

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p>Plaintiff</p> <p>vs.</p> <p>COMPLETE BUSINESS SOLUTIONS GROUP, INC. d/b/a PAR FUNDING, et al</p> <p>Defendants</p>	<p>FILED BY <u>PCS</u> D.C.</p> <p>AUG 30 2023</p> <p>ANGELA E. NOBLE CLERK U.S. DIST. CT. S.D. OF FLA. - W.P.B.</p> <p>Case No. 20-CIV-81205-RAR</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------

MOTION TO INTERVENE FOR THE LIMITED PURPOSE OF REQUESTING
RELIEF FROM THE STAY

Plaintiff, J. Brian Ferguson, *pro se*, submits the following Motion to Intervene for the Limited Purpose of Requesting Relief from the Stay states:

1. J. Brian Ferguson (“Movant”) is the duly appointed Chapter 7 Bankruptcy Trustee for the bankruptcy estates of Gregory A. Houser and Debra Jo Houser (“Debtors”) pending in the Bankruptcy Court for the Western District of Arkansas, bearing case number 5:23-bk-70664.
2. Part of the Debtors’ estates which Movant is legally obligated to administer is a home located at 329 Driftwood Drive, Farmington, Arkansas 72730. Complete Business Solutions Group, Inc. (“PAR”) has filed of record with the Washington County Circuit Clerk a “Security Agreement” which purports to give PAR a lien on the property.
3. Movant believes the Security Agreement is invalid and does not legally grant PAR any type of lien. Movant wishes to pursue an adversary proceeding in the Bankruptcy Court for

the Western District of Arkansas to determine the validity, priority and extent of the purported lien.

4. However, this Court entered an order on July 31, 2020 which provides a litigation stay against PAR. Specifically, this Court's order stays:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or any other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any of the Receivership Entities' property interests, wherever located; (c) any of the Receivership Entities, including subsidiaries and partnerships; or, (d) any of a Receivership Entity's past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

5. Rule 24(a)(2) of the Federal Rules of Civil Procedure provides that the "the court must permit anyone to intervene who claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."

6. Here, Movant is entitled to intervene as a matter of right as the Movant claims an interest in property subject to this action, namely the equity in the property which PAR's purported lien impairs. Movant's inability to sue PAR over its property because of the stay impairs and impedes Movant's ability to protect the estates' property interest. Specifically, continuation of the stay makes it impractical for the Movant to be able to sell the house in question and administer the bankruptcy estates as he is legally required to do.

7. Pursuant to Rule 24(c) of the Federal Rules of Civil Procedure, Movant attaches hereto, as **Exhibit A**, his proposed Motion for Relief from the Stay for which he seeks intervention to be able to file.

CONCLUSION

For the foregoing reasons, Movant's Motion should be GRANTED, and the Court should allow him to intervene for the limited purpose of filing the attached Motion for Relief from Stay, and for all other just and proper relief to which he is so entitled.


CERTIFICATE OF ATTEMPTED GOOD FAITH COMMUNICATION

Pursuant to Local Rule 7.1, Movant confirms that he has attempted to communicate with the Receiver in good faith to resolve this issue before the filing of this Motion but has been unable to do so. Specifically, Movant sent the Receiver an email on August 2, 2023, for which he has not received a substantive response.

Dated August 28, 2023.

RESPECTFULLY SUBMITTED,

J. Brian Ferguson, Chapter 7 Trustee
3333 Pinnacle Hills Parkway, STE 410
Rogers, AR 72758
(479) 464-4418
brian@ozarkfunds.com



J. Brian Ferguson

J. Brian Ferguson
Attorney at Law
Chapter 7 Panel Trustee

August 28, 2023

Clerk of the District Court
Southern District of Florida
West Palm Beach Division
701 Clematis Street, Room 202
West Palm Beach, FL 33401

Re: Motion to Intervene in *Securities and Exchange Commission v. Complete Business Solutions group, Inc. d/b/a Par Funding, et al.* Case No. 20-CIV-81205-RAR (the "Par Funding Receivership").

To the Clerk of the Court


My name is J. Brian Ferguson and I am the Chapter 7 Bankruptcy Trustee for the bankruptcy estates of Gregory A. Houser and Debra Jo Collins-Houser (the "Estate") pending in the U.S. Bankruptcy Court for the Western District of Arkansas (the "Bankruptcy Court") as Case No. 5:23-bk-70664. The Estate has an interest in certain real property in Benton County, Arkansas which appears to be encumbered by a recorded lien in favor of one of the Par Funding Receivership entities. I believe that lien could and should be avoided through an adversary proceeding in the bankruptcy. However, the Amended Order Appointing Receiver entered in the Par Funding Receivership acts as a stay of all litigation against the Par Funding entities. In order to bring an action in the Bankruptcy Court against the Par Funding entity I must first Intervene in the Par Funding Receivership and then file a Motion for Relief from the Stay.

I am an attorney licensed in Arkansas. I am in good standing with the Supreme Court of Arkansas. I am admitted to practice in the District Courts for the Eastern and Western Districts of Arkansas, the District Court for the Northern District of Texas, and the Fifth Circuit Court of Appeals. I am not admitted to practice in the Southern District of Florida. I am an authorized CM/ECF filer in all of the federal courts where I am admitted to practice.

The Estate does not yet have any money with which to pay local counsel or *pro hac vice* admission fees. Accordingly, I am acting in a *pro se* capacity in the Par Funding Receivership. Enclosed with this letter you will find: (a) a Motion to Intervene; (b) a Motion for Relief from the Stay which is attached as Exhibit A to the Intervention Motion and contains its own Exhibits 1 and 2; and (c) my consent as a *pro se* litigant to receive notices of electronic filings. I ask that you file the Intervention Motion and register me to receive notices of electronic filings.

In addition to the email address and work number shown on this letter, I am also available on my cell phone: (479) 659-1746. Please contact me if you have any questions.

Sincerely,


J. Brian Ferguson, Chapter 7 Trustee

Express

J BRIAN FERGUSON
(787) 265-8787 0.1 LBS
THE UPS STORE #6271 SHIP
STE 9 DATE
3511 SE J ST
BENTONVILLE AR 72712-3856

SHIP CLERK OF THE DISTRICT COURT
TO: SOUTHERN DISTRICT OF FLORIDA
RM 202
701 CLEMATIS ST

WEST PALM BEACH FL 33401-5



FL 334



UPS 2ND DAY AIR A.M.

TRACKING #: 1Z 664 959 07 7028 7449



BILLING: P/P
UPS CARBON NEUTRAL SHIPMENT

10K 13.00F 22P

SEE UPS.COM FOR SHIPPING SERVICE TERMS, AND LIST OF SERVICES. THIS LABEL IS VOID IF NOT USED WITHIN THE U.S. UPS SERVICE AREA. THIS LABEL IS VOID IF NOT USED WITHIN THE U.S. UPS SERVICE AREA. THIS LABEL IS VOID IF NOT USED WITHIN THE U.S. UPS SERVICE AREA.



EXHIBIT

A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p>Plaintiff</p> <p>vs.</p> <p>COMPLETE BUSINESS SOLUTIONS GROUP, INC. d/b/a PAR FUNDING, et al</p> <p>Defendants</p>	<p>Case No. 20-CIV-81205-RAR</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------

MEMORANDUM MOTION FOR RELIEF FROM THE STAY

Movant, J. Brian Ferguson (“Movant”), *pro se*, submits the following Motion for Relief from the Stay stating:

INTRODUCTION

Movant is entitled to relief from the litigation stay entered in this matter because the stay, as applied to his specific proposed litigation, does not preserve the status quo, he is likely to succeed on the merits, and the Receiver has had over three years to investigate and organize the affairs of Complete Business Solutions Group, Inc. (“PAR”).

FACTUAL BACKGROUND

Movant is the duly appointed Chapter 7 Bankruptcy Trustee for the bankruptcy estates of Gregory A. Houser and Debra Jo Houser (“Debtors”) pending in the Bankruptcy Court for the Western District of Arkansas, bearing case number 5:23-bk-70664.

Part of the Debtors' estates for which Movant is legally obligated to administer is a home located at 329 Driftwood Drive, Farmington, Arkansas 72730.

Complete Business Solutions Group, Inc. ("PAR") has filed of record with the Washington County Circuit Clerk a "Security Agreement" which purports to give PAR a second lien¹ on the house.²

The PAR Security Agreement on file purports the debt it secures is a "Note," which is defined as "the Factoring Agreement signed by Seller and dated November 19, 2018. The Note states that Seller owes Purchaser Two Hundred Sixty – Two Thousand Nine Hundred Forty and 68/100 Dollars (U.S. \$ 262,940.68) plus fees."

The Debtors did sign a factoring agreement with PAR dated November 16, 2018—not November 19, 2018.³ Further, the factoring agreement they signed with PAR was on behalf of their business, BEBE, LLC. BEBE, LLC is an Arkansas limited liability company with its principal place of business in Fayetteville, Arkansas. Specifically, BEBE, LLC operated a daycare in Fayetteville, Arkansas and the PAR factoring agreement dealt with receivables therefrom.

Movant believes the Security Agreement and Factoring Agreement are void as usurious under Arkansas law. The Debtors also believe they paid PAR everything they were entitled to or at least paid a substantial sum toward same. Movant wishes to pursue an adversary proceeding in the Bankruptcy Court for the Western District of Arkansas related to his usury claim and for a determination as to exactly what is owed, if anything.

¹ The first lien is in favor of U.S. Bank National Association pursuant to a home mortgage. As of August 4, 2023 there was \$316,027.24 due on the first mortgage lien with interest and fees still accumulating.

² A true and correct copy of the "Security Agreement" is attached hereto as Exhibit 1.

³ A true and correct copy of the Factoring Agreement signed by the Debtors is attached hereto as Exhibit 2. It should be noted this agreement was signed by the Debtors in Arkansas and the Debtors were residents of Arkansas at the time the agreement was signed.

However, this Court entered an order on July 31, 2020, which provides a litigation stay against PAR. Specifically, this Court's order stays:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or any other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any of the Receivership Entities' property interests, wherever located; (c) any of the Receivership Entities, including subsidiaries and partnerships; or, (d) any of a Receivership Entity's past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

RELIEF FROM STAY STANDARD

As this Court has recognized, blanket injunctions are to be "sparsely exercised" in SEC receivership matters. *Sec. & Exch. Comm'n v. Complete Bus. Sols. Grp., Inc.*, No. 20-CIV-81205-RAR, 2020 WL 9209280, at *2 (S.D. Fla. July 31, 2020). "To the extent that a party has a colorable claim against a receiver or the entities in receivership, due process demands that the claimant be heard. . . ." *Liberte Cap. Grp., LLC v. Capwill*, 462 F.3d 543, 552 (6th Cir. 2006). The Ninth Circuit has explained the equities a district court should consider in determining if relief from the stay order is appropriate. *S.E.C. v. Wencke*, 622 F.2d 1363, 1373-74 (9th Cir. 1980). These three main considerations are: (1) "whether refusing to lift the stay genuinely preserves the status quo or whether the moving party will suffer substantial injury if it is not permitted to proceed"; (2) the merits of the moving party's claim; and (3) the time at which the motion for relief from the stay is made. *Id.*

The merits of the moving party's claim are relevant because "a blanket stay should not be used to prejudice the rights which innocent and legitimate creditors may have against the

receivership entities.” *Id.* Thus, when “the likelihood that the receiver will prevail is small, when the receiver's position is considered realistically and not in the abstract, there is less reason to permit the receiver to avoid resolving the claim. . . .” *Id.*

Timing is also an important factor because it impacts the burden placed on the receiver. “As the receivership progresses, however, it may become less plausible for the receiver to contend that he needs more time to explore the affairs of the entities.” *Id.*

It must also be remembered that the moving party is going to be able to bring his claims eventually, as the stay “does not render [his] claims futile for all time.” *Kane v. Rose*, 259 F. App'x 258, 260–61 (11th Cir. 2007).

I. MOVANT IS ENTITLED TO RELIEF FROM THE STAY

1. The stay does not genuinely preserve the status quo as to the Movant, and substantially prejudices his claims and the bankruptcy estates

Movant cannot liquidate the home until the purported mortgage of PAR is resolved. In the meantime, the first lien continues to accumulate interest, attorney fees, and other costs. Additionally, Movant must upkeep and maintain the property for the benefit of the bankruptcy estates. Thus, the stay greatly prejudices the ability of the Movant to effectively administer the bankruptcy estates and causes great financial burdens on the bankruptcy estates he is tasked to administer.

