hereunder to any party (each, an "**Assignee**") without notifying you or obtaining your consent. Without limiting the generality of the foregoing, we may grant a security interest in any and all of our rights and interests pursuant to this Agreement, including our rights and interests in and to the Weekday Payment Amounts and the Repayment Amount, and including to parties from whom we may obtain financing (any such Assignee, a "**Secured Party**"), and you agree that any such Secured Party is entitled, to the extent of the applicable assignment or other agreement between us and such Secured Party, to enforce any and all of our rights, remedies and interests under this Agreement. Any Secured Party shall have all of our rights, but no liability for any of our obligations, under this Agreement, and you agree that you will not assert against any Secured Party any defense, counterclaim, set-off, recoupment, offset or other alleged right that you may have against us. Upon and following receipt of written notification by an Assignee to you, you are authorized and directed to remit any and all amounts then or thereafter payable by you under this Agreement directly to such Assignee. As between you and any such Assignee, any remittance sent to us following such receipt shall not constitute payment unless and until such payment is actually received by such Assignee.

12. RIGHT TO PERFORM; FURTHER ASSURANCES. If you fail to carry any insurance or render any other performance required by this Agreement, we may, at our sole option and without obligation, do so and you will reimburse us together with interest from the date of the expense to the date of reimbursement at the rate for prejudgment interest prevailing in your jurisdiction. You hereby appoint us as your true and lawful attorney and agent to, in your name, execute, file, communicate, record and deliver any documents we deem appropriate to protect our interest in this Agreement or any Collateral or the proceeds thereof. This power, being coupled with an interest, shall be irrevocable until all your obligations hereunder have been indefeasibly and fully paid and performed. YOU ACKNOWLEDGE THAT THE FEES WE CHARGE TO YOU FOR LATE PAYMENTS, DOCUMENTATION, ORIGINATION, ADMINISTRATION, TAX COMPLIANCE, INSURANCE OR ANY OTHER MATTER ASSOCIATED WITH THIS AGREEMENT MAY REPRESENT PROFIT TO US IN WHOLE OR IN PART AND MAY NOT BE MERELY A REIMBURSEMENT FOR ACTUAL COSTS. You agree to execute and deliver any additional writings and take any other actions we reasonably request to evidence or effect your agreements and obligations under this Agreement.

13. USURY SAVINGS CLAUSE. It is the intention of parties hereto to comply strictly with applicable usury laws and, accordingly, in no event shall we ever be entitled to receive, collect, or apply as interest any interest, fees, charges or other payments equivalent to interest, in excess of the maximum rate of interest, which we may lawfully charge under applicable law (the "**Maximum Rate**"). In the event that we ever receive, collect, or apply as interest any such excess, such amount which, but for this provision, would be excessive interest, shall be applied to the reduction of the principal balance owed hereunder; and if said principal balance, and all lawful interest thereon, is paid in full, any remaining excess shall forthwith be paid to you, or other party lawfully entitled thereto. In determining whether or not the interest paid or payable, under any specific contingency, exceeds the highest rate which we may lawfully charge under applicable law, the parties hereto shall, to the maximum extent permitted under applicable law, characterize any non-principal payment as a reasonable loan charge, rather than as interest. Any provision hereof, or of any other agreement between the parties hereto, that operates to obligate or compel you to pay interest in excess of the Maximum Rate shall be construed to require payment of the Maximum Rate only. The provisions of this *Section 13* shall prevail over any other provision herein or in any other agreement between the parties hereto that is in conflict with the provisions of this *Section 13*.

14. CONTACTING YOU; PHONE AND TEXT MESSAGES. You and Signing Principal authorize us and our affiliates, agents, representatives, assigns and service providers (collectively, the "**Messaging Parties**") to provide information about this Agreement and the loan (including without limitation information about upcoming payment due dates, missed payments, returned payments, the Messaging Parties' servicing and/or collection of amounts owed to the Messaging Parties or any other matter) using automatic telephone dialing systems, artificial or prerecorded voice message systems, text messaging systems, facsimile machines, automated email systems and any other method of communication. You and Signing Principal authorize the Messaging Parties to make such communications using any telephone numbers (including wireless, landline, residential, facsimile and VOIP numbers) or email addresses supplied in connection with this Agreement or the loan. Anyone with access to the telephone or email accounts supplied may listen to or read the messages the Messaging Parties leave or send, and you and Signing Principal agree that the Messaging Parties will have no liability for any such access. You and Signing Principal further agree that the Messaging Parties will have no liability for any charges from your telecommunications, wireless and/or Internet service providers for the telephone calls, facsimile or text messages or emails we make or send. You and Signing Principal expressly authorize the Messaging Parties to monitor and record your calls with the Messaging Parties. Consent to receive text messages and calls to a cell phone or to receive artificial or prerecorded voice message system calls may be withdrawn by calling 877-500-8282. To stop text messages, reply "STOP" to any text message from the Messaging Parties. To stop emails, follow the opt-out instructions included at the bottom of the Messaging Parties' emails.

15. COMMUNICATIONS.

15.1 YOUR AUTHORIZED REPRESENTATIVES. You acknowledge that we will only communicate directly with your Principals or your authorized attorney-at-law (your "**Authorized Representatives**") in discussing your loan and/or your obligations under this Agreement. You agree not to authorize any other third-party to contact us regarding this Agreement and any attempt to do so shall automatically be void. We shall have the right, in our sole discretion, to refuse to discuss this Agreement with any person who is not your Authorized Representative. We shall also have no obligation to comply with any instructions or directions provided by a person who is not an Authorized Representative.

15.2 NOTICES. Any notice or other communication required or desired to be given shall be in writing and shall be sent by certified mail, return receipt requested, by a nationally recognized express courier service (such as FedEx) or personally served, and shall be deemed to be duly given when postmarked by the United States Post Office, when deposited with a nationally recognized express courier service or when personally served. Each such notice to Borrower shall be at the mailing address (or location address for delivery by courier or personal service if the mailing address is a Post Office box) set forth under "Borrower Information" on *page 1, Table A*, and any such notice to Lender shall be at the following address (or to any other address as may be specified by either party by a notice given as provided herein):

WebBank c/o CAN Capital, Inc., as Servicer
2015 Vaughn Road, NW, Bldg 500
Kennesaw, GA 30144

Notwithstanding the foregoing, any notice, request or demand which you make pursuant to any statutory rights granted to debtors under Article 9 of the UCC shall only be effective upon receipt of a copy of said notice, request or demand by us at the address set forth above with the following caption "Attention: Manager- UCC Notice."

16. GOVERNING LAW; JURISDICTION. THIS AGREEMENT AND ALL TRANSACTIONS IT CONTEMPLATES, INCLUDING ALL ISSUES CONCERNING THE VALIDITY OF THIS AGREEMENT AND ANY TRANSACTIONS IT CONTEMPLATES, THE CONSTRUCTION OF ITS TERMS, AND THE INTERPRETATION, PERFORMANCE AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF US, YOU AND SIGNING PRINCIPAL SHALL BE GOVERNED BY AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF **UTAH**, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF ANY OTHER LAW. Without limiting the generality of the foregoing, you, the Signing Principals and we agree that Utah law shall govern the entire relationship between and among all parties hereto, including without limitation, all issues or claims arising out of, relating to, in connection with, or incident to this Agreement and any transactions it contemplates, whether such claims are based in tort, contract, or arise under statute or in equity, including without limitation the law with respect to applicable statutes of limitations, laches, or similar time-based defenses. Subject to each party's right to elect arbitration under *Section 19* below, you and the Signing Principal further irrevocably and unconditionally consent and submit to the jurisdiction of any state or federal court located in Utah to resolve any suit, action, controversy, or proceeding of any kind (whether in contract, tort, statute, equity or otherwise) between or among any of the parties hereto, arising out of, related to, in connection with, or incident to this Agreement or any of the transactions it contemplates. You and the Signing Principal hereby agree that any of the above-named courts shall be a convenient forum for any such suit, action, controversy, or proceeding of any kind between or among the parties hereto, arising out of, related to, in connection with, or incident to this Agreement or any of the transactions it contemplates. You and the Signing Principal waive, to the fullest extent permitted by law, (a) any objection that you or the Signing Principal may now or later have to the laying of venue of any suit, action, controversy, or proceeding arising out of, relating to, in connection with, or incident to this Agreement or any of the transactions it contemplates in any of the above-named courts, (b) any objection to personal jurisdiction applying in any such court, and (c) any claim that any such suit, action, controversy or proceeding brought in any such court has been brought in an inconvenient forum. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS MADE AND PERFORMED IN **UTAH**. You and the Signing Principal understand and agree that: (i) we are located in Utah; (ii) we make all credit and other decisions from our office in Utah; and (iii) the loan hereunder is made in Utah (that is, no binding contract will be formed until we receive and accept your signed agreement in Utah).

17. FAX SIGNATURES; COUNTERPARTS. You and the Signing Principal agree that your faxed, scanned or other electronic signatures will be considered as good as your original signature and admissible in court as conclusive evidence. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which when taken together shall constitute one and the same agreement.