The stay in this instance also prejudices the Receiver as the Receiver cannot do anything with the purported lien absent judicial involvement. Hence, even if the Receiver had a valid lien, he cannot do anything with it until the stay is lifted.

Again, the claims are going to have to be litigated one day as the stay “does not render [his] claims futile for all time.” *Kane v. Rose*, 259 F. App'x at 260–61. Here, delay only allows for

additional expenses which diminish the value to the bankruptcy estate and the value of any second lien the Receiver may have.

2. Movant is likely to succeed on the merits as the note is usurious under Arkansas law

Movant is likely to succeed on the merits as it is clear Arkansas law applies and that the agreement is usurious under Arkansas law.

While the factoring agreement has a choice of law provision in it that provides Pennsylvania law applies, the Security Agreement provides that Arkansas law applies as the *situs* of the property. And Pennsylvania law provides that its law cannot be selected in a way that violates the fundamental policy of the state whose laws would normally apply. *Fleetwood Servs., LLC v. Complete Bus. Sols. Grp., Inc.*, 374 F. Supp. 3d 361, 372 (E.D. Pa. 2019); *see also Cooper v. Cherokee Vill. Dev. Co.*, 236 Ark. 37, 42, 364 S.W.2d 158, 161 (1963) (“this court is not committed to any choice of law rules of contracts which is a sham to evade the usury laws of our state”).

Determining what law applies under Pennsylvania’s standards involves a two-part inquiry: (1) Determining what state’s law would normally apply; and (2) determining if that state’s fundamental policy would be violated if Pennsylvania’s law applied.

In determining which state’s law would normally apply absent the choice of law provision, Pennsylvania Courts are to determine “the most significant relationship to the transaction as determined by several factors, including: (a) the place of contracting, (b) the place of negotiation of the contract, (c) the place of performance, (d) the location of the subject matter of the contract, and (e) the domicile, residence, nationality, place of incorporation and place of business of the parties.” *Fleetwood Servs.*, 374 F. Supp. 3d at 370–71.

In *Fleetwood Servs.*, the District Court faced with the identical factoring agreement as at issue here, held that Texas law would normally apply and that Pennsylvania law could not apply

as same, without usury protections, would violate a fundamental policy of Texas--that being high interest rates.

The facts in *Fleetwood Servs.* are virtually identical to the facts here, except for the fact that the borrowers in this case are from Arkansas. In *Fleetwood Servs.*, the Court found that Texas had a far greater material interest in the dispute and its law would ordinarily apply because the borrower company was a “Texas limited liability company headquartered in Dallas, Texas,” the individual guarantors were residents of Texas; and “the commercial and personal property—including [the guarantor’s] home and personal assets—securing repayment is located in Texas.” 374 F. Supp. 3d at 371–72.

Here, just as in *Fleetwood Servs.*, the borrower was an Arkansas limited liability company with its principal place of business in Arkansas, the Guarantors were residents of Arkansas, and the property secured by the loan, including the Guarantors houses were located in Arkansas. Additionally, the agreement was signed in Arkansas and the Debtors here were solicited into the agreement in Arkansas. Hence, Arkansas law would normally apply absent a choice of law provision. *Id.*

Further, applying the choice of law provision would violate a fundamental policy of Arkansas law, namely Arkansas’ antipathy to high interest rates. Section 3 of Amendment 89 to the Arkansas Constitution makes clear that “[t]he maximum lawful rate of interest on loans or contracts not described in Sections 1 and 2 shall not exceed seventeen percent (17%) per annum.” Ark. Const. amend. LXXXIX, § 3.⁴ Section 6 of Amendment 89 mandates that all loans that violate Section 3 are **void as to principal and interest**. See Ark. Const. amend. LXXXIX, § 6 (“All contracts under Section 3 having a rate of interest in excess of the maximum lawful rate **shall**

⁴ Section 1 and 2 of Amendment 89 deal with governmental loans and loans by FDIC insured institutions, respectively.

be void as to principal and interest. . . .”) (emphasis added). *See also State ex rel. Bryant v. R & A Inv. Co.*, 336 Ark. 289, 296, 985 S.W.2d 299, 303 (1999) (describing Arkansas as having a “strong anti-usury policy” to protect borrowers from excessive interest rates”).

Simply put, preventing usury is a “strong” and fundamental policy of Arkansas. Thus, applying Pennsylvania law (which allows for usurious contracts in business dealings) would clearly violate a fundamental policy of Arkansas, as enshrined in the Arkansas Constitution.

Under Arkansas law, to determine if a loan is usurious, this Court simply asks if the Plaintiff intended to commit usury. *See Evans v. Hamby*, 2011 Ark. 69, 7, 378 S.W.3d 723, 728 (2011). “The intent that is required, however, is not an intent to violate the law, but merely **the intent to charge a rate of interest that proves to be usurious.**” *Id.* (emphasis added). In determining the lender’s intent, the fact finder “must look beyond the four corners of the challenged agreement” when the challenged agreement does not definitively show a usurious agreement. *Id.*

This standard creates a shifting burden framework. “When an instrument is usurious on its face, the holder has the burden of proving it to be otherwise.” *Bunn v. Weyerhaeuser Co.*, 268 Ark. 445, 449, 598 S.W.2d 54, 56 (1980) (internal citations omitted). “On the other hand, if it is not usurious on its face, the borrower has the burden of proving it is usurious.” *Id.* *See also Knox v. Goodyear Stores, Inc.*, 252 Ark. 530, 535, 479 S.W.2d 875, 878 (1972) (“when a contract is usurious on its face, the burden shifts to the one who would sustain its validity in proving it is not usurious”).

If considered a loan, the interest rates would clearly be usurious under Arkansas law. Specifically, the loan was for \$187,814.77 and called for \$262,940.68 to be repaid in 267 days.

That comes to higher than 40% interest, or more than double the allowed interest charge under Arkansas law. Thus, the entire agreement is void as to principal and interest.

Thus, the Movant has a high likelihood of success on the merits.

3. Time weighs in favor of relief from the stay as the Receiver has had over three years to organize the affairs of PAR

The litigation stay has been in place since July 31, 2020. Hence, the Receiver has had over three years to organize the affairs of PAR. “As the receivership progresses, however, it may become less plausible for the receiver to contend that he needs more time to explore the affairs of the entities.” Certainly, after three years the Receiver cannot say that he needs additional time to explore the affairs of PAR. Hence, this factor weighs heavily in favor of relief from the stay.

CONCLUSION

For the foregoing reasons, Movant’s Motion should be GRANTED, and Movant should be granted relief from the stay to pursue litigation in the Bankruptcy Court for the Western District of Arkansas related to the validity of the lien purportedly claimed by PAR and for declaratory relief as to what is owed under same if it is valid.


CERTIFICATE OF ATTEMPTED GOOD FAITH COMMUNICATION

Pursuant to Local Rule 7.1, Movant confirms that he has attempted to communicate with the Receiver in good faith to resolve this issue before the filing of this Motion but has been unable to do so. Specifically, Movant sent the Receiver an email on August 2, 2023, for which he has not received a substantive response.

Dated August 28, 2023.

RESPECTFULLY SUBMITTED,

J. Brian Ferguson, Chapter 7 Trustee
3333 Pinnacle Hills Parkway, STE 410
Rogers, AR 72758
(479) 464-4418
brian@ozarkfunds.com



J. Brian Ferguson

EXHIBIT

1

Type: REAL ESTATE
Kind: AGREEMENTS
Recorded: 1/4/2019 10:19:56 AM
Fee Amt: \$75.00 Page 1 of 13
Washington County, AR
Kyle Sylvester Circuit Clerk

After Recording Return To:
Lucosky Brookman
101 Wood Avenue South, Fifth Floor
Woodbridge, New Jersey 08830
Attn.: Jeffrey M. Goldstein, Esq.

File# 2019-00000320

[Space Above This Line For Recording Data]

SECURITY AGREEMENT

(A) **“Security Instrument”** means this document, which is dated November 19, 2018, together with all Riders to this document.

(B) **“Seller”** is Gregory Houser and Debra Houser.

(C) **“Purchaser”** is Complete Business Solutions Group, Inc. Purchaser is a corporation organized and existing under the laws of the State of Delaware. Purchaser’s address is Purchaser’s address is 23 North 3rd Street, Philadelphia, Pennsylvania 19106. Purchaser is the mortgagee under this Security Instrument.

(D) **“Note”** means the Factoring Agreement signed by Seller and dated November 19, 2018. The Note states that Seller owes Purchaser Two Hundred Sixty - Two Thousand Nine Hundred Forty and 68/100 Dollars (U.S. \$ 262,940.68) plus fees.

(E) **“Property”** means the property that is described below under the heading “Transfer of Rights in the Property.”

(F) **“Advance”** means the debt evidenced by the Note, plus fees, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus fees.

(G) **“Applicable Law”** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(H) **“Electronic Funds Transfer”** means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(I) **“Miscellaneous Proceeds”** means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(J) **“Periodic Payment”** means the regularly scheduled amount due for (i) principal and fees under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(page 1 of 12 pages)

(K) "Successor in Interest of Seller" means any party that has taken title to the Property, whether or not that party has assumed Seller's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Purchaser: (i) the repayment of the Advance, and all renewals, extensions and modifications of the Note; and (ii) the performance of Seller's covenants and agreements under this Security Instrument and the Note. For this purpose, Seller does hereby mortgage, grant and convey to Purchaser, with power of sale, the following described property located in the Washington County, State of Arkansas which currently has the address of 329 Driftwood Drive, Farmington, Arkansas 72730 ("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

SELLER COVENANTS that Seller is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Seller warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Seller and Purchaser covenant and agree as follows:

1. Payment of Principal, Fees, Prepayment Charges, and Late Charges. Seller shall pay when due the principal of, and fees on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Purchaser as payment under the Note or this Security Instrument is returned to Purchaser unpaid, Purchaser may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Purchaser: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Purchaser when received at the location designated in the Note or at such other location as may be designated by Purchaser in accordance with the notice provisions in Section 12. Purchaser may return any payment or partial payment if the payment or partial payments are insufficient to bring the Advance current. Purchaser may accept any payment or partial payment insufficient to bring the Advance current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Purchaser is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Purchaser need not pay Fees on unapplied funds. Purchaser

(page 2 of 12 pages)

may hold such unapplied funds until Seller makes payment to bring the Advance current. If Seller does not do so within a reasonable period of time, Purchaser shall either apply such funds or return them to Seller. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Seller might have now or in the future against Purchaser shall relieve Seller from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Purchaser shall be applied in the following order of priority: (a) fees due under the Note; (b) principal due under the Note. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Purchaser receives a payment from Seller for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Purchaser may apply any payment received from Seller to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Charges; Liens. Seller shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any.

Seller shall promptly discharge any lien which has priority over this Security Instrument unless Seller: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Purchaser, but only so long as Seller is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Purchaser's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Purchaser subordinating the lien to this Security Instrument. If Purchaser determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Purchaser may give Seller a notice identifying the lien. Within 10 days of the date on which that notice is given, Seller shall satisfy the lien or take one or more of the actions set forth above in this Section 3.

Purchaser may require Seller to pay a one-time charge for a real estate tax verification and/or reporting service used by Purchaser in connection with this Advance.

4. Property Insurance. Seller shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Purchaser requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Purchaser requires. What Purchaser requires pursuant to the preceding sentences can change during the term of the Advance. The insurance carrier providing the insurance shall be chosen

by Seller subject to Purchaser's right to disapprove Seller's choice, which right shall not be exercised unreasonably. Purchaser may require Seller to pay, in connection with this Advance, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Seller shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Seller.

If Seller fails to maintain any of the coverages described above, Purchaser may obtain insurance coverage, at Purchaser's option and Seller's expense. Purchaser is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Purchaser, but might or might not protect Seller, Seller's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Seller acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Seller could have obtained. Any amounts disbursed by Purchaser under this Section 4 shall become additional debt of Seller secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest within 30 days after the date of the Notice.

All insurance policies required by Purchaser and renewals of such policies shall be subject to Purchaser's right to disapprove such policies, shall include a standard mortgage clause, and shall name Purchaser as mortgagee and/or as an additional loss payee. Purchaser shall have the right to hold the policies and renewal certificates. If Purchaser requires, Seller shall promptly give to Purchaser all receipts of paid premiums and renewal notices. If Seller obtains any form of insurance coverage, not otherwise required by Purchaser, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Purchaser as mortgagee and/or as an additional loss payee.