18. INTERPRETATION; MISCELLANEOUS. This Agreement shall only be valid when accepted by us at our home office in Utah. Except as otherwise stated in *Section 19*, the provisions of this Agreement shall be severable and if any provision shall be invalid, void or unenforceable in whole or in part for any reason, the remaining provisions shall remain in full force and effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns (subject nevertheless to restrictions provided in *Section 11*). This Agreement, together with the other agreements and instruments mentioned herein or executed by you contemporaneously herewith, constitutes the entire agreement of the parties hereto and we shall not be charged with any agreement or representation not contained in a writing executed by us as provided herein. Any modifications to this Agreement, which is our form agreement used for all loans we make, must be made in a separate amending document signed by both parties. Absent manifest error, our records shall be conclusive evidence with respect to the matters governed by this Agreement (including the total amount of Weekday Payment

Amounts and other amounts paid to us) but the failure to record any such amount in such records or otherwise shall not limit or affect your obligations or our rights hereunder. Whenever terms such as "include" or "including" are used herein, they shall mean "include" or "including," as the case may be, without limiting the generality of any description or word preceding such term. Whenever terms such as "acceptable to us" or "to our satisfaction" are used or we are granted the contractual right to choose between alternatives or express our opinion, the satisfaction, choices and opinions are to be made in our sole and absolute discretion. The captions or headings herein are made for convenience and general reference only and shall not be construed to describe, define or limit the scope or intent of the provisions of such document. As used herein, all masculine pronouns shall include the feminine or neuter, and all singular terms the plural forms thereof, and vice versa. Any exhibits annexed hereto are incorporated therein and made a part thereof as if contained in the body of this Agreement. All references to "Sections" shall be deemed to refer to the numbered sections of this Agreement, unless otherwise expressly provided, whether or not "hereof," "above," "below" or like words are used. This Agreement has been drafted by our counsel as a convenience to the parties hereto only and shall not, by reason of such action, be construed against us or any other party.

19. ARBITRATION AGREEMENT. You or we each may elect to resolve any and all claims and disputes relating in any way to this Agreement or our dealings with one another ("**Claims**"), except for Claims concerning the validity, scope or enforceability of this Arbitration Agreement, through **BINDING INDIVIDUAL ARBITRATION**. This Arbitration Agreement is made with respect to transactions involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U. S. C. §§ 1-16 (the "**FAA**"), and not by state law. **SIGNING PRINCIPAL AGREES THAT *SECTION 19* (INCLUDING *SECTIONS 19.1 – 19.6*) SHALL APPLY TO HIM/HER IN THE SAME MANNER AS BORROWER.**

19.1 ***Individual Arbitration***. If either of us elects to resolve a dispute by arbitration, this means that neither you nor we will be able to have the dispute settled by a court or jury trial or to participate in a class action or class arbitration. Other rights that you and we would have if you or we went to court will not be available or will be more limited in arbitration, including your and our right to appeal. YOU AND WE BOTH UNDERSTAND AND AGREE THAT BY ALLOWING EACH OTHER TO ELECT TO RESOLVE ANY DISPUTE THROUGH INDIVIDUAL ARBITRATION, **WE ARE EACH WAIVING THE RIGHT TO A JURY TRIAL OR A TRIAL BEFORE A JUDGE IN A PUBLIC COURT.** IF EITHER YOU OR WE ELECT TO RESOLVE A DISPUTE BY ARBITRATION, THAT DISPUTE SHALL BE ARBITRATED ON AN INDIVIDUAL BASIS. **NEITHER YOU NOR WE MAY BRING A CLAIM UNDER THIS PROVISION AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE CAPACITY.** THE ARBITRATOR(S) MAY NOT CONSOLIDATE MORE THAN ONE PARTY'S CLAIMS (except Claims by or against you and the Signing Principal with respect to a single Agreement or series of Agreements involving the same parties) AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING.

19.2 ***Arbitration Rules***. Arbitration of any dispute under this Arbitration Agreement shall be administered by the American Arbitration Association ("**AAA**") pursuant to the applicable rules of AAA in effect at the time the arbitration is initiated. You may contact AAA to obtain information about arbitration, arbitration procedures and fees by calling 800-778-7879 or visiting www.adr.org. If AAA is unable or unwilling to administer the arbitration of a dispute, then a dispute may be referred to any other arbitration organization mutually agreed upon in writing by you and us or to an arbitration organization or arbitrator appointed pursuant to section 5 of the FAA. Arbitrations between you and us shall be conducted before a single arbitrator who shall be a retired judge or an attorney with at least 15 years of active practice. The arbitration shall take place in the federal judicial district in which your physical address is located, unless otherwise agreed by you and us in writing. The arbitrator shall apply applicable substantive law consistent with the FAA and applicable statutes of limitations and shall be authorized to award any relief that would have been available in court, provided that the arbitrator's authority to resolve claims and make awards is limited to you and us alone except as otherwise specifically stated herein. No arbitration award or decision will have any preclusive effect as to issues or claims in any dispute with anyone who is not a named party to the arbitration. The decision by the arbitrator shall be final and binding. You and we agree that this Arbitration Agreement extends to any other parties involved in any Claims, including but not limited to your Principals and our employees, affiliated companies and vendors. In the event of any conflict between this Arbitration Agreement and the AAA arbitration rules or the rules of any other arbitration organization or arbitrator, this Arbitration Agreement shall govern.

19.3 ***Arbitration Fees and Costs***. If we initiate a dispute and either of us elects to arbitrate that dispute, or if you initiate a dispute and elect to arbitrate that dispute at the time you initiate it, we will be responsible for paying all of the arbitration fees. If you initiate a dispute, but do not elect to arbitrate it, and we elect to arbitrate that dispute, you will be responsible for paying your share of the arbitration fees up to the amount of any filing fees you would have incurred if you had brought a claim in the state or federal court closest to your physical address set forth above, and we will pay the remainder of the fees.

19.4 ***Exceptions***. Notwithstanding any other provision of this Agreement, you or we may seek relief in a small claims court for Claims within the jurisdiction of that court. In addition, you and we agree that this Arbitration Agreement does not stop you or us from exercising any lawful rights to seek provisional remedies or self-help. You and we agree that we each may seek provisional remedies in court or self-help remedies out of court without waiving the right to arbitrate. Notwithstanding any other provision of this Agreement, if the foregoing prohibition against consolidated, class and/or representative arbitration is determined to be invalid or unenforceable, then this entire Arbitration Agreement shall not apply. If any portion of this Arbitration Agreement other than the prohibition on consolidated, class and representative arbitration is deemed invalid or unenforceable, it shall not invalidate the remaining portions of this Arbitration Agreement.

19.5 ***Arbitration Agreement Is Optional***. YOU HAVE THE RIGHT TO REJECT THIS ARBITRATION AGREEMENT, BUT **YOU MUST EXERCISE THIS RIGHT PROMPTLY**. If you do not wish to be bound by this agreement to arbitrate, you must notify us in writing within sixty (60) days after the Effective Date. You must send your request to: WebBank, c/o CAN Capital, Inc. as Servicer, Customer Service Department, 2015 Vaughn Road, NW, Bldg 500, Kennesaw, GA 30144. The request must include your full name, address, account number, and the statement "I reject the Arbitration Agreement contained in my Business Loan Agreement." If you exercise your right to reject arbitration, the other terms of this Agreement shall remain in full force and effect as if you had not rejected arbitration.

19.6 ***Cure Provision***. You and we intend for both of us to have the right to arbitrate disputes on an individual basis as set forth above. In the event that a court finds any reason to invalidate or refuse to enforce this Arbitration Agreement, the party aggrieved by that decision shall have the right to take unilateral action to eliminate the basis for the court's decision, such as by waiving any right or remedy it has under this Agreement or agreeing to additional fee or cost shifting. This cure right may be exercised during briefing of a motion to compel arbitration, during oral argument, or in a renewed motion to compel arbitration. If a renewed motion is filed, you and we agree that the exercise of cure rights hereunder shall constitute new facts permitting such a renewed motion.

20. POST-TERMINATION REQUESTS; SURVIVAL.

20.1 Post-Termination Requests. Once six (6) business days have passed since the date on which you have fulfilled all of your obligations to us under this Agreement, you may: (a) call or write to us to request a "zero balance letter" and/or a UCC-3 Release of the UCC-1 financing statements. Please note that depending on the Secretary of State's office in your state a UCC-3 can take up to 30 business days to be created and returned to us.

20.2 Survival. The Personal Guaranty and the following Sections hereof shall survive the expiration or termination of this Agreement for any reason and/or the relationship between us, any bankruptcy by you or us and any transfer by us of this Agreement or our rights hereunder: *7.1, 7.2, 8.4, 8.5, 10.9, 10.10, 10.11, 10.13, 11, 13, 14, 15, 16, 17, 18, 19* (including *Sections 19.1 – 19.6*) and *20*.

21. TRANSACTIONS INVOLVING COLLATERAL. You represent, warrant and agree that: (a) you shall not sell, offer to sell, or otherwise transfer or dispose of any Collateral, except for inventory sold or accounts collected in the ordinary course of your business, unless we otherwise agree in writing; (b) no one else has any interest in or claim against the Collateral that you have not disclosed to us in writing prior to the Effective Date; (c) you shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any security interests, liens, claims, charges, restrictions, conditions, options, rights, mortgages, equities, pledges and encumbrances of any kind or nature whatsoever (collectively, "**Liens**") other than the security interest granted to us hereunder; and (d) you have, and at all times will have, good, complete and marketable title to all Collateral, free and clear of any and all Liens or any other rights or interests that may be inconsistent with the transactions contemplated with us under this Agreement, or adverse to our interests. You shall, at your sole cost and expense, defend our rights in the Collateral against the claims and demands of all other persons. All proceeds from any unauthorized disposition of the Collateral shall be held in trust for us, shall not be commingled with any other funds and shall be immediately delivered to us; provided, however that this requirement does not constitute our consent to any such disposition.

22. SIMULTANEOUS FUNDING RESTRICTION. You shall not enter into any arrangement, agreement or commitment with any person or entity other than us (a) that involves the direct or indirect pledge or sale of any portion of payments by your customers with credit cards, debit cards, charge cards, bank cards and/or other payment cards ("**Card Receivables**"), whether in the form of a purchase of, a loan against, or the sale or purchase of credits against, Card Receivables; or (b) that requires or contemplates that you will make regular payments more frequently than monthly. You agree that financing statements we file to protect our interests in the Collateral and under this Agreement may contain a statement that you are prohibited from transferring Card Receivables or other Collateral to any person or entity other than us, granting any security interest in Card Receivables or other Collateral to any person or entity other than us, or entering into any financing arrangement requiring or contemplating regular payments more frequently than monthly, until you have fulfilled all of your obligations to us.

ARBITRATION NOTICE. THIS AGREEMENT CONTAINS AN ARBITRATION PROVISION IN *SECTION 19* (INCLUDING *SECTIONS 19.1 – 19.6*). THE ARBITRATION AGREEMENT AFFECTS YOUR LEGAL RIGHTS. READ IT CAREFULLY BEFORE SIGNING.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth (for any natural person), and other information that will allow us to identify you and your company. We may also ask to see your driver's license or other identifying documents about you and your company.

BORROWER SIGNATURE

I have read this entire Agreement, including the Arbitration Agreement in *Section 19* (including *Sections 19.1 – 19.6*), and received a copy for my records. I understand that I have the right to consult with an attorney before signing this Agreement if I choose to do so. I am able to read and understand the English language. By signing below, on behalf of Borrower and in my individual capacity as a Signing Principal, I agree to all of the terms of this Agreement, including the Arbitration Agreement and the other "Key Terms and Conditions" summarized on *Page 2, Table F*, and offer to enter into the transaction it describes.

BUSINESS LEGAL NAME (TYPE OR PRINT)	
AUTHORIZED SIGNATURE	
NAME (TYPE OR PRINT)	
TITLE (TYPE OR PRINT)	

PERSONAL GUARANTY

THIS GUARANTY CREATES SPECIFIC LEGAL OBLIGATIONS. READ IT CAREFULLY BEFORE SIGNING.

I hereby personally and unconditionally guaranty for the benefit of WebBank and its successors and assigns ("**Lender**") the prompt payment to Lender of all amounts owed by the Borrower referenced above ("**Borrower**") under the above Agreement. The obligations of Signing Principal(s) pursuant to the foregoing guarantees are primary, joint and several, and irrevocable, irrespective of the genuineness, validity, regularity or enforceability of the Agreement, and without regard to any circumstance that might constitute a legal or equitable discharge of a guarantor. This is a guaranty of payment and performance and not a guaranty of collection. This is an absolute, unconditional, primary and continuing obligation and will remain in full force and effect until all amounts owed to Lender pursuant to the Agreement are satisfied in full. I agree to be bound by all of the terms and conditions contained in the Agreement and applicable to the Signing Principal. I further agree that Lender may extend, transfer and amend the Agreement and I agree to be bound by all such changes. I waive all defenses, legal or equitable, otherwise available to me, and I waive all notices to which I might otherwise be entitled by law, including notices of protest, presentment, transfer, demand and default. I agree Lender may proceed against me separately without first proceeding against Borrower, any collateral or any other Guarantor. This Guaranty will not be discharged or affected by my death and will bind my heirs and personal representatives. I hereby authorize Lender, its agents and representatives and any credit reporting agency engaged by Lender, to (a) investigate any references given or any other statements or data obtained from or about me for purposes of this guaranty, the Agreement, and any associated documentation, and (b) pull credit reports at any time now and for so long as Borrower or I may have any obligation to Lender as a consequence of this Guaranty or the Agreement, including for Lender's collection processes and its credit evaluations, including to determine Borrower's or my eligibility to enter into the Agreement or any future agreement with Lender. I hereby expressly consent to receive notices and transact business by electronic means.

I ACKNOWLEDGE AND AGREE THAT THIS GUARANTY, THE AGREEMENT AND ALL ASSOCIATED DOCUMENTATION SHALL BE INTERPRETED, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH, APPLIED WITHOUT GIVING EFFECT TO CONFLICT-OF-LAWS PRINCIPLES.

I ACKNOWLEDGE AND AGREE THAT THIS GUARANTY IS GOVERNED BY THE ARBITRATION AGREEMENT SET FORTH ABOVE IN *SECTION 19* (INCLUDING *SECTIONS 19.1 – 19.6*). WITH RESPECT TO ANY LEGAL ACTION OR PROCEEDING OF ANY KIND ARISING OUT OF, RELATED TO, IN CONNECTION WITH OR INCIDENT TO THIS GUARANTY, THE AGREEMENT, OR ANY ASSOCIATED DOCUMENTATION, I WAIVE MY RIGHT TO A JURY AND AGREE TO ARBITRATE ANY CLAIMS ON AN INDIVIDUAL BASIS AS SET FORTH IN THE ARBITRATION AGREEMENT ABOVE.

Guarantor Signatures

GUARANTOR SIGNATURE	
NAME (TYPE OR PRINT)	

CONTACT CONSENT

We would like to be able to contact you about new loan offers and products. By signing below, you authorize us and our agents to use an automatic telephone dialing system and/or an artificial or prerecorded voice to make telemarketing calls and deliver marketing text messages to the telephone number(s) listed below. If you do not wish to receive marketing calls or messages from us, you should not agree to this Contact Consent. You understand that any messages we send or leave for you may be accessed by anyone with access to your text and voicemail. You understand that your mobile phone service provider may charge you for text messages that we send you and for calls that we make to you, and you agree that we shall have no liability for the cost of any such messages or calls. At any time, you may withdraw or alter your consent to receive marketing calls or text messages by calling us at (877) 500-8282 or writing to us at WebBank c/o CAN Capital, Inc. as Servicer, Customer Service Department, 2015 Vaughn Road, Bldg 500, Kennesaw, GA 30144. Alternatively, to stop marketing text messages, simply reply "STOP" to any marketing text message that we send you.

You are not required to sign this Contact Consent to obtain this loan from us. However, we ask that you sign it so we can let you know about other products that may be of interest.

Signature for Contact Consent:

BUSINESS LANDLINE	**MOBILE PHONE**
SIGNING PRINCIPAL NAME (TYPE OR PRINT)	**AUTHORIZED SIGNATURE**

EXHIBIT B

CAN CAPITAL

AGREEMENT DATE:
MERCHANT ID:

FUTURE RECEIVABLES PURCHASE AND SALE AGREEMENT

This Future Receivables Purchase and Sale Agreement ("**Agreement**"), is entered into by and between **CAN Capital Merchant Services, Inc.** ("**Buyer**," "**we**," or "**us**") and the business listed below ("**Seller**" or "**you**"). The owner and/or principal of the Seller signing this Agreement as the personal guarantor of certain representations and Contractual Covenants (defined below) is referred to as "**Principal**." Buyer, Seller, and Principal are sometimes referred to individually as a "**Party**" or collectively as the "**Parties**."

A. SELLER'S INFORMATION

BUSINESS LEGAL NAME			
D/B/A (if applicable)	**BUSINESS START DATE**		
STATE OF ENTITY ORGANIZATION	**BUSINESS ENTITY TYPE** (check one): ☐ Corporation (Inc., Corp. & PC) ☐ Limited Liability Partnership (LLP) ☐ Partnership ☐ Limited Liability Company (LLC) ☐ Limited Partnership (LP) ☐ Sole Proprietorship		
PHYSICAL BUSINESS LOCATION			
STREET ADDRESS	**CITY**	**STATE**	**ZIP**
SIGNING PRINCIPAL'S FULL LEGAL NAME	**SIGNING PRINCIPAL'S TITLE**		
PRINCIPAL'S RESIDENTIAL STREET ADDRESS	**CITY**	**STATE**	**ZIP**

B. PURCHASE AND SALE OF FUTURE RECEIVABLES

This Agreement will be accepted by us if and when we purchase the "**Specified Amount**" of your Future Receivables for the "**Purchase Price**," at the amounts shown below. The Parties agree that the Purchase Price represents a fair discounted price for the future value of the daily payment card receivables that you will earn in the days to come (your "**Future Receivables**"). You will assign to us the "**Specified Percentage**" (as listed below) of your daily payment card receivables (your "**Daily Receivables**") on each day your business operates until we have received the entire Specified Amount. On days when banks are not open, the Specified Percentage of your Daily Receivables will be delivered to us on the next banking day. For example, the Specified Percentage for Friday, Saturday, and Sunday will be remitted on the following Monday.