In the event of loss, Seller shall give prompt notice to the insurance carrier and Purchaser. Purchaser may make proof of loss if not made promptly by Seller. Unless Purchaser and Seller otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Purchaser, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Purchaser's security is not lessened. During such repair and restoration period, Purchaser shall have the right to hold such insurance proceeds until Purchaser has had an opportunity to inspect such Property to ensure the work has been completed to Purchaser's satisfaction, provided that such inspection shall be undertaken promptly. Purchaser may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Purchaser shall not be required to pay Seller any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Seller shall not be paid out of the insurance proceeds and shall be the sole obligation of Seller. If the restoration or repair is not economically feasible or Purchaser's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Seller. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Seller abandons the Property, Purchaser may file, negotiate and settle any available insurance claim and related matters. If Seller does not respond within 30 days to a notice from Purchaser that the insurance carrier has offered to settle a claim, then Purchaser may negotiate and settle the claim. The

(page 4 of 12 pages)

30-day period will begin when the notice is given. In either event, or if Purchaser acquires the Property under Section 19 or otherwise, Seller hereby assigns to Purchaser (a) Seller's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Seller's rights (other than the right to any refund of unearned premiums paid by Seller) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Purchaser may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

5. Preservation, Maintenance and Protection of the Property; Inspections. Seller shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Seller is residing in the Property, Seller shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 4 that repair or restoration is not economically feasible, Seller shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Seller shall be responsible for repairing or restoring the Property only if Purchaser has released proceeds for such purposes. Purchaser may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Seller is not relieved of Seller's obligation for the completion of such repair or restoration.

Purchaser or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Purchaser may inspect the interior of the improvements on the Property. Purchaser shall give Seller notice at the time of or prior to such an interior inspection specifying such reasonable cause.

6. Seller's Advance Application. Seller shall be in default if, during the Advance application process, Seller or any persons or entities acting at the direction of Seller or with Seller's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Purchaser (or failed to provide Purchaser with material information) in connection with the Advance.

5. Protection of Purchaser's Interest in the Property and Rights Under this Security Instrument. If (a) Seller fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Purchaser's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Seller has abandoned the Property, then Purchaser may do and pay for whatever is reasonable or appropriate to protect Purchaser's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Purchaser's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding.

Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Purchaser may take action under this Section 8, Purchaser does not have to do so and is not under any duty or obligation to

(page 5 of 12 pages)

do so. It is agreed that Purchaser incurs no liability for not taking any or all actions authorized under this Section 7.

Any amounts disbursed by Purchaser under this Section 7 shall become additional debt of Seller secured by this Security Instrument. These amounts shall bear Fees at the Note rate from the date of disbursement and shall be payable, with such Fees, upon notice from Purchaser to Seller requesting payment.

8. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Purchaser.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Purchaser's security is not lessened. During such repair and restoration period, Purchaser shall have the right to hold such Miscellaneous Proceeds until Purchaser has had an opportunity to inspect such Property to ensure the work has been completed to Purchaser's satisfaction, provided that such inspection shall be undertaken promptly. Purchaser may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Purchaser shall not be required to pay Seller any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Purchaser's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Seller. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Seller.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Seller and Purchaser otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Seller.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Seller and Purchaser otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Seller, or if, after notice by Purchaser to Seller that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Seller fails to respond to Purchaser within 30 days after the date the notice is given, Purchaser is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Seller Miscellaneous Proceeds or the party against whom Seller has a right of action in regard to Miscellaneous Proceeds.

Seller shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Purchaser's judgment, could result in forfeiture of the Property or other material impairment of Purchaser's interest in the Property or rights under this Security Instrument. Seller can cure such a default and, if acceleration has occurred, reinstate as provided in Section 17, by causing the action or proceeding to be dismissed with a ruling that, in Purchaser's judgment, precludes forfeiture of the Property or other material impairment of Purchaser's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Purchaser's interest in the Property are hereby assigned and shall be paid to Purchaser.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

9. Seller Not Released; Forbearance By Purchaser Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Purchaser to Seller or any Successor in Interest of Seller shall not operate to release the liability of Seller or any Successors in Interest of Seller. Purchaser shall not be required to commence proceedings against any Successor in Interest of Seller or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Seller or any Successors in Interest of Seller. Any forbearance by Purchaser in exercising any right or remedy including, without limitation, Purchaser's acceptance of payments from third persons, entities or Successors in Interest of Seller or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

10. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Seller covenants and agrees that Seller's obligations and liability shall be joint and several. However, any Seller who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Purchaser and any other Seller can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 15, any Successor in Interest of Seller who assumes Seller's obligations under this Security Instrument in writing, and is approved by Purchaser, shall obtain all of Seller's rights and benefits under this Security Instrument. Seller shall not be released from Seller's obligations and liability under this Security Instrument unless Purchaser agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 16) and benefit the successors and assigns of Purchaser.

11. Advance Charges. Purchaser may charge Seller fees for services performed in connection with Seller's default, for the purpose of protecting Purchaser's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Seller shall not be construed as a prohibition on the charging of such fee. Purchaser may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Advance is subject to a law which sets maximum Advance charges, and that law is finally interpreted so that the fees or other Advance charges collected or to be collected in connection with the Advance exceed the permitted limits, then: (a) any such Advance charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected

from Seller which exceeded permitted limits will be refunded to Seller. Purchaser may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Seller. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Seller's acceptance of any such refund made by direct payment to Seller will constitute a waiver of any right of action Seller might have arising out of such overcharge.

12. Notices. All notices given by Seller or Purchaser in connection with this Security Instrument must be in writing. Any notice to Seller in connection with this Security Instrument shall be deemed to have been given to Seller when mailed by first class mail or when actually delivered to Seller's notice address if sent by other means. Notice to any one Seller shall constitute notice to all Sellers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Seller has designated a substitute notice address by notice to Purchaser. Seller shall promptly notify Purchaser of Seller's change of address. If Purchaser specifies a procedure for reporting Seller's change of address, then Seller shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Purchaser shall be given by delivering it or by mailing it by first class mail to Purchaser's address stated herein unless Purchaser has designated another address by notice to Seller. Any notice in connection with this Security Instrument shall not be deemed to have been given to Purchaser until actually received by Purchaser. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

13. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

14. Seller's Copy. Seller shall be given one copy of the Note and of this Security Instrument.

15. Transfer of the Property or a Beneficial Interest in Seller. As used in this Section 15, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Seller at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Seller is not a natural person and a beneficial interest in Seller is sold or transferred) without Purchaser's prior written consent, Purchaser may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Purchaser if such exercise is prohibited by Applicable Law.

If Purchaser exercises this option, Purchaser shall give Seller notice of acceleration. The notice

shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 12 within which Seller must pay all sums secured by this Security Instrument. If Seller fails to pay these sums prior to the expiration of this period, Purchaser may invoke any remedies permitted by this Security Instrument without further notice or demand on Seller.

16. Seller's Right to Reinstate After Acceleration. If Seller meets certain conditions, Seller shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Seller's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Seller: (a) pays Purchaser all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Purchaser's interest in the Property and rights under this Security Instrument; and (d) takes such action as Purchaser may reasonably require to assure that Purchaser's interest in the Property and rights under this Security Instrument, and Seller's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Purchaser may require that Seller pay such reinstatement sums and expenses in one or more of the following forms, as selected by Purchaser: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Seller, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 15.

17. Sale of Note; Change of Advance Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Seller. A sale might result in a change in the entity (known as the "Advance Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage Advance servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Advance Servicer unrelated to a sale of the Note. If there is a change of the Advance Servicer, Seller will be given written notice of the change which will state the name and address of the new Advance Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Advance is serviced by a Advance Servicer other than the purchaser of the Note, the mortgage Advance servicing obligations to Seller will remain with the Advance Servicer or be transferred to a successor Advance Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Seller nor Purchaser may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Seller or Purchaser has notified the other party (with such notice given in compliance with the requirements of Section 12) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of

(page 9 of 12 pages)

acceleration and opportunity to cure given to Seller pursuant to Section 19 and the notice of acceleration given to Seller pursuant to Section 17 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 17.

18. Hazardous Substances. As used in this Section 18: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Seller shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Seller shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Seller shall promptly give Purchaser written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Seller has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Seller learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Seller shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Purchaser for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Seller and Purchaser further covenant and agree as follows:

19. Acceleration; Remedies. Purchaser shall give notice to Seller prior to acceleration following Seller's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Seller, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Seller of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Seller to acceleration and sale. If the default is not cured on or before the date specified in the notice, Purchaser at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke any other remedies permitted by

(page 10 of 12 pages)

Applicable Law. Purchaser shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 19, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

It is understood and agreed to by Seller that this Security Instrument is subject to the foreclosure procedures of the Arkansas Statutory Foreclosure Law, Act 53 of 1987, as amended from time to time (the "Act"), for Seller's breach of any covenant or agreement in this Security Instrument. In furtherance and not in limitation of the provisions of Section 11, any forbearance by Purchaser in exercising any right or remedy under the Act shall not be a waiver of or preclude acceleration and the exercise of any right or remedy under the Act, or at the option of Purchaser, use of judicial foreclosure proceedings.

20. Release. Upon payment in full of all sums secured by this Security Instrument, Purchaser shall release this Security Instrument. Seller shall pay any recordation costs. Purchaser may charge Seller a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

21. Waivers. Seller waives all rights of homestead exemption in, and statutory redemption of, the Property and all right of appraisement of the Property and relinquishes all rights of curtesy and dower in the Property.

THIS SPACE INTENTIONALLY LEFT BLANK

(page 11 of 12 pages)

BY SIGNING BELOW, Seller accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Seller and recorded with it.

Witnesses:

[Signature]
[Signature]

[Signature] (Seal)
Gregory Houser - Seller
[Signature] (Seal)
Debra Houser - Seller

[Space Below This Line For Acknowledgment]

State of Arkansas

County of Benton

On this the 19 day of 11 2018, before me, Jonathan Maddox, the undersigned officer, personally appeared Gregory Houser known to me (or satisfactorily proven) to be the person whose name Gregory subscribed to the within instrument and acknowledged that he executed the same for the purposes therein.

In witness whereof I hereunto set my hand and official seal.

[Signature] (Seal) Jonathan Maddox
Notary Public-Arkansas
Benton County
My Commission Expires 09-11-2028
Commission # 12705394

State of Arkansas

County of Benton

On this the 19 day of 11 2018, before me, Jonathan Maddox, the undersigned officer, personally appeared Debra Houser known to me (or satisfactorily proven) to be the person whose name Debra subscribed to the within instrument and acknowledged that he executed the same for the purposes therein.

In witness whereof I hereunto set my hand and official seal.

[Signature] (Seal) Jonathan Maddox
Notary Public-Arkansas
Benton County
My Commission Expires 09-11-2028
Commission # 12705394

(page 12 of 12 pages)

EXHIBIT A

LEGAL DESCRIPTION:

LOT 29, TWIN FALLS ADDITION, PHASE 1, AS PER PLAT OF SAID ADDITION ON FILE IN PLAT BOOK 23A AT PAGE 216 OF THE RECORDS OF WASHINGTON COUNTY, ARKANSAS.

Washington County, AR
I certify this instrument was filed on
1/4/2019 10:19:56 AM
and recorded in REAL ESTATE

File# 2019-00000320
Kylie Sylvester - Circuit Clerk



EXHIBIT

2



22 N 3RD Street Philadelphia, Pennsylvania 19106
Phone: 215-922-2636 Fax: 888-305-7562

FACTORING AGREEMENT

Dated the 16TH day of NOVEMBER, 2018 by and between Complete Business Solutions Group, Inc. ("CBSG" and/or "PURCHASER") and the "SELLER/MERCHANT" listed below (as "Seller/Merchant" or "the Merchant").