PURCHASE PRICE		**SPECIFIED AMOUNT**		**SPECIFIED PERCENTAGE**	

This Agreement is for the sale of your Future Receivables to us, and it is not, nor will it be construed to be, a loan. One benefit of selling Future Receivables, instead of borrowing money, is that there are no minimum payments, no payment schedules, and no due dates. So if your business is slower on one day, the amount you remit to us will be proportionally lower for that day. Consequently, we take greater risks in this arrangement as compared to a loan; such as the risk of not receiving the Specified Amount of Future Receivables we purchased as quickly as we forecast, or the risk of never receiving the full amount if you go out of business. However, in return for the risks we take, you agree not to break any of the Contractual Covenants listed in this Agreement, because that would unfairly prevent us from receiving what we have purchased. For example, you cannot stop taking payment cards as a form of payment, use a payment card processor we have not approved in writing, sell your Future Receivables to another company, or close your business and start up another similar business right away. The details on this are all below.

By signing this Agreement you are making an offer to sell Future Receivables to us. This Agreement is not binding on us, and therefore not accepted by us, unless and until we deliver the Purchase Price to you.

FEE DISCLOSURE AND ADDITIONAL TERMS ON FOLLOWING PAGES

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C. FEES

You agree to pay us the following fees, as described below, and you further agree that we, and anyone else we designate, may Debit (as defined below) or otherwise withdraw such fees and charges from your bank account.

Administrative Fee: An Admin Fee of is required to cover our costs for filing financing statements and providing services to you such as monthly statements (when applicable), online access to account information, and toll-free telephone access to customer service representatives.

Non-sufficient Funds: A fee of **$25.00** (or, if less, the maximum amount permitted by applicable law) may be charged for each rejected or dishonored check, ACH debit, or wire transfer withdrawal made under this Agreement.

Site Inspections: A fee of up to **$200** may be charged in the event we send a site inspector to your business, in accordance with our rights under *subsection 3.10*, and the inspector reports findings that constitute a breach of the Contractual Covenants.

WARNING REGARDING THIRD PARTY FEES: Please note, if you worked with a third party to facilitate the sale of your Future Receivables hereunder, we may directly pay such third party a referral fee, but **we do not permit** third parties to charge any fees directly to you. Please notify us immediately if any third party has charged you a fee in connection with this Agreement.

ADDITIONAL TERMS OF AGREEMENT

Capitalized terms not defined below in these Additional Terms of Agreement will have the meanings given above.

1. PROCESSING TERMS & ARRANGEMENTS.

1.1. ***Processing Agreement*****.** If you have not already done so, you agree to enter into an agreement acceptable to us with a payment card processor acceptable to us (the **"Processor"**) to obtain payment card processing services (the "**Processing Agreement**"). You agree to comply with the Processing Agreement and not to modify the Processing Agreement in any manner that could harm us or our interests, without our prior written consent. You agree that Processor may rely upon our instructions without asking you if you agree. You waive any claim for damages you may have against Processor or us relating to actions taken based on your or our instructions, unless the Processor did not follow our instructions. You acknowledge and agree that (a) Processor will be acting on our behalf with respect to the Future Receivables we bought from you, (b) Processor may or may not be our affiliate, (c) we do not control Processor's actions in processing your payment card transactions and remitting the Specified Percentage to us, and (d) we are not responsible and will not be liable for, and you agree to hold us harmless for, the actions of Processor. You understand that Processor may charge a fee or commission for processing receipts of your Daily Receivables (the "**Processor's Fee**") as stated in the Processing Agreement. You agree that the Processor's Fee will be deducted from the portion of the Daily Receivables payable to you and not from the Specified Percentage payable to us.

1.2. ***Instructions to Processors*****.** You authorize and instruct Processor to hold the Specified Percentage of your Daily Receivables in trust for us each day, and to remit it directly to us at the same time it remits to you the balance of the Daily Receivables otherwise due to you. You agree that the funds representing the Specified Percentage of your Daily Receivables are our sole property, even before they have been provided to us, and you disclaim all interest in these funds. You instruct Processor to provide us with your payment card transaction history upon our request. You authorize us to contact any of your past, present, or future processors to obtain any information that we deem necessary or appropriate to confirm that you are in compliance with this Agreement, including without limitation through any applicable processor website, portal or account access system (including automated telephone systems) for which you have provided us (either directly or indirectly) your access credentials. You hereby authorize and direct such processors, predecessors, and affiliates to provide us with all such information. You agree that you cannot revoke any of the instructions or authorizations in this paragraph until we receive the entire Specified Amount, unless we agree otherwise in writing.

1.3. ***ACH Debits and Other Withdrawals.*** As an alternative to direct remittance by the Processor, we may Debit your Account (as defined below) to retrieve the Specified Percentage of your Daily Receivables that would otherwise have been remitted to us by the Processor. This is a good option if your business is using a payment card processor that is currently not approved to directly remit to us. Additional terms provided in the *ACH Debit Addendum* at the end of this Agreement will be incorporated herein, in the event that the ACH Debit method is utilized. "**Debit**" is defined under this Agreement as any kind of withdrawal (via the Automated Clearing House ("**ACH**") system, electronic checks, wires, or otherwise) from your Account. In making Debits we may utilize an "**Operator**," defined as any person or entity we use to make Debits on our behalf. In the event that this remittance option is utilized, you agree that all of the agreements, authorizations, and instructions in *subsections 1.1 and 1.2* also apply to Operator. You agree that you cannot revoke any of the instructions or authorizations in this paragraph, and in the *ACH Debit Addendum,* until we receive the entire Specified Amount, unless we agree otherwise in writing.

1.4. ***Indemnification***. You agree to indemnify and hold Processor and Operator, and their respective officers, directors, affiliates, employees, agents and representatives, harmless from and against all losses, damages, claims, liabilities and expenses (including reasonable attorneys' fees) suffered or incurred by Processor or Operator resulting from actions taken by Processor or Operator in reliance upon information or instructions we provide to Processor or Operator.

1.5. ***Limitation of Liability***. In no event will we, Processor, or Operator be liable for any claims asserted by you under any theory of law, including any tort or contract theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special,

incidental, indirect or consequential damages, each of which you expressly waive.

1.6. ***Account; Authorization to Withdraw from Accounts***. You represent and warrant that the bank account into which all settlement proceeds of Future Receivables will be deposited (the "**Designated Account**"), is your primary business bank account and is the account identified by the account name, account number, and bank name and address shown on the face of the voided check that you have provided to us along with this Agreement. If you or Processor transfer to the Designated Account, or to any other account, any funds that should have been transferred to us under *subsections 1.1*, *1.2*, or *1.3*, you will, and/or you will cause the account holder to, immediately segregate and hold all such funds in express trust for our sole and exclusive benefit. If this happens, you will maintain in the Designated Account a minimum balance equal to either (a) the amount that should have been transferred to us or (b) the Specified Percentage multiplied by your average daily payment card volume based on the processing records provided to us before the "**Agreement Date**" stated in the header on page one (assuming twenty-one days of processing per month) multiplied by three, whichever is greater ("**Minimum Balance**"), until such funds are transferred to us. You and Principal hereby irrevocably authorize us, Processor, and Operator to Debit from such Account such funds and any fees, costs, charges, or other amounts we are entitled to receive under the Agreement. You and Principal agree not to revoke or cancel such authorizations until we have received the entire Specified Amount of Future Receivables and any other amounts we are entitled to receive. You and Principal acknowledge and agree that we, Processor, and Operator may issue pre-notifications to your and Principal's bank(s) with respect to such Debits. Within two business days of any request by us, you will provide, or cause Processor, Operator, the applicable bank(s), or Principal, to provide us with records and other information regarding your payment card sales, the Designated Account, and any other accounts of you or Principal. You and Principal hereby authorize and direct the applicable bank(s) to provide us with all such information in compliance with this section. You and Principal agree to provide information to us, Processor, and Operator, as we may request from time to time.

1.7. ***Processing Trial.*** After this Agreement has been signed by you and Principal, but before we determine whether to pay the Purchase Price, you agree to permit us to instruct Processor and/or Operator to conduct a short processing trial (the "**Processing Trial**") to ensure that your payment card transactions are being correctly processed through Processor and that the cash attributable to the Specified Percentage of Future Receivables will be appropriately remitted to us. We agree to decide whether to purchase the Specified Amount of Future Receivables promptly after commencing the Processing Trial. You authorize us and our designees, in connection with the Processing Trial, to Debit any fees we are entitled to receive under the Agreement. If we elect to purchase the Specified Amount of Future Receivables, then all of the cash we received in connection with the Processing Trial before the payment of the Purchase Price will first be applied to fees we are entitled to receive, and then to the Specified Amount. Nothing in this Agreement will require us to purchase any Future Receivables, and we expressly reserve the right to not purchase the Specified Amount of Future Receivables and not pay the Purchase Price to you. If we decide not to purchase the Specified Amount of Future Receivables, this Agreement will become void and we shall, promptly after receipt from Processor or Operator, return to you any cash we received from the Processing Trial. We shall have no obligation to pay you any interest or other compensation for any such returned cash.

1.8. ***Excess Cash*****.** In the event that the amount of cash remitted to us under this Agreement exceeds the sum of the Specified Amount and any other amounts we are entitled to receive (such excess being the "**Excess Cash**") by at least $20.00, we agree to pay such Excess Cash to you within thirty (30) days after we receive it. If the Excess Cash is less than $20.00, we agree to pay such Excess Cash to you within thirty (30) days after we receive a written request from you, if you make the request within six months of us receiving the Excess Cash; otherwise you agree to waive all rights to the Excess Cash. You agree that we have no obligation to take any action (including against Processor or Operator) with respect to any cash held by Processor or Operator which will become Excess Cash once it is paid to us by Processor or Operator, before we receive such Excess Cash.

1.9. ***Reliance on Terms***. The provisions of this Agreement are agreed to for the benefit of you, us, Principal, Processor and Operator, notwithstanding the fact that Processor and Operator are not parties to this Agreement. Processor and Operator may rely upon the terms of this Agreement and raise them as defenses in any action.

2. COVENANTS, REPRESENTATIONS & WARRANTIES.

2.1. ***CONTRACTUAL COVENANTS***. Until the entire Specified Amount has been fully remitted to us, you promise and agree (collectively, the "**Contractual Covenants**"):

(a) **Nature of Business:** to not materially change the nature of your business from what you represented to us or Processor before we paid the Purchase Price, and to not materially change the nature of goods and services you sell or provide;

(b) **Processor:** to use Processor for the processing of all of your payment card transactions, unless we agree in writing to your use of a different processor; and to not change your arrangements with Processor in any way that is harmful to us;

(c) **Payment Cards:** to not take any action to discourage the use of payment cards, and to not permit any event to occur that could have an adverse effect on the use, acceptance, or authorization of payment cards for purchases from you;

(d) **Designated Account:** to not allow payment card settlement proceeds to be deposited to an account other than the Designated Account unless we first consent in writing to a different account, and to not revoke or cancel any of the authorizations to Debit from the Designated Account or any other account of Seller or Principal, and to not remove funds from the Designated Account such that we are unable to receive the Specified Percentage of your Daily Receivables on any given day;

(e) **Transfer of Business:** to not sell, dispose of, or otherwise transfer your business or the majority of its assets without (i) our express prior written consent, and (ii) the assumption by any such purchaser of all of your obligations under this Agreement pursuant to documentation acceptable to us;

(f) **Additional Sale of Future Receivables:** to not enter into any arrangement, agreement, or commitment relating to your Future Receivables or future payment card sales (including, without limitation, a loan, sale, purchase, or factoring) with anyone but us, and not to transfer ownership of any of your Future Receivables to anyone other than us;

(g) **Liens:** to not give or permit, without our express written consent, any Lien (defined in *subsection 2.1(j)*) on any of your accounts receivable, including Future Receivables, for the benefit of any person or entity other than us (including, but not limited to, "stacking" or Seller entering into a financing arrangement requiring Seller to make daily or weekly payments or remittances);

(h) **Cooperation**: to cooperate and communicate with Buyer, its representatives and/or agents in connection with reasonable inquiries into your compliance with the terms of this Agreement, including providing any information (e.g., sales and processing data, processor information) we reasonably request within ten (10) business days of such request; and

(i) **Representations:** that none of the representations set forth in *subsections 2.2(a)-(d)* below will be false or misleading in any material respect.

These Contractual Covenants are intended only to prevent you from interfering with our bargained-for right to collect the Future Receivables we purchased as they are created in the ordinary course of your business. They do not create any obligation for you to remit money to us on any particular day if Daily Receivables are simply not generated by your business. Buyer, Seller, and Principal(s) acknowledge and agree that Seller going bankrupt or out of business, in and of itself, does not constitute a breach of these Contractual Covenants.

2.2. *Representations and Warranties.* You understand that we will rely on all information (financial and otherwise) you provide to us, or that is provided on your behalf, to decide whether to purchase the Specified Amount of Future Receivables from you. You represent and warrant as follows:

(a) **Evictions:** No eviction or foreclosure is pending or threatened against you, other than any such event you have provided to us in the form of a written disclosure attached to this Agreement;

(b) **Title to Future Receivables:** You have good, complete, and marketable title to all Future Receivables we have purchased under this Agreement, free and clear of any and all liabilities, liens, claims, charges, restrictions, conditions, options, rights, mortgages, security interests, equities, pledges, and encumbrances of any kind whatsoever (collectively, "**Liens**") or any other rights or interests that may be inconsistent with your transactions with us, or which are adverse to our interests;

(c) **Accurate Information:** All information (financial and otherwise) you provide to us in connection with this Agreement is and will be true, accurate, and complete, and you authorize us now and in the future to correct any typographical or minor errors in this Agreement and fill in any blanks not filled in by you or us;

(d) **Solvency**:

(i) you do not intend to close or cease operating the business, in whole or in part, temporarily or permanently prior to us receiving the Specified Amount that we have purchased;

(ii) as of the Agreement Date, you are solvent and are in no way contemplating, and have not commenced, any insolvency or bankruptcy proceeding;

(iii) during the six (6) months before the Agreement Date, neither you nor Principal has discussed with or among your management, with counsel, or with any other advisor or creditor, closing your business or pursuing or agreeing to any insolvency or bankruptcy proceeding, receivership, or assignment for the benefit of creditors with respect to your business; and

(iv) You agree that, in the event that you go out of business or are the subject of a voluntary or involuntary filing for protection under the United States Bankruptcy Code within forty-five (45) days of us delivering the Purchase Price to you, there will be a rebuttable presumption that the representations you have made to us regarding your financial condition, upon which we reasonably relied in entering into this Agreement, were materially false and made with the intent to deceive us;

(e) **Legal Compliance:** You are in, and will remain in, compliance with any and all applicable federal, state, and local laws and rules and regulations, as well as all rules and regulations of payment card associations and payment networks. You have, and are in compliance with, and will remain in compliance with, all permits, licenses, approvals, consents, registrations and other authorizations necessary to own, operate, and lease your properties and to conduct your business;

(f) **Change of Name, Location, Etc.** You do not, and will not, conduct your business under any name other than as stated on page one of this Agreement and you will not change your place of business, your legal name, entity type, or the jurisdiction of your organization, unless you have provided us with at least thirty (30) days' prior written notice and provided us with any documents, agreements, signed amendments and information we request to allow us to protect our rights;

(g) **Authority to Sign:** You, and the person(s) signing this Agreement on your behalf, have full power and authority to enter into and perform the obligations under this Agreement and the Processing Agreement, all of which have been duly authorized by all necessary and proper actions;

(h) **Good Standing:** You are a valid business in good standing under the laws of each jurisdiction in which you are organized or operate, and you are entering into this Agreement solely for business purposes and not as a consumer for personal, family, or household purposes;

(i) **Bona Fide Sales:** All amounts we receive attributable to the Specified Amount of Future Receivables will come from bona fide sales by you of your goods and services to payment card holders who present their cards as payment; and

(j) **Nature of Account:** The Account is and will be used for business purposes and not for personal, family or household purposes, and you are an authorized signor on the Designated Account.

2.3. *Insurance*. You agree to maintain insurance in such amounts and against such risks as is commercially reasonable for your business and that are consistent with your past practice. You will provide proof of such insurance at our request.

3. ADDITIONAL TERMS.

3.1. *Unique Nature of Future Receivables Sale; Not a Loan*. You and we intend and agree that our purchase of the Specified Amount of your Future Receivables is an absolute sale, conveying good title to the Specified Amount of Future Receivables, free and clear of any Liens of others. You acknowledge and agree, (i) that you have no legal or equitable interest in the Specified Amount of your Future Receivables as established under this Agreement, (ii) that in the event you become a debtor in a case under Title 11 of the United States Code (or otherwise becomes subject to any receivership, bankruptcy, insolvency or similar law of any jurisdiction), the Specified Amount of your Future Receivables is not property of your estate, and (iii) that you no longer own or control the Specified Amount of Future Receivables. You represent and warrant that you are selling the Specified Amount of Future Receivables to us and that the Purchase Price is good and valuable consideration for such sale. We are buying the Specified Amount of Future Receivables knowing the risks that your business may slow down or fail, and we assume these risks based on your agreement to the Contractual Covenants, which are designed to give us a reasonable and fair opportunity to receive the benefit of our bargain, and based on the representations and warranties in this Agreement. You and we understand and agree that there is no set time frame for us to receive the Specified Amount, such as a "term" or other set time period for collection of the Specified Amount. You agree to use the proceeds of this sale solely for business purposes. You agree that this transaction is not a loan and you waive the right to claim otherwise. You are not indebted to us as of the Agreement Date. You are selling a portion of a future revenue stream to us at a discount, not borrowing money from us. You are required to allow us to receive the revenue stream we purchased by complying with the Contractual Covenants, and to pay the fees specified in this Agreement, but you have no obligation to make any payments to us otherwise. There is no interest rate or payment schedule and no time period during which the Specified Amount must be remitted to us.

3.2. *No Right to Repurchase*. You acknowledge and agree that you have no right to repurchase from us the Specified Amount of Future Receivables, or any portion of it, and we may not force you to repurchase the Specified Amount of Future Receivables, or any portion of it. Any repurchase must be mutually agreed to by both Parties.