Business Legal Name: BUTTERFLIES AND FROGS

D/B/A: BEBE, LLC

Type of entity (check one) Corporation LLC Limited Partnership Limited Liability Partnership Sole Proprietor

Physical Address: 3675 MALL AVENUE FAYETVILLE, AR 72703

Mailing Address: 3675 MALL AVENUE FAYETVILLE, AR 72703

Fed ID#: [REDACTED] 951

PURCHASE AND SALE OF FUTURE RECEIPTS WITH SELLER RECOURSE

Seller/Merchant hereby sells, assigns and transfers to CBSG (making CBSG the absolute owner) in consideration of the funds provided ("Purchase Price") specified below, all of Seller/Merchant's future receipts, accounts, contract rights and other obligations arising from or relating to the payment of monies from Seller/Merchant's customers' and/or other third party payers (collectively the "Receipts" defined as all payments made by cash, check, credit or debit card, electronic transfer or other form of monetary payment in the ordinary course of the merchant's business) until such time as the "Receipts Purchased Amount (RPA)" has been delivered by Seller/Merchant to CBSG.

THIS IS A FACTORING AGREEMENT WITH RECOURSE.

The Purchased Amount shall be paid to CBSG by Seller/Merchant's irrevocably authorizing only one depositing account acceptable to CBSG (the "Account") to remit the Daily Specified Amount from the Seller/Merchant's receipts until such time as CBSG receives payment in full of the Receipts Purchased Amount. In consideration of servicing the account, the Seller/Merchant hereby authorizes CBSG to ACH debit the "Specified Daily Amount" from the merchant's bank account, as an approximation of the base payment due under the Specified Percentage. It is the Seller/Merchant's responsibility to provide bank statements for any and all bank accounts by the Merchant to reconcile the daily payments made against the Daily Specified Amount. Failure to provide all of their bank statements in a timely manner or missing a month shall forfeit all rights to future reconciliations. CBSG may, upon Seller/Merchant's request, adjust the amount of any payment due under this Agreement at CBSG's sole discretion and as it deems appropriate in servicing this Agreement. Seller/Merchant warrants that it will ensure that funds adequate to cover the amount to be debited by CBSG remains in the account. Seller/Merchant will be held responsible for any fees incurred by CBSG resulting from a rejected ACH attempt or an event of default. (See Appendix A). CBSG is not responsible for any overdrafts or rejected transactions in the Seller/Merchants account which may result from CBSG's scheduled ACH debit under the terms of this agreement. Notwithstanding anything to the contrary in this Agreement or any other agreement between CBSG and Seller/Merchant, upon the violation of any provision contained in Sections I and II of the FACTORING AGREEMENT, shall be deemed a breach of the representations and warranties contained herein. A list of all fees applicable under this FACTORING AGREEMENT is contained in Appendix A.

Purchase Price: \$187,814.77 Specified Percentage: 10% Daily Specified Amount: \$983.56 for 267 days Receipts Purchased Amount: \$262,940.68

***SEE SCHEDULE A**

***Wire to merchant to be less payoff for CBSG and any applicable fees**

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH ON PAGES 2 THROUGH 12 HEREOF ARE HERBY INCORPORATED HEREIN AND MADE A PART OF THIS FACTORING AGREEMENT.

FOR THE SELLER/MERCHANT
By: DEBRA HOUSER, OWNER
Name and Title

DocuSigned by:
X debra houser ← [REDACTED]
(Seller/Merchant Signature)

FOR THE SELLER/MERCHANT
By: DEBRA HOUSER, OWNER
Name and Title

DocuSigned by:
X debra houser ← [REDACTED]
(Seller/Merchant Signature)

FOR THE SELLER/MERCHANT
By: GREG HOUSER, OWNER
Name and Title

DocuSigned by:
X [Signature] ← [REDACTED]
(Seller/Merchant Signature)

FOR THE SELLER/MERCHANT
By: GREG HOUSER, OWNER
Name and Title

DocuSigned by:
X [Signature] ← [REDACTED]
(Seller/Merchant Signature)

COMPLETE BUSINESS SOLUTIONS GROUP, INC.

By _____
Company Officer

To the extent set forth herein, each of the parties is obligated upon his/ her or its execution of the Agreement to all terms of the Agreement, including the Additional Terms set forth below. Each individual executing this Agreement represents that he or she is authorized to sign this Agreement for Merchant, legally binding said Merchant to honor the terms of this obligation and that the information provided herein and in all of CBSG documents, forms and recorded interviews is true, accurate



22 N 3RD Street Philadelphia, Pennsylvania 19106
Phone: 215-922-2636 Fax: 888-305-7562

and complete in all respects. If any such information is false or misleading, Merchant shall be deemed in material breach of all agreements and the representations and warranties contained herein between Merchant and CBSG and CBSG shall be entitled to all remedies available under law. Merchant and each of the above-signed Officers/ Owners authorizes CBSG, its agents and representatives and any credit-reporting agency engaged by CBSG, to (i) investigate any references given or any other statements or data obtained from or about Merchant or any of its Owners for the purpose of this Agreement, and (ii) pull credit report at any time now or for so long as Merchant and/Owner(s) continue to have any obligation owed to CBSG.

ANY MISREPRESENTATION MADE BY SELLER/MERCHANT OR OWNER IN CONNECTION WITH THIS AGREEMENT MAY CONSTITUTE A SEPARATE CAUSE OF ACTION FOR FRAUD OR INTENTIONAL MISREPRESENTATION
FACTORING AGREEMENT TERMS AND CONDITIONS

I. GENERAL TERMS OF AGREEMENT (MUTUAL REPRESENTATIONS AND WARRANTIES)

1.1 Electronic Fund Transfer. Upon request from PURCHASER ("hereinafter CBSG or Purchaser") Seller/Merchant ("hereinafter Merchant") shall execute such forms or agreements acceptable to PURCHASER, with Bank acceptable to PURCHASER, to obtain electronic fund transfer services. Merchant shall provide PURCHASER, and/or its authorized agent with all the information, authorization and passwords necessary for verifying Merchant's receivable, receipts and deposits into the account Merchant shall authorize PURCHASER and/or its agent to deduct the amounts owed to PURCHASER for the Receipts as specified herein from settlement amounts which would otherwise be due to Merchant from electronic check transactions and to pay such amounts to PURCHASER by permitting PURCHASER to withdraw the SPECIFIED DAILY AMOUNT by ACH debiting of the account. The authorization shall be irrevocable without the written consent of PURCHASER.

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

1.3 Term of Agreement. This Agreement shall have a term as set forth above. Upon the expiration of the term, this Agreement shall automatically renew for successive similar terms, provided, however, that during the renewal term(s) Merchant may terminate this Agreement upon ninety days' prior written notice (effective upon receipt) to PURCHASER. The termination of this Agreement shall not affect Merchant's responsibility to satisfy all outstanding obligations to PURCHASER at the time of termination.

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

1.5 Financial Condition. Merchant authorize PURCHASER and its agents to investigate their financial responsibility and history, and will provide to PURCHASER any bank or financial statements, tax returns, etc., as PURCHASER deems necessary prior to or at any time after execution of this Agreement. A photocopy of this authorization will be deemed as acceptable for release of financial information. PURCHASER is authorized to update

such information and financial profiles from time to time as it deems appropriate.

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

1.7 Indemnification. Merchant jointly and severally indemnify and hold harmless Processor, its officers, directors and shareholders against all losses, damages, claims, liabilities and expenses (including reasonable attorney's fees)

incurred by Processor resulting from (a) claims asserted by PURCHASER for monies owed to PURCHASER from Merchant and (b) actions taken by Processor in reliance upon information or instructions provided by PURCHASER.

1.8 No Liability. In no event will CBSG be liable for any claims asserted by Merchant under any legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is waived by Merchant.

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

1.10 Sale of Receipts. Merchant and CBSG agree that the Purchase Price under this Agreement is in exchange for the Purchased Amount and that such Purchase Price is not intended to be, nor shall it be construed as a loan from PURCHASER to Merchant. Merchant agrees that the Purchase Price is in exchange for Future Receipts pursuant to this Agreement equals the fair market value of such Receipts. PURCHASER has purchased and shall own all the Receipts described in this Agreement up to the full Purchased Amount as the Receipts are created. Payments made to PURCHASER with respect to the full amount of the Receipts shall be conditioned upon Merchant's sale of products and services and the payment therefore by Merchant's customers in the manner provided in Section 1.1. IN NO EVENT SHALL THE AGGREGATE OF THE AMOUNTS RECEIVED BE DEEMED AS INTEREST HEREUNDER. In the event that a court determines that PURCHASER has charged or received interest hereunder, and that said amount is in excess of the highest applicable rate, the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by applicable law and PURCHASER shall promptly refund to Merchant any interest received by PURCHASER in excess of the maximum lawful rate, it being intended that Merchant not pay or contract to pay, and that PURCHASER not receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by Merchant under applicable law. MERCHANT ACKNOWLEDGES THAT PENNSYLVANIA LAW APPLIES TO THE WITHIN AGREEMENT.

1.11 Monthly Assessment of Merchant Cash Flow Merchant hereby authorizes PURCHASER to initiate one or more ACH debits at the specified "Daily

Retrieval Rate" from the Account as an approximation of the base payment due under the Specified Percentage. It is the Merchant's responsibility to provide financial information (e.g. bank statements, credit card processing statements, general ledger) regarding its gross receivables, to reconcile the daily payments made against the Specified Percentage, permitting PURCHASER to debit or credit the difference to Merchant on a monthly basis so that the Daily Retrieval Rate equals the Specified Percentage.

1.12 Power of Attorney Merchant irrevocably appoints PURCHASER as its agent and attorney-in-fact with full authority to take any action or execute any instrument or document to settle all obligations due to PURCHASER from Processor, or in the case of a violation by Merchant of Section 1.12 or the occurrence of an Event of Default under Section 4 hereof, from Merchant, under this Agreement, including without limitation (i) to obtain and adjust insurance; (ii) to collect monies due or to become due under or in respect of any of the Collateral; (iii) to receive, endorse and collect any checks, notes, drafts, instruments, documents or chattel paper in connection with clause (i) or clause (ii) above; (iv) to sign Merchant's name on any invoice, bill of lading, or assignment directing customers or account debtors to make payment directly to PURCHASER; and (v) to file any claims or take any action or institute any proceeding which PURCHASER may deem necessary for the collection of any of the unpaid Purchased Amount from the Collateral, or otherwise to enforce its rights with respect to payment of the Purchased Amount.

1.13 Protections Against Default. Merchant represents and warrants that it will not violate Conditions (a) through (e) below and in the event of default thereunder the following Protections 1 through 8 may be invoked by PURCHASER, immediately and without notice to Merchant in the event: (a) Merchant takes any action to discourage the use of electronic check processing that are settled through Processor, or permits any event to occur that could have an adverse effect on the use, acceptance, or authorization of checks for the purchase of Merchant's services and products including but not limited to direct deposit of any checks into a bank account without scanning into the PURCHASER electronic check processor; (b) Merchant changes its arrangements with Processor in any way that is adverse to PURCHASER; (c) Merchant changes the electronic check processor through which the Receipts are settled from Processor to another electronic check processor, or permits any event to occur that could cause diversion of any of Merchant's check transactions to another processor; (d) Merchant interrupts the operation of this business (other than adverse weather, natural disasters or acts of God) transfers, moves, sells, disposes, transfers or otherwise conveys its business or assets without (i) the express prior written consent of PURCHASER, and (ii) the written agreement of any purchaser or transferee to the assumption of all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to PURCHASER; or (e) Merchant takes any action, fails to take any action, or offers any incentive—economic or otherwise—the result of which will be to induce any

Merchant Initials

[Handwritten Signature]

Merchant Initials

[Handwritten Signature]



22 N 3RD Street Philadelphia, Pennsylvania 19106
Phone: 215-922-2636 Fax: 888-305-7562

customer or customers to pay for Merchant's services with any means other than checks that are settled through Processor. These protections are in addition to any other remedies available to PURCHASER at law, in equity or otherwise pursuant to this Agreement.

Protection 1. The full uncollected Purchase Amount plus all fees due under this Agreement and the attached Security Agreement become due and payable in full immediately.

Protection 2. Upon breach of ANY MATERIAL PROVISION OR BREACH OF REPRESENTATIONS AND WARRANTIES in this Agreement, PURCHASER may enter that confession of judgment (judgment) with the Clerk of the Court and execute thereon.

Protection 3. Purchaser may enforce its security interest in the Collateral identified in Article III hereof.

Protection 4. The entire Unpaid Purchase Amount shall become immediately refundable to PURCHASER from Merchant.

Protection 5. Purchaser may proceed to protect and enforce its rights and remedies by lawsuit. In any such lawsuit, in which Purchaser shall recover judgment against Merchant, Merchant shall be liable for the full costs of PURCHASER'S legal action, including all reasonable attorneys' fees and court costs.

Protection 6. Merchant shall, upon execution of this Agreement, deliver to PURCHASER an executed assignment of lease of Merchant's premises in favor of CBSG. Upon breach of any provision in this paragraph 1.13, PURCHASER may exercise its rights under such assignment of lease.

Protection 7. PURCHASER may debit Merchant's depository accounts wherever situated by means of ACH debit or facsimile signature on a computer-generated check drawn on Merchant's bank account.

Protection 8. In the event Merchant changes or permits the change of the Processor approved by CBSG, or adds an additional Processor, in violation of Section 1.11 above, CBSG shall have the right, without waiving any of its rights and remedies and without notice to Merchant, to notify the new or additional Processor of the sale of the Receipts hereunder and to direct such new or additional Processor to make payment directly to CBSG of all or any portion of the amount received by such Processor.

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

1.15 Confidentiality. Merchant understands and agrees that the terms and conditions of the products and services offered by PURCHASER, including this Agreement and any other PURCHASER documentations (collectively, "Confidential Information") are proprietary and confidential information of PURCHASER. Accordingly, unless disclosure is required by law or court order, Merchant shall not disclose Confidential Information of PURCHASER to any person other than an attorney, accountant, financial advisor or employee of Merchant who needs to know such information for the purpose of

advising Merchant ("Advisor"), provided such Advisor uses such information solely for the purpose of advising Merchant and first agrees in writing to be bound by the terms of this Section 1.13.

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

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

2.1 Financial Condition and Financial Information. Bank and financial statements, and future statements furnished to PURCHASER, fairly represent the financial condition of Merchant at such dates. Merchant has a continuing, affirmative obligation to advise PURCHASER of any material or adverse change in its financial condition, operation or ownership. PURCHASER may request statements at any time during the performance of this Agreement and the Merchant shall provide them to PURCHASER within 5 business days. Merchant's failure to do so is a material breach of this Agreement.

2.2 Governmental Approvals. Merchant is in compliance and shall comply with all laws and has valid permits, authorizations and licenses to own, operate and lease its properties and to conduct the business in which it is presently engaged.

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

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

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

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

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

2.8 Estoppel Certificate. Merchant will at any time, and from time to time, upon at least one (1) day's prior notice from PURCHASER to Merchant, execute, acknowledge and deliver to PURCHASER and/or to any other person, person firm or corporation specified by PURCHASER, a statement certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and stating the dates which the Purchased Amount or any portion thereof has been repaid.

2.9 No Bankruptcy. As of the date of this Agreement, Merchant does not contemplate and has not filed any petition for bankruptcy protection under Title 11 of the United States Code and there has been no involuntary petition brought or pending against Merchant.

Merchant further warrants that it does not anticipate filing any such bankruptcy petition and it does not anticipate that an involuntary petition will be filed against it. In the event that the Merchant files for bankruptcy protection or is placed under an involuntary filing Protections 2 and 3 are immediately invoked.

2.10 Working Capital Funding. Merchant shall not enter into any arrangement, agreement or commitment that relates to or involves the Receipts, whether in the form of a purchase of, a loan against, collateral against or the sale or purchase of credits against, Receipts or future check sales with any party other than PURCHASER.

2.11 Unencumbered Receipts. Merchant has good, complete and marketable title to all Receipts, free and clear of any and all liabilities, liens, claims, changes, restrictions, conditions, options, rights, mortgages, security interests, equities, pledges and encumbrances of any kind or nature whatsoever or any other rights or interests that may be inconsistent with the transactions contemplated with, or adverse to the interests of PURCHASER.

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

2.13 Default under Other Contracts. Merchant's execution of and/or performance under this Agreement will not cause or create an event of default by Merchant under any contract with another person or entity.

2.14 3rd Party Negotiators with Regard to This Agreement and the Obligations Herein. Merchant hereby agrees not to retain any 3rd party negotiators, consolidators, or credit relief agencies with regard to its obligations under the terms of this Agreement. Merchant will maintain and allow direct communication with PURCHASER at all times during the course of this Agreement and shall not engage any 3rd party to negotiate its obligations as stated in this Agreement. Should Merchant violate this subsection 2.14, Merchant will be liable for the additional fee as specific in the attached Appendix A.

III. EVENTS OF BREACH OF REPRESENTATIONS, WARRANTIES, AND COVENANTS AND REMEDIES

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

[Handwritten Signature]

[Handwritten Signature]



22 N 3RD Street Philadelphia, Pennsylvania 19106
Phone: 215-922-2636 Fax: 888-305-7562

of any Collateral granted under this Agreement; (l) Merchant shall engage a third party to renegotiate the terms of this Agreement on Merchant's behalf; (m) Merchant shall engage a third party in an attempt to cease direct communication and/or contact with PURCHASER; or (n) Merchant shall default under any of the terms, covenants and conditions of any other agreement with PURCHASER.

3.2 Remedies. In case any Event of a Breach of Representations, Warranties and Covenants, Default occurs and is not waived pursuant to Section 4.4 hereof, PURCHASER may proceed to protect and enforce its rights or remedies by suit in equity or by action at law, or both, whether for the specific performance of any covenant, agreement or other provision contained herein, or to enforce the discharge of Merchant's obligations hereunder or any other legal or equitable right or remedy. IN THE EVENT OF VIOLATION OF THE REPRESENTATIONS AND WARRANTIES BY MERCHANT, PURCHASER may also file a Complaint in Confession of Judgment pursuant to the Warrant of Attorney contained herein. All rights, powers and remedies of PURCHASER in connection with this Agreement may be exercised at any time by PURCHASER after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

3.3 Consent to Sale/Transfer of Interest: In event of MERCHANT breach of warranties, covenants and representations under this Agreement, Merchant consents to PURCHASER'S sale or transfer of its remaining interests in MERCHANT'S receivables to a third party buyer of defaulted financial obligations and instruments. More specifically, MERCHANT recognizes PURCHASER'S authority to sell its interests in said receivables to New York Unity Factor, LLC ("NYUF") which MERCHANT authorizes to pursue legal remedies in NYUF's home State of New York in the event of a breach of the warranties, covenants, and representations stated under this Agreement.

3.4 WARRANT OF ATTORNEY TO CONFESS JUDGMENT. UPON THE OCCURRENCE OF A VIOLATION OF THE REPRESENTATIONS AND WARRANTIES MADE HERETOFORE BY MERCHANT, MERCHANT IRREVOCABLY AUTHORIZE AND EMPOWER ANY ATTORNEY OR ANY CLERK OF ANY COURT OF RECORD, TO APPEAR FOR AND CONFESS JUDGMENT AGAINST MERCHANT FOR SUCH SUMS AS ARE DUE AND/OR MAY BECOME DUE UNDER THIS MERCHANT AGREEMENT OR ANY ACCOMPANYING DOCUMENTS, WITH OR WITHOUT DECLARATION, WITH COSTS OF SUIT, WITHOUT STAY OF EXECUTION AND WITH AN AMOUNT, FOR LIEN PRIORITY PURPOSES, EQUAL TO TEN PERCENT (10%) OF THE AMOUNT OF SUCH JUDGMENT, BUT NOT LESS THAN ONE THOUSAND DOLLARS (\$1,000.00), ADDED FOR ATTORNEYS' COLLECTION FEES, WITH THE ACTUAL AMOUNT OF ATTORNEY'S FEES AND COSTS TO BE DETERMINED IN ACCORDANCE WITH THE SECTION OF THIS MERCHANT AGREEMENT "ATTORNEY'S FEES AND COLLECTION COSTS." TO THE EXTENT PERMITTED BY LAW, MERCHANT: (1) WAIVE THE RIGHT OF INQUISITION ON ANY REAL ESTATE LEVIED ON, VOLUNTARILY CONDEMNNS THE SAME, AUTHORIZES THE PROTHONOTARY OR CLERK TO ENTER

UPON THE WRIT OF EXECUTION THIS VOLUNTARY CONDEMNATION AND AGREES THAT ANY REAL ESTATE MAY BE SOLD ON A WRIT OF EXECUTION; (2) WAIVE AND RELEASE ALL RELIEF FROM ALL APPRAISEMENT, STAY, EXEMPTION OR APPEAL LAWS OF ANY STATE NOW IN FORCE OR HEREINAFTER ENACTED; AND (3) RELEASE ALL ERRORS IN SUCH PROCEEDINGS. IF A COPY OF THIS MERCHANT AGREEMENT, VERIFIED BY AFFIDAVIT BY OR ON BEHALF OF PURCHASER SHALL HAVE BEEN FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL MERCHANT AGREEMENT AS A WARRANT OF ATTORNEY. THE AUTHORITY AND POWER TO APPEAR FOR AND CONFESS JUDGMENT AGAINST MERCHANT SHALL NOT BE EXHAUSTED BY THE INITIAL EXERCISE THEREOF AND MAY BE EXERCISED AS OFTEN AS PURCHASER SHALL FIND IT NECESSARY AND DESIRABLE AND THIS BUSINESS CASH ADVANCE AND SECURITY AGREEMENT SHALL BE A SUFFICIENT WARRANT THEREFOR. PURCHASER MAY CONFESS ONE OR MORE JUDGMENTS IN THE SAME OR DIFFERENT JURISDICTIONS FOR ALL OR ANY PART OF THE AMOUNTS OWING HEREUNDER, WITHOUT REGARD TO WHETHER JUDGMENT HAS THERETOFORE BEEN CONFESSED ON MORE THAN ONE OCCASION FOR THE SAME AMOUNTS. IN THE EVENT ANY JUDGMENT CONFESSED AGAINST THE MERCHANT HEREUNDER IS STRICKEN OR OPENED UPON APPLICATION BY OR ON MERCHANT'S BEHALF FOR ANY REASON, PURCHASER IS HEREBY AUTHORIZED AND EMPOWERED TO AGAIN APPEAR FOR AND CONFESS JUDGMENT AGAINST MERCHANT FOR ANY PART OR ALL OF THE AMOUNTS OWED HEREUNDER, AS PROVIDED FOR HEREIN, IF DOING SO WILL CURE ANY ERRORS AND DEFECTS IN SUCH PRIOR PROCEEDINGS.

3.41 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FACTORING AGREEMENT, THE CONFESSION OF JUDGMENT, THE SECURITY AGREEMENT, OR ANY OTHER DOCUMENTS EXECUTED BY MERCHANT IN CONNECTION WITH THE ADVANCE OF FUNDS TO SELLER, ALL PARTIES ACKNOWLEDGE THAT RECOURSE TO THE MERCHANT AND THE MERCHANT'S ASSETS IS PERMITTED ONLY FOR BREACHES OF THE REPRESENTATIONS AND WARRANTIES MADE BY THE SELLER IN THE FACTORING AGREEMENT.

3.5 Costs. Merchant shall pay to PURCHASER all reasonable costs associated with (a) a breach by Merchant of the Covenants in this Agreement and the enforcement thereof, and (b) the enforcement of PURCHASER'S remedies set forth in Section 4.2 above, including but not limited to court costs and attorneys' fees.

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

IV. MISCELLANEOUS

4.1 Modifications; Agreements. No modification, amendment, waiver or consent of any provision of this Agreement shall be effective unless the same shall be in writing and signed by PURCHASER.

4.2 Assignment. PURCHASER may assign, transfer or sell its rights to receive the Purchased Amount or delegate its duties hereunder, either in whole or in part.

4.3 Notices. All notices, requests, consent, demands and other communications hereunder shall be delivered by certified mail, return receipt requested, to the respective parties to this Agreement at the addresses set forth in this Agreement and shall become effective only upon receipt.

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

4.5 Merchant/Guarantor(s) barred from transfer. This Agreement shall be binding upon and inure to the benefit of Merchant, PURCHASER and their respective successors and assigns, except that Merchant shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of PURCHASER which consent may be withheld in PURCHASER'S sole discretion. PURCHASER reserves the rights to assign this Agreement with or without prior written notice to Merchant or Guarantor(s).