3.3. *Remedies*. If you break any of the promises in this Agreement, including but not limited to the Contractual Covenants (each, a "**Breach**"), we shall be entitled to all remedies available under law and equity, including the right to non-judicial foreclosure, and the right to receive all Indemnified Amounts (defined in *subsection 4.8*) from you. If you violate any of the Contractual Covenants, you agree that we shall be entitled to, but not limited to, liquidated damages equal to the unremitted balance of the Specified Amount. You agree that it is difficult to calculate damages in these circumstances, and that the Specified Amount represents a reasonable estimate of our damages. You irrevocably authorize us, Processor, and Operator to Debit such damages, in full or in partial amounts, from your accounts (including the Designated Account) without notice, except as required by applicable law. You agree that you cannot revoke any of the instructions or authorizations in this paragraph until we receive the entire Specified Amount, unless we agree otherwise in writing

3.4. *Power of Attorney*. In addition to any other remedies available for violation of the Contractual Covenants, if you change or permit a change of the Processor, or use an additional payment processor, we shall have the right, without waiving any of our rights or remedies, and without notice to you or Principal(s), to either: (a) notify the new or additional processor of this Agreement and to direct any new or additional processor to pay to us from your Daily Receivables otherwise due to you any amounts we were, are, or will be entitled to receive under this Agreement; or (b) unilaterally exercise the option of making ACH Debits pursuant to the terms of *subsection 1.3* and the *ACH Debit Addendum* in order to debit any amounts we were, are, or will be entitled to receive under this Agreement. You hereby give us an irrevocable power of attorney, which shall be coupled with an interest, and hereby appoint us and our designees as your attorney-in-fact, to take any and all actions necessary or appropriate to exercise the foregoing rights, including the right to direct any new or additional processor to make payment to us as contemplated by this section.

3.5. *Security Agreement; Financing Statements*. To secure your performance of the Contractual Covenants and your other obligations to us under this Agreement or any other agreement between you and us, you give us a continuing priority security interest, subject only to the security interest of Processor, if any, in the following property of yours (collectively, the "**Collateral**"):

(a) all of your personal property, including, all accounts, chattel paper, documents, equipment, general intangibles, instruments, inventory (as those terms are defined in Article 9 of the Uniform Commercial Code ("**UCC**") in effect from time-to-time in the State of New York), and liquor licenses, wherever located, currently owned or later acquired by you;

(b) all trademarks, trade names, service marks, logos and other sources of business identifiers, and all registrations, recordings and applications with the U.S. Patent and Trademark Office ("**USPTO**") and all renewals, reissues and extensions thereof (collectively "**IP**") whether owned now or acquired later, together with any written agreement granting any right to use any IP; and

(c) all proceeds from items described in (a) and (b) above, as the term "proceeds" is defined in Article 9 of the UCC.

The security interest described above does not secure any loan payment obligation, since you have no such obligation under this Agreement. You understand and agree that we may file one or more (i) UCC-1 financing statements at any time to perfect our interests under the UCC created by this Agreement, and (ii) assignments with USPTO to perfect the security interest in IP described above. If we elect to file a financing statement naming

you as debtor or seller, you authorize us to describe the collateral as "all assets of debtor/seller, whether now owned or hereafter acquired," or words to that effect, even though the security interest created under this Agreement may not, in fact, apply to all of your assets and even though your sale of the Specified Amount of Future Receivables does not cause you to become a debtor or cause us to become a creditor. Such financing statements also may state that you are prohibited from transferring Future Receivables to anyone other than us or granting any security interest in your accounts receivable to anyone other than us until we receive the Specified Amount of Future Receivables and any other amounts we are entitled to receive under the Agreement. You authorize us to file financing statements and any continuation statements or amendments as we require from time to time, and agree that we or our designee may file any such financing statement before this agreement goes into effect. Our rights under this section will also apply to any later or other agreement between the Parties. You agree to promptly sign and deliver any documents, or take action we request or as may be necessary, to perfect against you and all third parties the sale of the Specified Amount of Future Receivables or to enable us to exercise our rights and remedies under the Agreement.

3.6. ***Protection of Information***. You, and each person signing this Agreement on Seller's behalf or as a Principal, personally authorize us to disclose information concerning your and Principal's credit standing (including credit bureau reports that we obtain) and business conduct to any third party. You and Principal hereby waive to the maximum extent permitted by law any claim against us or any of or affiliates relating to any (i) investigation done by us or on our behalf permitted by this Agreement or (ii) disclosure of information as permitted by this Agreement.

3.7. ***Contacting, Monitoring and Recording.*** As part of the consideration for us to purchase Future Receivables from you, you and Principal authorize us and our affiliates, agents, representatives, assigns and service providers (collectively, the "**Messaging Parties**") to contact you using automatic telephone dialing systems, artificial or prerecorded voice message systems, text messaging systems, facsimile machines, automated email systems, and any other method of communication. You and Principal authorize the Messaging Parties to make such communications using any telephone numbers (including wireless, landline, residential, facsimile and VOIP numbers) or email addresses supplied by you or Principal, or by any of your employees, officers, principals, agents, family members, or associates, at any time in connection with this Agreement. Anyone with access to the telephone or email accounts supplied may listen to or read the messages the Messaging Parties leave or send, and you and Principal agree that the Messaging Parties will have no liability for any such access. You and Principal further agree that the Messaging Parties will have no liability for any charges from any of your telecommunications, wireless and/or Internet service providers for any such communications. You and Principal agree that we will not be liable to you for any fees, inconvenience, annoyance, or loss of privacy in connection with such communications. You and Principal understand that anyone with access to your telephone or email account may listen to or read the messages, notwithstanding our efforts to communicate only with you or Principal(s). If a telephone number(s) you or Principal have provided to us changes, or if you cease to be the owner, subscriber, or primary user of such telephone number(s), you and Principal agree to immediately give us notice of such facts so that we may update our records. Seller and Principal expressly authorize the Messaging Parties to monitor and record calls and other communications with the Messaging Parties.

3.8. ***Confidentiality***. You and Principal understand and agree that the terms and conditions of the products and services we offer, including this Agreement and our documentation (collectively, "**Confidential Information**") are our proprietary and confidential information. Accordingly, unless disclosure is required by applicable law or court order, you and Principal must not disclose Confidential Information to any person other than an attorney, accountant, financial advisor, or employee of yours who needs to know such information for the purpose of advising you (each, an "**Advisor**"), provided such Advisor uses such information solely for the purpose of advising you and first agrees in writing to be bound by the terms of this section.

3.9. ***Publicity***. You and Principal authorize us to use its, his, or her name in a listing of clients and in advertising and marketing materials.

3.10. ***Inspection of Collateral and Place of Business***. We and or our representatives and agents will have the right, during your normal business hours and at any other reasonable times, to examine the Collateral and the interior and exterior of any of your places of business. This examination may include, among other things, whether you (a) have a place of business separate from any personal residence, (b) are open for business, (c) have sufficient inventory to conduct business, (d) have one or more point-of-sale terminals to process payment card transactions, and (e) post signage regarding the use of payment cards. You agree to allow such examinations and agree to permit our representatives or agents to run low dollar test transactions through your payment terminals and to photograph the interior and exterior of any of your places of business, including any signage and persons.

4. MISCELLANEOUS.

4.1. ***Modifications; Amendments; Construction***. No modification, amendment, or waiver of any provision of this Agreement will be effective unless it is in writing and signed by the parties affected. The headings of the sections and subsections of the Agreement are used for convenience only and will not affect the interpretation of this Agreement. For purposes of this Agreement, "including" will mean "including, without limitation" and "and" will mean "and/or." Any reference in this Agreement (a) to the singular includes the plural where appropriate, and (b) to the masculine gender includes the feminine and neuter genders where appropriate.

4.2. ***Notices.*** All notices, requests, demands, and other communications made relating to the Agreement will be in writing and will be delivered by mail, overnight delivery, or hand delivery. Notices to us must be sent to the following address, or such other notice address as we may specify in writing: CAN Capital Merchant Services, Inc., c/o General Counsel, 2015 Vaughn Road NW, Bldg 500, Kennesaw, Georgia, 30144.

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

4.4. *D/B/As and Proxies*. You and Principal agree that we may use "doing business as" or "d/b/a" names or third-party proxy services in connection with any dealings between us, including the filing of UCC-1 financing statements and other notices or filings.

4.5. *Binding Effect; Assignments*. This Agreement will be binding upon and inure to the benefit of you, us, Principal(s), and their respective successors and assigns, except that you and Principal(s) will not have the right to assign or delegate any of your rights or obligations or any interest under this Agreement without our prior written consent, which may be withheld in our sole discretion. Any assignment or delegation you make without our prior written consent is void. Notwithstanding the foregoing, you agree that a transfer or reorganization of the Seller business without our consent, including but not limited to a transfer resulting from the Principal's death, will not be deemed to terminate our rights to the Specified Amount that we have purchased from you; and the Seller business, so long as it is continuing to operate in any form, will remain obligated under this Agreement to continue to remit, and we shall be entitled to debit, the Specified Percentage of Future Receivables as contemplated herein. We reserve the right to assign or delegate this Agreement, or any of the rights and obligations created by the Agreement, with or without prior notice to you. We may, for example, grant a security interest in any and all of our rights and interests pursuant to this Agreement, including our rights and interests in the Specified Amount of Future Receivables, to any secured party we may obtain financing from, and such secured party will be entitled to enforce our rights and interests under this Agreement, subject to and in accordance with the Agreement's terms. Such secured party will have no liability for any of our obligations under this Agreement.

4.6. *Governing Law; Jurisdiction*. This Agreement, including all issues concerning its validity, construction, interpretation, performance, and enforcement of the rights of any party to the Agreement, and all disputes between the parties, will be governed by and adjudicated in accordance with the laws of the State of New York, without regard to conflicts of law principles. The parties agree that the laws of the State of New York will govern the entire relationship among the Parties, including, without limitation, all issues or claims arising out of, or relating to, in connection with, or incident to this Agreement, whether such claims are based in tort, contract, statute, equity, or otherwise. The Parties further agree that that this Agreement is made and performed in the State of New York. Subject to the right to elect arbitration of disputes under *Section 5*, you and Principal irrevocably and unconditionally consent and submit to the jurisdiction of any state or federal court sitting in New York City or New York County, New York or Cobb County, Georgia to resolve any suit, action, controversy, or proceeding of any kind (whether in contract, tort, statute, equity or otherwise) between or among the Parties, arising out of, related to, in connection with, or incident to this Agreement or any of the transactions or dealings it contemplates. You and Principal agree that any of the above-named courts are a convenient forum for the resolution of any such dispute. You and Principal waive, to the fullest extent permitted by law, (i) any objection that you or Principal may now or later have to the venue of any suit, action, controversy, or proceeding in any of the above-named courts, (ii) any objection to personal jurisdiction applying in any such court, and (iii) any claim that any such suit, action, controversy or proceeding brought in any such court has been brought in an inconvenient forum.

4.7. *Costs*. We shall be entitled to receive from you and Principal, and you and Principal agree to pay, all reasonable costs associated with any breach of this Agreement and the enforcement of our rights, including, but not limited to, court costs, arbitration costs allowed under *Section 5*, and attorneys' fees.

4.8. *Indemnified Amounts*. If a Breach occurs, you and Principal will assume liability for and agree to indemnify, defend, and hold harmless us, our affiliates, and our or their officers, directors, employees, agents, representatives, successors, and assignees (collectively, the "**Indemnified Parties**"), from and against any and all liabilities, claims, losses, obligations, damages, penalties, suits, actions, controversies, or proceedings of any kind, imposed upon, incurred by, or asserted against any of the Indemnified Parties, in any way arising from, in connection with, relating to, or incident to such Breach (collectively, "**Indemnified Amounts**"). This includes payment of all costs and expenses of every kind for the enforcement of our rights and remedies under the Agreement, including reasonable attorneys' fees, trial costs, appellate court proceedings, administrative proceedings, arbitration (unless inconsistent with anything in *Section 5* below) or any negotiations or consultations regarding any such Breach. Such Indemnified Amounts will bear interest at the highest rate of interest permitted by applicable law until paid.

4.9. *Term and Survival*. Except as stated elsewhere in this Agreement, this Agreement will continue in full force and effect until we have received the Specified Amount of Future Receivables; provided, however, that the following sections will survive the expiration or termination of this Agreement for any reason and/or the relationship between the Parties, any bankruptcy of a Party, and our transfer of this Agreement or our rights: *subsections 1.4, 1.5, 2.2, 3.1, 3.2, 3.3, 3.7, 3.8, 3.9 and Sections 4 and 5*.

4.10. *Severability*. Except as otherwise provided in *Section 5*, if any provision of this Agreement is found to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions will not be affected or impaired.

4.11. *Counterparts; Facsimile and Electronic Signatures*. This Agreement may be signed in one or more counterparts, each of which will constitute an original and all of which when taken together will constitute one and the same agreement. Facsimile signatures and other electronic signatures will be deemed to be original signatures and each Party may rely on a facsimile signature or electronic signature as an original for purposes of enforcing this Agreement.

4.12. *Entire Agreement*. This Agreement, together with any other agreements and instruments specifically mentioned in the Agreement or any executable documents that we provide you and which you and/or Principal sign in connection with the Agreement, including the *ACH Debit Addendum*, constitutes the entire agreement and understanding among you, Principal, and us, and supersedes all prior agreements and understandings relating to the subject matter of this Agreement. You and Principal each acknowledge and agree that you, he or she is not relying on any representations not specifically stated in this Agreement. WE ARE NOT RESPONSIBLE FOR ANY THIRD PARTY REPRESENTATIONS OR AGREEMENTS. IF YOU ARE UNSURE ABOUT SOMETHING, ASK US.

5. ARBITRATION & CLASS ACTION WAIVER.

5.1. *Arbitration Agreement.* You and we each may elect to resolve any and all claims and disputes relating in any way to this Agreement or our dealings with one another ("**Claims**"), except for Claims concerning the validity, scope, or enforceability of this Arbitration Agreement, through **BINDING INDIVIDUAL ARBITRATION.** This Arbitration Agreement is made with respect to transactions involving interstate commerce and will be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (the "**FAA**"), and not by state law. **PRINCIPAL AGREES THAT SECTION 5 WILL APPLY TO HIM OR HER.** You and we may also elect arbitration of a dispute after the filing of a counterclaim by the other party, even if you or we filed the original claim in court.

5.2. *Individual Arbitration.* If either you or we elect to resolve a dispute by arbitration, this means that neither you nor we will be able to have the dispute settled by a court or jury trial or to participate in a class action or class arbitration. Other rights that you and we would have in court will not be available or will be more limited in arbitration, including the right to appeal. YOU AND WE BOTH UNDERSTAND AND AGREE THAT BY ALLOWING EACH OTHER TO ELECT TO RESOLVE ANY DISPUTE THROUGH INDIVIDUAL ARBITRATION, **WE ARE EACH WAIVING THE RIGHT TO A JURY TRIAL OR A TRIAL BEFORE A JUDGE IN A PUBLIC COURT.** IF ANY PARTY CHOOSES TO RESOLVE A DISPUTE BY ARBITRATION, THAT DISPUTE MUST BE ARBITRATED ON AN INDIVIDUAL BASIS. **YOU MAY NOT BRING A CLAIM UNDER THIS PROVISION AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE CAPACITY.** THE ARBITRATOR(S) MAY NOT CONSOLIDATE MORE THAN ONE PARTY'S CLAIMS (except Claims by or against you or Principal with respect to a single Agreement or series of agreements involving the same parties) AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING.

5.3. *Arbitration Rules.* Arbitration of any dispute under this Arbitration Agreement will be administered by the American Arbitration Association ("**AAA**") pursuant to the applicable rules of AAA in effect at the time the arbitration is initiated. You may contact AAA to obtain information about arbitration, arbitration procedures and fees by calling 800-778-7879 or visiting www.adr.org. If AAA is unable or unwilling to administer the arbitration of a dispute, then a dispute may be referred to any other arbitration organization mutually agreed upon in writing by you and us or to an arbitration organization or arbitrator appointed pursuant to *Section 5* of the FAA. Arbitrations between the parties will be conducted before a single arbitrator who will be a retired judge or an attorney with at least 15 years of active practice. The arbitration will take place in the federal judicial district in which your physical address is located, unless otherwise agreed by the parties in writing. The arbitrator will apply applicable substantive law consistent with the FAA and applicable statutes of limitations and will be authorized to award any relief that would have been available in court, provided that the arbitrator's authority to resolve claims and make awards is limited to you and us alone except as otherwise specifically stated herein. No arbitration award or decision will have any preclusive effect as to issues or claims in any dispute with anyone who is not a named party to the arbitration. The decision by the arbitrator will be final and binding. You and we agree that this Arbitration Agreement extends to any other parties involved in any Claims, including but not limited to Principal and your and our employees, affiliated companies, and vendors. In the event of any conflict between this Arbitration Agreement and the AAA arbitration rules or the rules of any other arbitration organization or arbitrator, this Arbitration Agreement will govern.

5.4. *Arbitration Fees and Costs.* If we initiate a dispute and either you or we elect arbitration of that dispute, or if you initiate a dispute and elect to arbitrate that dispute at the time you initiate it, we will be responsible for paying all of the arbitration fees. If you initiate a dispute, but do not elect to arbitrate that dispute, and we elect to arbitrate that dispute, you will be responsible for paying our share of the arbitration fees up to the amount of any filing fees you would have incurred if you had brought a claim in the state or federal court closest to your physical address set forth above, whichever is less, and we will pay the remainder of the fees.

5.5. *Exceptions.* Notwithstanding any other provision of this Agreement, including without limitation *subsection 4.6* and *Section 5*, you or we may seek relief in a small claims court for Claims within the jurisdiction of that court. In addition, you and we agree that this Arbitration Agreement does not stop you or us from exercising any lawful rights to seek provisional remedies or self-help. You and we agree that each of us may seek provisional remedies in court or self-help remedies out of court without waiving the right to arbitrate, and the exercise of self-help remedies is not exempt from legal challenge in arbitration or otherwise. Notwithstanding any other provision of this Agreement, if the prohibition against consolidated, class, and/or representative arbitration in *subsection 5.2* is determined to be invalid or unenforceable, then this entire Arbitration Agreement will not apply. If any portion of this Arbitration Agreement other than the prohibition on consolidated, class, and representative arbitration is deemed invalid or unenforceable, it will not invalidate the remaining portions of this Arbitration Agreement.

5.6. *Arbitration Agreement Is Optional.* YOU HAVE THE RIGHT TO REJECT THIS ARBITRATION AGREEMENT, BUT MUST EXERCISE THIS RIGHT PROMPTLY. If you do not want to be bound by this agreement to arbitrate, you must notify us in writing within sixty (60) days after the Agreement Date. You must send your request to: CAN Capital Merchant Services, Inc., c/o General Counsel, 2015 Vaughn Road NW, Bldg 500, Kennesaw, Georgia, 30144. The request must include your full name, address, account number, and the statement "I reject the Arbitration Agreement contained in my Future Receivables Purchase and Sale Agreement with CAN Capital Merchant Services, Inc." If you exercise your right to reject arbitration, the other terms of this Agreement will remain in full force and effect as if you had not rejected arbitration.