4.6 Governing Law/Jurisdiction/Venue for disputes. All signatories to this Agreement consent that this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regards to any applicable principals of conflicts of law. Any suit, action or proceeding arising hereunder, or the interpretation, performance or breach hereof, shall, if PURCHASER so elects, be instituted in the Court of Common Pleas, Philadelphia County, Federal Court for the Eastern District of Pennsylvania, or the Philadelphia County Municipal Court, (the "Acceptable Forums"). Merchant agrees that the Acceptable Forums are convenient to it, and submits to the jurisdiction of the Acceptable Forums and waives any and all objections to jurisdiction or venue. Should such proceeding be initiated in any other forum, Merchant waives any right to oppose any motion or application made by PURCHASER to transfer such proceeding to an Acceptable Forum.

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

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

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

ll

GH



22 N 3RD Street Philadelphia, Pennsylvania 19106
Phone: 215-922-2636 Fax: 888-305-7562

4.10 JURY TRIAL WAIVER. THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING IN CONNECTION WITH OR IN ANY WAY RELATED TO THE TRANSACTIONS OF WHICH THIS AGREEMENT IS A PART OR THE ENFORCEMENT HEREOF. THE PARTIES HERETO ACKNOWLEDGE THAT EACH MAKES THIS WAIVER KNOWINGLY, WILLINGLY AND VOLUNTARILY AND WITHOUT DURESS, AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH THEIR ATTORNEYS.

4.11 CLASS ACTION WAIVER. THE PARTIES HERETO WAIVE ANY RIGHT TO ASSERT ANY CLAIMS AGAINST THE OTHER PARTY AS A REPRESENTATIVE OR MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW AGAINST PUBLIC POLICY. TO THE EXTENT EITHER PARTY IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST THE OTHER, THE PARTIES HEREBY AGREE THAT: (1) THE PREVAILING PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS OR REPRESENTATIVE ACTION (NOT WITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT); AND (2) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS OR REPRESENTATIVE ACTION.

4.12 Counterparts & Facsimile/Email Signatures. This Agreement may be executed in any number of counterparts each of which shall be deemed to be an original, all of which together shall be deemed one and the same instrument. Further, facsimile and email signatures shall be deemed to be originals for all purposes.

Merchant Initials DS dh Merchant Initials DS GH

EXHIBIT

A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p>Plaintiff</p> <p>vs.</p> <p>COMPLETE BUSINESS SOLUTIONS GROUP, INC. d/b/a PAR FUNDING, et al</p> <p>Defendants</p>	<p>Case No. 20-CIV-81205-RAR</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------

MEMORANDUM MOTION FOR RELIEF FROM THE STAY

Movant, J. Brian Ferguson (“Movant”), *pro se*, submits the following Motion for Relief from the Stay stating:

INTRODUCTION

Movant is entitled to relief from the litigation stay entered in this matter because the stay, as applied to his specific proposed litigation, does not preserve the status quo, he is likely to succeed on the merits, and the Receiver has had over three years to investigate and organize the affairs of Complete Business Solutions Group, Inc. (“PAR”).

FACTUAL BACKGROUND

Movant is the duly appointed Chapter 7 Bankruptcy Trustee for the bankruptcy estates of Gregory A. Houser and Debra Jo Houser (“Debtors”) pending in the Bankruptcy Court for the Western District of Arkansas, bearing case number 5:23-bk-70664.

Part of the Debtors' estates for which Movant is legally obligated to administer is a home located at 329 Driftwood Drive, Farmington, Arkansas 72730.

Complete Business Solutions Group, Inc. ("PAR") has filed of record with the Washington County Circuit Clerk a "Security Agreement" which purports to give PAR a second lien¹ on the house.²

The PAR Security Agreement on file purports the debt it secures is a "Note," which is defined as "the Factoring Agreement signed by Seller and dated November 19, 2018. The Note states that Seller owes Purchaser Two Hundred Sixty – Two Thousand Nine Hundred Forty and 68/100 Dollars (U.S. \$ 262,940.68) plus fees."

The Debtors did sign a factoring agreement with PAR dated November 16, 2018—not November 19, 2018.³ Further, the factoring agreement they signed with PAR was on behalf of their business, BEBE, LLC. BEBE, LLC is an Arkansas limited liability company with its principal place of business in Fayetteville, Arkansas. Specifically, BEBE, LLC operated a daycare in Fayetteville, Arkansas and the PAR factoring agreement dealt with receivables therefrom.

Movant believes the Security Agreement and Factoring Agreement are void as usurious under Arkansas law. The Debtors also believe they paid PAR everything they were entitled to or at least paid a substantial sum toward same. Movant wishes to pursue an adversary proceeding in the Bankruptcy Court for the Western District of Arkansas related to his usury claim and for a determination as to exactly what is owed, if anything.

¹ The first lien is in favor of U.S. Bank National Association pursuant to a home mortgage. As of August 4, 2023 there was \$316,027.24 due on the first mortgage lien with interest and fees still accumulating.

² A true and correct copy of the "Security Agreement" is attached hereto as Exhibit 1.

³ A true and correct copy of the Factoring Agreement signed by the Debtors is attached hereto as Exhibit 2. It should be noted this agreement was signed by the Debtors in Arkansas and the Debtors were residents of Arkansas at the time the agreement was signed.

However, this Court entered an order on July 31, 2020, which provides a litigation stay against PAR. Specifically, this Court's order stays:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or any other actions of any nature involving: (a) the Receiver, in his capacity as Receiver; (b) any of the Receivership Entities' property interests, wherever located; (c) any of the Receivership Entities, including subsidiaries and partnerships; or, (d) any of a Receivership Entity's past or present officers, directors, managers, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as "Ancillary Proceedings").

RELIEF FROM STAY STANDARD

As this Court has recognized, blanket injunctions are to be "sparsely exercised" in SEC receivership matters. *Sec. & Exch. Comm'n v. Complete Bus. Sols. Grp., Inc.*, No. 20-CIV-81205-RAR, 2020 WL 9209280, at *2 (S.D. Fla. July 31, 2020). "To the extent that a party has a colorable claim against a receiver or the entities in receivership, due process demands that the claimant be heard. . . ." *Liberte Cap. Grp., LLC v. Capwill*, 462 F.3d 543, 552 (6th Cir. 2006). The Ninth Circuit has explained the equities a district court should consider in determining if relief from the stay order is appropriate. *S.E.C. v. Wencke*, 622 F.2d 1363, 1373-74 (9th Cir. 1980). These three main considerations are: (1) "whether refusing to lift the stay genuinely preserves the status quo or whether the moving party will suffer substantial injury if it is not permitted to proceed"; (2) the merits of the moving party's claim; and (3) the time at which the motion for relief from the stay is made. *Id.*

The merits of the moving party's claim are relevant because "a blanket stay should not be used to prejudice the rights which innocent and legitimate creditors may have against the

receivership entities.” *Id.* Thus, when “the likelihood that the receiver will prevail is small, when the receiver's position is considered realistically and not in the abstract, there is less reason to permit the receiver to avoid resolving the claim. . . .” *Id.*

Timing is also an important factor because it impacts the burden placed on the receiver. “As the receivership progresses, however, it may become less plausible for the receiver to contend that he needs more time to explore the affairs of the entities.” *Id.*

It must also be remembered that the moving party is going to be able to bring his claims eventually, as the stay “does not render [his] claims futile for all time.” *Kane v. Rose*, 259 F. App'x 258, 260–61 (11th Cir. 2007).

I. MOVANT IS ENTITLED TO RELIEF FROM THE STAY

1. The stay does not genuinely preserve the status quo as to the Movant, and substantially prejudices his claims and the bankruptcy estates

Movant cannot liquidate the home until the purported mortgage of PAR is resolved. In the meantime, the first lien continues to accumulate interest, attorney fees, and other costs. Additionally, Movant must upkeep and maintain the property for the benefit of the bankruptcy estates. Thus, the stay greatly prejudices the ability of the Movant to effectively administer the bankruptcy estates and causes great financial burdens on the bankruptcy estates he is tasked to administer.

The stay in this instance also prejudices the Receiver as the Receiver cannot do anything with the purported lien absent judicial involvement. Hence, even if the Receiver had a valid lien, he cannot do anything with it until the stay is lifted.

Again, the claims are going to have to be litigated one day as the stay “does not render [his] claims futile for all time.” *Kane v. Rose*, 259 F. App'x at 260–61. Here, delay only allows for

additional expenses which diminish the value to the bankruptcy estate and the value of any second lien the Receiver may have.

2. Movant is likely to succeed on the merits as the note is usurious under Arkansas law

Movant is likely to succeed on the merits as it is clear Arkansas law applies and that the agreement is usurious under Arkansas law.

While the factoring agreement has a choice of law provision in it that provides Pennsylvania law applies, the Security Agreement provides that Arkansas law applies as the *situs* of the property. And Pennsylvania law provides that its law cannot be selected in a way that violates the fundamental policy of the state whose laws would normally apply. *Fleetwood Servs., LLC v. Complete Bus. Sols. Grp., Inc.*, 374 F. Supp. 3d 361, 372 (E.D. Pa. 2019); *see also Cooper v. Cherokee Vill. Dev. Co.*, 236 Ark. 37, 42, 364 S.W.2d 158, 161 (1963) (“this court is not committed to any choice of law rules of contracts which is a sham to evade the usury laws of our state”).

Determining what law applies under Pennsylvania’s standards involves a two-part inquiry: (1) Determining what state’s law would normally apply; and (2) determining if that state’s fundamental policy would be violated if Pennsylvania’s law applied.

In determining which state’s law would normally apply absent the choice of law provision, Pennsylvania Courts are to determine “the most significant relationship to the transaction as determined by several factors, including: (a) the place of contracting, (b) the place of negotiation of the contract, (c) the place of performance, (d) the location of the subject matter of the contract, and (e) the domicile, residence, nationality, place of incorporation and place of business of the parties.” *Fleetwood Servs.*, 374 F. Supp. 3d at 370–71.

In *Fleetwood Servs.*, the District Court faced with the identical factoring agreement as at issue here, held that Texas law would normally apply and that Pennsylvania law could not apply

as same, without usury protections, would violate a fundamental policy of Texas--that being high interest rates.

The facts in *Fleetwood Servs.* are virtually identical to the facts here, except for the fact that the borrowers in this case are from Arkansas. In *Fleetwood Servs.*, the Court found that Texas had a far greater material interest in the dispute and its law would ordinarily apply because the borrower company was a “Texas limited liability company headquartered in Dallas, Texas,” the individual guarantors were residents of Texas; and “the commercial and personal property—including [the guarantor’s] home and personal assets—securing repayment is located in Texas.” 374 F. Supp. 3d at 371–72.

Here, just as in *Fleetwood Servs.*, the borrower was an Arkansas limited liability company with its principal place of business in Arkansas, the Guarantors were residents of Arkansas, and the property secured by the loan, including the Guarantors houses were located in Arkansas. Additionally, the agreement was signed in Arkansas and the Debtors here were solicited into the agreement in Arkansas. Hence, Arkansas law would normally apply absent a choice of law provision. *Id.*

Further, applying the choice of law provision would violate a fundamental policy of Arkansas law, namely Arkansas’ antipathy to high interest rates. Section 3 of Amendment 89 to the Arkansas Constitution makes clear that “[t]he maximum lawful rate of interest on loans or contracts not described in Sections 1 and 2 shall not exceed seventeen percent (17%) per annum.” Ark. Const. amend. LXXXIX, § 3.⁴ Section 6 of Amendment 89 mandates that all loans that violate Section 3 are **void as to principal and interest**. See Ark. Const. amend. LXXXIX, § 6 (“All contracts under Section 3 having a rate of interest in excess of the maximum lawful rate **shall**

⁴ Section 1 and 2 of Amendment 89 deal with governmental loans and loans by FDIC insured institutions, respectively.

be void as to principal and interest. . . .”) (emphasis added). *See also State ex rel. Bryant v. R & A Inv. Co.*, 336 Ark. 289, 296, 985 S.W.2d 299, 303 (1999) (describing Arkansas as having a “strong anti-usury policy” to protect borrowers from excessive interest rates”).

Simply put, preventing usury is a “strong” and fundamental policy of Arkansas. Thus, applying Pennsylvania law (which allows for usurious contracts in business dealings) would clearly violate a fundamental policy of Arkansas, as enshrined in the Arkansas Constitution.