5.7. *Cure Provision.* You and we intend for both of us to have the right to arbitrate disputes on an individual basis as stated in *subsection 5.2*. In the event that a court finds any reason to invalidate or refuse to enforce this Arbitration Agreement, the party aggrieved by that decision will have the right to take unilateral action to eliminate the basis for the court's decision, such as by waiving any right or remedy it has under this Agreement or agreeing to additional fee or cost shifting. This cure right may be exercised during briefing of a motion to compel arbitration, during oral argument, or in a renewed motion to compel arbitration. If a renewed motion is filed, you and we agree that the exercise of cure rights hereunder will constitute new facts permitting such a renewed motion.

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ACH DEBIT ADDENDUM

In the event that the Specified Amount of your Future Receivables is, or may be, remitted via ACH Debit, the additional terms and conditions of this Addendum will also apply.

1. **Part of Agreement.** By its reference in *subsection 1.3*, this ACH Debit Addendum (this "**Addendum**") is made part of the Future Receivables Purchase and Sale Agreement (the "**Agreement**") to which it is attached. Capitalized terms not defined below in this Addendum will have the meanings given in the Agreement.
2. **Remitting by ACH Debit.** You agree to remit the cash attributable to the Specified Amount of your Daily Receivables to us by authorizing us and/or the Operator to debit your Designated Account via the Automated Clearing House ("**ACH**") method on each day that banks are open for business ("**Business Day**") an amount of cash that is, either:
    a. equal to the Specified Percentage of all Daily Receivables, or
    b. a fair approximation of the Specified Percentage of your Daily Receivables, which amount will be calculated from prior weeks' actual Daily Receivables (hereinafter, the "**Specified ACH Amount**").

    Such debits will continue until the Specified Amount of Future Receivables has been fully remitted to us.
3. **Fair Approximation.** You acknowledge that the Specified ACH Amount cannot be exact but is a fair approximation of your Daily Receivables. To the extent we exercise the Specified ACH Amount method, we may, no less frequently than monthly, adjust the Specified ACH Amount for each particular day of the week by averaging the Daily Receivables you earned on that day during each of the most recent weeks since the last time the Specified ACH Amount for that day was calculated.
4. **Access to Processor Site.** So that we may calculate the Specified ACH Amount, you agree to provide us with all necessary information to access your card processing statements from your Processor via online web access, including the username and password to your Processor's website (the "**Site**"), so that we may view your statements for the purpose of calculating the Specified ACH Amount. You authorize us, and our agents, designees and service providers, to access the Site using such user name and password. You agree that you will not disable access to the Site or change the user name or password for the Site without our prior written consent, unless you immediately provide us with the updated information via email [crACH@CANCapital.com] or phone [877-496-2623, Ext. 6920].
5. **Expected Weekly Average.** As an alternative to providing us access to the Site, you may request that we calculate your expected Daily Receivables from your recent processor statements at the beginning of the Agreement in order to set the expected weekly average of your receivables (referred to as the "**EWA**" or "**Expected Weekly Average**"). The EWA will then be used to figure the Specified ACH Amount to be debited from the Designated Account. We will continue to use the same EWA as a good faith approximation of your actual Daily Receivables until you have fully remitted the Specified Amount. Notwithstanding the foregoing, in the event that your business experiences an ongoing material increase or decrease in its actual Daily Receivables, you should contact us via email [crACH@CANCapital.com] or phone [877-496-2623, Ext. 6920] to request a revised calculation of your EWA from more recent processing statements. We also reserve the right to use this method of calculating the Specified ACH Amount (or, alternatively, just continue to use the most recent Specified ACH Amounts) in the event that, for whatever reason, we are no longer able to obtain processing statements from the Site, and you authorize us to continue debiting such amounts, until our access to the Site is restored or until the entire Specified Amount of Future Receivables has been fully remitted.
6. **Processing Trial.** Before any ACH Debit activity can occur, you acknowledge that we will first run a Processing Trial pursuant to the terms of *subsection 1.7* of the Agreement. If the Processing Trial is unsuccessful, you will be required to switch to an approved Processor or else abandon your funding application.
7. **Deposits into Designated Account.** You agree that on each Business Day, you will deposit or cause to be deposited all of your Daily Receivables exclusively into the Designated Account (as defined in *subsection 1.6* of the Agreement).
8. **Remedies.** You agree that we may otherwise use the ACH Debit method described herein to obtain any monetary remedies legally available to us under the Agreement in the event that you commit an actionable breach under the Agreement.
9. **Unauthorized Increases.** Except as specifically provided above with respect to permitted adjustments to the Specified ACH Amount, we will not increase the Specified Percentage or the Specified ACH Amount without your prior written consent.
10. **No Revocation.** You hereby authorize all of the debits and other adjustments described above and agree that you will not revoke such authorization until the entire Specified Amount of Future Receivables has been remitted.

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SELLER SIGNATURE

AUTHORIZATION AND ACCEPTANCE: The undersigned Seller agrees to all terms of this Agreement, including the Arbitration Agreement and class action waiver. The person signing on behalf of Seller represents and warrants that he or she is authorized to do so and to bind Seller to the Agreement.

Seller and Principal authorize us, our agents and representatives, and any credit reporting agency we may engage, to, now (including prior to our delivery of the Purchase Price to you) or in the future, (i) investigate any references given or any other statements or data obtained from or about Seller or Principal for the purpose of this Agreement, and (ii) pull credit reports (a) now or while this Agreement remains in effect, or (b) at any time in order for us to determine eligibility for a financial product we or any of our affiliates may offer. You hereby authorize us to share such information with any of our affiliates to determine eligibility for a financial product we or any of our affiliates may offer. We may report our transactions and experiences with Seller or Principal to our affiliates. Our affiliates may only use such information to consider whether to offer financial or other products or services requested by Seller or Principal. You also authorize us, our agents and representatives (and any third party you or we are using to facilitate this potential transaction) to contact any past, present, or future purchasers of your Future Receivables, lenders or other financing parties of any kind, now or in the future, including without limitation through any applicable website, portal or account access system (including automated telephone systems) for which you have provided us (either directly or indirectly) your access credentials, to obtain and/or confirm any balance due to such parties or any other information reasonably necessary for us to ensure compliance with this Agreement (both prior to our delivery of the Purchase Price and through remittance of the full Specified Amount). You hereby authorize and direct such parties to provide us with any requested information. You agree that you cannot revoke any of the instructions or authorizations in this paragraph until we receive the entire Specified Amount, unless we agree otherwise in writing.

BUSINESS LEGAL NAME (TYPE OR PRINT)	
AUTHORIZED SIGNATURE OF PRINCIPAL	
PRINCIPAL NAME (TYPE OR PRINT)	
PRINCIPAL TITLE (TYPE OR PRINT)	

PERSONAL GUARANTY

THIS GUARANTY CREATES SPECIFIC LEGAL OBLIGATIONS FOR PRINCIPAL AS AN INDIVIDUAL. PLEASE READ IT CAREFULLY BEFORE SIGNING.

As consideration for Buyer to enter into this agreement, PRINCIPAL HEREBY PERSONALLY AND UNCONDITIONALLY GUARANTEES TO BUYER AND ITS ASSIGNS THAT (i) ALL REPRESENTATIONS, WARRANTIES, AND INFORMATION PROVIDED TO BUYER IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES ARE TRUE, ACCURATE, AND COMPLETE IN ALL RESPECTS, and (ii) SELLER WILL NOT BREACH ANY OF THE "CONTRACTUAL COVENANTS" IN SECTION 2.1 OF THE AGREEMENT.

In addition, Principal guarantees the payment of and agrees to pay Buyer and its assigns all amounts Buyer is entitled to receive pursuant to and in accordance with *subsection 3.3* (Remedies) and *subsection 4.8* (Indemnified Amounts), including without limitation any liquidated damages resulting from a breach of any of the Contractual Covenants. The obligations of Principal under these guarantees are primary, joint and several, and irrevocable, irrespective of the genuineness, validity, regularity, or enforceability of this Agreement, and without regard to any circumstance that might constitute a legal or equitable discharge of a guarantor. Principal waives any rights to require Buyer to first proceed against Seller or to first exhaust any remedies against Seller, the Future Receivables, or any property subject to *subsection 3.5* before proceeding against Principal. Principal agrees to and makes each representation, warranty, and covenant set forth in *Sections 2* and *3* of this Agreement (and each of their subsections), and these representations, warranties, and covenants will survive the termination of this Agreement as provided in *subsection 4.9*. Principal acknowledges and agrees that Seller going bankrupt or out of business, in and of itself, does not constitute a breach of the Contractual Covenants. Principal agrees to *Section 5* of this Agreement, which allows Buyer and Principal to elect individual arbitration of disputes.

PRINCIPAL ACKNOWLEDGES AND AGREES THAT THIS GUARANTY IS GOVERNED BY THE ARBITRATION AGREEMENT SET FORTH ABOVE IN *SECTION 5*. WITH RESPECT TO ANY LEGAL ACTION OR PROCEEDING OF ANY KIND ARISING OUT OF OR RELATED TO THIS GUARANTY, THE AGREEMENT, OR ANY ASSOCIATED DOCUMENTATION, PRINCIPAL WAIVES THE RIGHT TO A JURY AND AGREES TO ARBITRATE ANY CLAIMS ON AN INDIVIDUAL BASIS AS SET FORTH IN THE ARBITRATION AGREEMENT ABOVE.

PRINCIPAL SIGNATURE	
PRINCIPAL NAME (TYPE OR PRINT)	

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