Under Arkansas law, to determine if a loan is usurious, this Court simply asks if the Plaintiff intended to commit usury. *See Evans v. Hamby*, 2011 Ark. 69, 7, 378 S.W.3d 723, 728 (2011). “The intent that is required, however, is not an intent to violate the law, but merely **the intent to charge a rate of interest that proves to be usurious.**” *Id.* (emphasis added). In determining the lender’s intent, the fact finder “must look beyond the four corners of the challenged agreement” when the challenged agreement does not definitively show a usurious agreement. *Id.*

This standard creates a shifting burden framework. “When an instrument is usurious on its face, the holder has the burden of proving it to be otherwise.” *Bunn v. Weyerhaeuser Co.*, 268 Ark. 445, 449, 598 S.W.2d 54, 56 (1980) (internal citations omitted). “On the other hand, if it is not usurious on its face, the borrower has the burden of proving it is usurious.” *Id.* *See also Knox v. Goodyear Stores, Inc.*, 252 Ark. 530, 535, 479 S.W.2d 875, 878 (1972) (“when a contract is usurious on its face, the burden shifts to the one who would sustain its validity in proving it is not usurious”).

If considered a loan, the interest rates would clearly be usurious under Arkansas law. Specifically, the loan was for \$187,814.77 and called for \$262,940.68 to be repaid in 267 days.

That comes to higher than 40% interest, or more than double the allowed interest charge under Arkansas law. Thus, the entire agreement is void as to principal and interest.

Thus, the Movant has a high likelihood of success on the merits.

3. Time weighs in favor of relief from the stay as the Receiver has had over three years to organize the affairs of PAR

The litigation stay has been in place since July 31, 2020. Hence, the Receiver has had over three years to organize the affairs of PAR. “As the receivership progresses, however, it may become less plausible for the receiver to contend that he needs more time to explore the affairs of the entities.” Certainly, after three years the Receiver cannot say that he needs additional time to explore the affairs of PAR. Hence, this factor weighs heavily in favor of relief from the stay.

CONCLUSION

For the foregoing reasons, Movant’s Motion should be GRANTED, and Movant should be granted relief from the stay to pursue litigation in the Bankruptcy Court for the Western District of Arkansas related to the validity of the lien purportedly claimed by PAR and for declaratory relief as to what is owed under same if it is valid.


CERTIFICATE OF ATTEMPTED GOOD FAITH COMMUNICATION

Pursuant to Local Rule 7.1, Movant confirms that he has attempted to communicate with the Receiver in good faith to resolve this issue before the filing of this Motion but has been unable to do so. Specifically, Movant sent the Receiver an email on August 2, 2023, for which he has not received a substantive response.

Dated August 28, 2023.

RESPECTFULLY SUBMITTED,

J. Brian Ferguson, Chapter 7 Trustee
3333 Pinnacle Hills Parkway, STE 410
Rogers, AR 72758
(479) 464-4418
brian@ozarkfunds.com



J. Brian Ferguson

EXHIBIT

1

Type: REAL ESTATE
Kind: AGREEMENTS
Recorded: 1/4/2019 10:19:56 AM
Fee Amt: \$75.00 Page 1 of 13
Washington County, AR
Kyle Sylvester Circuit Clerk

After Recording Return To:
Lucosky Brookman
101 Wood Avenue South, Fifth Floor
Woodbridge, New Jersey 08830
Attn.: Jeffrey M. Goldstein, Esq.

File# 2019-00000320

[Space Above This Line For Recording Data]

SECURITY AGREEMENT

(A) **“Security Instrument”** means this document, which is dated November 19, 2018, together with all Riders to this document.

(B) **“Seller”** is Gregory Houser and Debra Houser.

(C) **“Purchaser”** is Complete Business Solutions Group, Inc. Purchaser is a corporation organized and existing under the laws of the State of Delaware. Purchaser’s address is Purchaser’s address is 23 North 3rd Street, Philadelphia, Pennsylvania 19106. Purchaser is the mortgagee under this Security Instrument.

(D) **“Note”** means the Factoring Agreement signed by Seller and dated November 19, 2018. The Note states that Seller owes Purchaser Two Hundred Sixty - Two Thousand Nine Hundred Forty and 68/100 Dollars (U.S. \$ 262,940.68) plus fees.

(E) **“Property”** means the property that is described below under the heading “Transfer of Rights in the Property.”

(F) **“Advance”** means the debt evidenced by the Note, plus fees, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus fees.

(G) **“Applicable Law”** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(H) **“Electronic Funds Transfer”** means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(I) **“Miscellaneous Proceeds”** means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(J) **“Periodic Payment”** means the regularly scheduled amount due for (i) principal and fees under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(page 1 of 12 pages)

(K) "Successor in Interest of Seller" means any party that has taken title to the Property, whether or not that party has assumed Seller's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Purchaser: (i) the repayment of the Advance, and all renewals, extensions and modifications of the Note; and (ii) the performance of Seller's covenants and agreements under this Security Instrument and the Note. For this purpose, Seller does hereby mortgage, grant and convey to Purchaser, with power of sale, the following described property located in the Washington County, State of Arkansas which currently has the address of 329 Driftwood Drive, Farmington, Arkansas 72730 ("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

SELLER COVENANTS that Seller is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Seller warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Seller and Purchaser covenant and agree as follows:

1. Payment of Principal, Fees, Prepayment Charges, and Late Charges. Seller shall pay when due the principal of, and fees on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Purchaser as payment under the Note or this Security Instrument is returned to Purchaser unpaid, Purchaser may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Purchaser: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Purchaser when received at the location designated in the Note or at such other location as may be designated by Purchaser in accordance with the notice provisions in Section 12. Purchaser may return any payment or partial payment if the payment or partial payments are insufficient to bring the Advance current. Purchaser may accept any payment or partial payment insufficient to bring the Advance current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Purchaser is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Purchaser need not pay Fees on unapplied funds. Purchaser

(page 2 of 12 pages)

may hold such unapplied funds until Seller makes payment to bring the Advance current. If Seller does not do so within a reasonable period of time, Purchaser shall either apply such funds or return them to Seller. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Seller might have now or in the future against Purchaser shall relieve Seller from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Purchaser shall be applied in the following order of priority: (a) fees due under the Note; (b) principal due under the Note. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Purchaser receives a payment from Seller for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Purchaser may apply any payment received from Seller to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Charges; Liens. Seller shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any.

Seller shall promptly discharge any lien which has priority over this Security Instrument unless Seller: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Purchaser, but only so long as Seller is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Purchaser's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Purchaser subordinating the lien to this Security Instrument. If Purchaser determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Purchaser may give Seller a notice identifying the lien. Within 10 days of the date on which that notice is given, Seller shall satisfy the lien or take one or more of the actions set forth above in this Section 3.

Purchaser may require Seller to pay a one-time charge for a real estate tax verification and/or reporting service used by Purchaser in connection with this Advance.

4. Property Insurance. Seller shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Purchaser requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Purchaser requires. What Purchaser requires pursuant to the preceding sentences can change during the term of the Advance. The insurance carrier providing the insurance shall be chosen

by Seller subject to Purchaser's right to disapprove Seller's choice, which right shall not be exercised unreasonably. Purchaser may require Seller to pay, in connection with this Advance, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Seller shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Seller.

If Seller fails to maintain any of the coverages described above, Purchaser may obtain insurance coverage, at Purchaser's option and Seller's expense. Purchaser is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Purchaser, but might or might not protect Seller, Seller's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Seller acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Seller could have obtained. Any amounts disbursed by Purchaser under this Section 4 shall become additional debt of Seller secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest within 30 days after the date of the Notice.

All insurance policies required by Purchaser and renewals of such policies shall be subject to Purchaser's right to disapprove such policies, shall include a standard mortgage clause, and shall name Purchaser as mortgagee and/or as an additional loss payee. Purchaser shall have the right to hold the policies and renewal certificates. If Purchaser requires, Seller shall promptly give to Purchaser all receipts of paid premiums and renewal notices. If Seller obtains any form of insurance coverage, not otherwise required by Purchaser, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Purchaser as mortgagee and/or as an additional loss payee.

In the event of loss, Seller shall give prompt notice to the insurance carrier and Purchaser. Purchaser may make proof of loss if not made promptly by Seller. Unless Purchaser and Seller otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Purchaser, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Purchaser's security is not lessened. During such repair and restoration period, Purchaser shall have the right to hold such insurance proceeds until Purchaser has had an opportunity to inspect such Property to ensure the work has been completed to Purchaser's satisfaction, provided that such inspection shall be undertaken promptly. Purchaser may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Purchaser shall not be required to pay Seller any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Seller shall not be paid out of the insurance proceeds and shall be the sole obligation of Seller. If the restoration or repair is not economically feasible or Purchaser's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Seller. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Seller abandons the Property, Purchaser may file, negotiate and settle any available insurance claim and related matters. If Seller does not respond within 30 days to a notice from Purchaser that the insurance carrier has offered to settle a claim, then Purchaser may negotiate and settle the claim. The

(page 4 of 12 pages)

30-day period will begin when the notice is given. In either event, or if Purchaser acquires the Property under Section 19 or otherwise, Seller hereby assigns to Purchaser (a) Seller's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Seller's rights (other than the right to any refund of unearned premiums paid by Seller) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Purchaser may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

5. Preservation, Maintenance and Protection of the Property; Inspections. Seller shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Seller is residing in the Property, Seller shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 4 that repair or restoration is not economically feasible, Seller shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Seller shall be responsible for repairing or restoring the Property only if Purchaser has released proceeds for such purposes. Purchaser may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Seller is not relieved of Seller's obligation for the completion of such repair or restoration.

Purchaser or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Purchaser may inspect the interior of the improvements on the Property. Purchaser shall give Seller notice at the time of or prior to such an interior inspection specifying such reasonable cause.

6. Seller's Advance Application. Seller shall be in default if, during the Advance application process, Seller or any persons or entities acting at the direction of Seller or with Seller's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Purchaser (or failed to provide Purchaser with material information) in connection with the Advance.

5. Protection of Purchaser's Interest in the Property and Rights Under this Security Instrument. If (a) Seller fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Purchaser's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Seller has abandoned the Property, then Purchaser may do and pay for whatever is reasonable or appropriate to protect Purchaser's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Purchaser's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding.

Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Purchaser may take action under this Section 8, Purchaser does not have to do so and is not under any duty or obligation to

(page 5 of 12 pages)

do so. It is agreed that Purchaser incurs no liability for not taking any or all actions authorized under this Section 7.

Any amounts disbursed by Purchaser under this Section 7 shall become additional debt of Seller secured by this Security Instrument. These amounts shall bear Fees at the Note rate from the date of disbursement and shall be payable, with such Fees, upon notice from Purchaser to Seller requesting payment.

8. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Purchaser.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Purchaser's security is not lessened. During such repair and restoration period, Purchaser shall have the right to hold such Miscellaneous Proceeds until Purchaser has had an opportunity to inspect such Property to ensure the work has been completed to Purchaser's satisfaction, provided that such inspection shall be undertaken promptly. Purchaser may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Purchaser shall not be required to pay Seller any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Purchaser's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Seller. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Seller.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Seller and Purchaser otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Seller.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Seller and Purchaser otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Seller, or if, after notice by Purchaser to Seller that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Seller fails to respond to Purchaser within 30 days after the date the notice is given, Purchaser is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Seller Miscellaneous Proceeds or the party against whom Seller has a right of action in regard to Miscellaneous Proceeds.

(page 6 of 12 pages)

Seller shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Purchaser's judgment, could result in forfeiture of the Property or other material impairment of Purchaser's interest in the Property or rights under this Security Instrument. Seller can cure such a default and, if acceleration has occurred, reinstate as provided in Section 17, by causing the action or proceeding to be dismissed with a ruling that, in Purchaser's judgment, precludes forfeiture of the Property or other material impairment of Purchaser's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Purchaser's interest in the Property are hereby assigned and shall be paid to Purchaser.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

9. Seller Not Released; Forbearance By Purchaser Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Purchaser to Seller or any Successor in Interest of Seller shall not operate to release the liability of Seller or any Successors in Interest of Seller. Purchaser shall not be required to commence proceedings against any Successor in Interest of Seller or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Seller or any Successors in Interest of Seller. Any forbearance by Purchaser in exercising any right or remedy including, without limitation, Purchaser's acceptance of payments from third persons, entities or Successors in Interest of Seller or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

10. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Seller covenants and agrees that Seller's obligations and liability shall be joint and several. However, any Seller who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Purchaser and any other Seller can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 15, any Successor in Interest of Seller who assumes Seller's obligations under this Security Instrument in writing, and is approved by Purchaser, shall obtain all of Seller's rights and benefits under this Security Instrument. Seller shall not be released from Seller's obligations and liability under this Security Instrument unless Purchaser agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 16) and benefit the successors and assigns of Purchaser.

11. Advance Charges. Purchaser may charge Seller fees for services performed in connection with Seller's default, for the purpose of protecting Purchaser's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Seller shall not be construed as a prohibition on the charging of such fee. Purchaser may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Advance is subject to a law which sets maximum Advance charges, and that law is finally interpreted so that the fees or other Advance charges collected or to be collected in connection with the Advance exceed the permitted limits, then: (a) any such Advance charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected

from Seller which exceeded permitted limits will be refunded to Seller. Purchaser may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Seller. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Seller's acceptance of any such refund made by direct payment to Seller will constitute a waiver of any right of action Seller might have arising out of such overcharge.

12. Notices. All notices given by Seller or Purchaser in connection with this Security Instrument must be in writing. Any notice to Seller in connection with this Security Instrument shall be deemed to have been given to Seller when mailed by first class mail or when actually delivered to Seller's notice address if sent by other means. Notice to any one Seller shall constitute notice to all Sellers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Seller has designated a substitute notice address by notice to Purchaser. Seller shall promptly notify Purchaser of Seller's change of address. If Purchaser specifies a procedure for reporting Seller's change of address, then Seller shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Purchaser shall be given by delivering it or by mailing it by first class mail to Purchaser's address stated herein unless Purchaser has designated another address by notice to Seller. Any notice in connection with this Security Instrument shall not be deemed to have been given to Purchaser until actually received by Purchaser. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

13. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

14. Seller's Copy. Seller shall be given one copy of the Note and of this Security Instrument.

15. Transfer of the Property or a Beneficial Interest in Seller. As used in this Section 15, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Seller at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Seller is not a natural person and a beneficial interest in Seller is sold or transferred) without Purchaser's prior written consent, Purchaser may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Purchaser if such exercise is prohibited by Applicable Law.

If Purchaser exercises this option, Purchaser shall give Seller notice of acceleration. The notice

shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 12 within which Seller must pay all sums secured by this Security Instrument. If Seller fails to pay these sums prior to the expiration of this period, Purchaser may invoke any remedies permitted by this Security Instrument without further notice or demand on Seller.

16. Seller's Right to Reinstate After Acceleration. If Seller meets certain conditions, Seller shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Seller's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Seller: (a) pays Purchaser all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Purchaser's interest in the Property and rights under this Security Instrument; and (d) takes such action as Purchaser may reasonably require to assure that Purchaser's interest in the Property and rights under this Security Instrument, and Seller's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Purchaser may require that Seller pay such reinstatement sums and expenses in one or more of the following forms, as selected by Purchaser: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Seller, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 15.

17. Sale of Note; Change of Advance Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Seller. A sale might result in a change in the entity (known as the "Advance Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage Advance servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Advance Servicer unrelated to a sale of the Note. If there is a change of the Advance Servicer, Seller will be given written notice of the change which will state the name and address of the new Advance Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Advance is serviced by a Advance Servicer other than the purchaser of the Note, the mortgage Advance servicing obligations to Seller will remain with the Advance Servicer or be transferred to a successor Advance Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Seller nor Purchaser may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Seller or Purchaser has notified the other party (with such notice given in compliance with the requirements of Section 12) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of

(page 9 of 12 pages)

acceleration and opportunity to cure given to Seller pursuant to Section 19 and the notice of acceleration given to Seller pursuant to Section 17 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 17.

18. Hazardous Substances. As used in this Section 18: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Seller shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Seller shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Seller shall promptly give Purchaser written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Seller has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Seller learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Seller shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Purchaser for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Seller and Purchaser further covenant and agree as follows:

19. Acceleration; Remedies. Purchaser shall give notice to Seller prior to acceleration following Seller's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Seller, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Seller of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Seller to acceleration and sale. If the default is not cured on or before the date specified in the notice, Purchaser at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke any other remedies permitted by

(page 10 of 12 pages)

Applicable Law. Purchaser shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 19, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

It is understood and agreed to by Seller that this Security Instrument is subject to the foreclosure procedures of the Arkansas Statutory Foreclosure Law, Act 53 of 1987, as amended from time to time (the "Act"), for Seller's breach of any covenant or agreement in this Security Instrument. In furtherance and not in limitation of the provisions of Section 11, any forbearance by Purchaser in exercising any right or remedy under the Act shall not be a waiver of or preclude acceleration and the exercise of any right or remedy under the Act, or at the option of Purchaser, use of judicial foreclosure proceedings.

20. Release. Upon payment in full of all sums secured by this Security Instrument, Purchaser shall release this Security Instrument. Seller shall pay any recordation costs. Purchaser may charge Seller a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

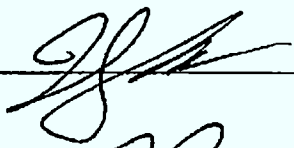
21. Waivers. Seller waives all rights of homestead exemption in, and statutory redemption of, the Property and all right of appraisement of the Property and relinquishes all rights of curtesy and dower in the Property.


THIS SPACE INTENTIONALLY LEFT BLANK

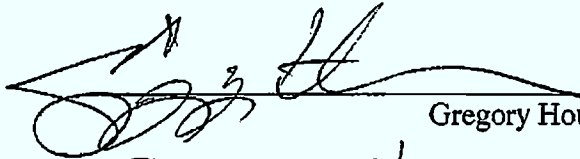
(page 11 of 12 pages)

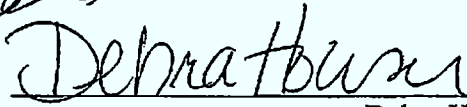
BY SIGNING BELOW, Seller accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Seller and recorded with it.

Witnesses:







Gregory Houser - Seller (Seal)


Debra Houser- Seller (Seal)

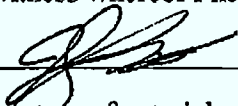
[Space Below This Line For Acknowledgment]

State of Arkansas

County of Benton

On this the 19 day of 11 2018, before me, Jonathan Maddox, the undersigned officer, personally appeared Gregory Houser known to me (or satisfactorily proven) to be the person whose name Gregory subscribed to the within instrument and acknowledged that he executed the same for the purposes therein.

In witness whereof I hereunto set my hand and official seal.



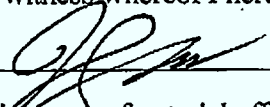
(Signature of notarial officer) (Seal) Jonathan Maddox
Notary Public-Arkansas
Benton County
My Commission Expires 09-11-2028
Commission # 12705394

State of Arkansas

County of Benton

On this the 19 day of 11 2018, before me, Jonathan Maddox, the undersigned officer, personally appeared Debra Houser known to me (or satisfactorily proven) to be the person whose name Debra subscribed to the within instrument and acknowledged that he executed the same for the purposes therein.

In witness whereof I hereunto set my hand and official seal.



(Signature of notarial officer) (Seal) Jonathan Maddox
Notary Public-Arkansas
Benton County
My Commission Expires 09-11-2028
Commission # 12705394

(page 12 of 12 pages)

EXHIBIT A

LEGAL DESCRIPTION:

LOT 29, TWIN FALLS ADDITION, PHASE 1, AS PER PLAT OF SAID ADDITION ON FILE IN PLAT BOOK 23A AT PAGE 216 OF THE RECORDS OF WASHINGTON COUNTY, ARKANSAS.

Washington County, AR
I certify this instrument was filed on
1/4/2019 10:19:56 AM
and recorded in REAL ESTATE

File# 2019-00000320
Kylie Sylvester - Circuit Clerk



EXHIBIT

2



22 N 3RD Street Philadelphia, Pennsylvania 19106
Phone: 215-922-2636 Fax: 888-305-7562

FACTORING AGREEMENT

Dated the 16TH day of NOVEMBER, 2018 by and between Complete Business Solutions Group, Inc. ("CBSG" and/or "PURCHASER") and the "SELLER/MERCHANT" listed below (as "Seller/Merchant" or "the Merchant").

Business Legal Name: BUTTERFLIES AND FROGS

D/B/A: BEBE, LLC

Type of entity (check one) Corporation LLC Limited Partnership Limited Liability Partnership Sole Proprietor

Physical Address: 3675 MALL AVENUE FAYETVILLE, AR 72703

Mailing Address: 3675 MALL AVENUE FAYETVILLE, AR 72703

Fed ID#: [REDACTED] 951

PURCHASE AND SALE OF FUTURE RECEIPTS WITH SELLER RECOURSE

Seller/Merchant hereby sells, assigns and transfers to CBSG (making CBSG the absolute owner) in consideration of the funds provided ("Purchase Price") specified below, all of Seller/Merchant's future receipts, accounts, contract rights and other obligations arising from or relating to the payment of monies from Seller/Merchant's customers' and/or other third party payers (collectively the "Receipts" defined as all payments made by cash, check, credit or debit card, electronic transfer or other form of monetary payment in the ordinary course of the merchant's business) until such time as the "Receipts Purchased Amount (RPA)" has been delivered by Seller/Merchant to CBSG.

THIS IS A FACTORING AGREEMENT WITH RECOURSE.

The Purchased Amount shall be paid to CBSG by Seller/Merchant's irrevocably authorizing only one depositing account acceptable to CBSG (the "Account") to remit the Daily Specified Amount from the Seller/Merchant's receipts until such time as CBSG receives payment in full of the Receipts Purchased Amount. In consideration of servicing the account, the Seller/Merchant hereby authorizes CBSG to ACH debit the "Specified Daily Amount" from the merchant's bank account, as an approximation of the base payment due under the Specified Percentage. It is the Seller/Merchant's responsibility to provide bank statements for any and all bank accounts by the Merchant to reconcile the daily payments made against the Daily Specified Amount. Failure to provide all of their bank statements in a timely manner or missing a month shall forfeit all rights to future reconciliations. CBSG may, upon Seller/Merchant's request, adjust the amount of any payment due under this Agreement at CBSG's sole discretion and as it deems appropriate in servicing this Agreement. Seller/Merchant warrants that it will ensure that funds adequate to cover the amount to be debited by CBSG remains in the account. Seller/Merchant will be held responsible for any fees incurred by CBSG resulting from a rejected ACH attempt or an event of default. (See Appendix A). CBSG is not responsible for any overdrafts or rejected transactions in the Seller/Merchants account which may result from CBSG's scheduled ACH debit under the terms of this agreement. Notwithstanding anything to the contrary in this Agreement or any other agreement between CBSG and Seller/Merchant, upon the violation of any provision contained in Sections I and II of the FACTORING AGREEMENT, shall be deemed a breach of the representations and warranties contained herein. A list of all fees applicable under this FACTORING AGREEMENT is contained in Appendix A.

Purchase Price: \$187,814.77 Specified Percentage: 10% Daily Specified Amount: \$983.56 for 267 days Receipts Purchased Amount: \$262,940.68

***SEE SCHEDULE A**

***Wire to merchant to be less payoff for CBSG and any applicable fees**

THE TERMS, DEFINITIONS, CONDITIONS AND INFORMATION SET FORTH ON PAGES 2 THROUGH 12 HEREOF ARE HERBY INCORPORATED HEREIN AND MADE A PART OF THIS FACTORING AGREEMENT.

FOR THE SELLER/MERCHANT
By: DEBRA HOUSER, OWNER
Name and Title
X debra houser ← [REDACTED]
(Seller/Merchant Signature)

FOR THE SELLER/MERCHANT
By: DEBRA HOUSER, OWNER
Name and Title
X debra houser ← [REDACTED]
(Seller/Merchant Signature)

FOR THE SELLER/MERCHANT
By: GREG HOUSER, OWNER
Name and Title
X [Signature] ← [REDACTED]
(Seller/Merchant Signature)

FOR THE SELLER/MERCHANT
By: GREG HOUSER, OWNER
Name and Title
X [Signature] ← [REDACTED]
(Seller/Merchant Signature)

COMPLETE BUSINESS SOLUTIONS GROUP, INC.

By _____
Company Officer

To the extent set forth herein, each of the parties is obligated upon his/ her or its execution of the Agreement to all terms of the Agreement, including the Additional Terms set forth below. Each individual executing this Agreement represents that he or she is authorized to sign this Agreement for Merchant, legally binding said Merchant to honor the terms of this obligation and that the information provided herein and in all of CBSG documents, forms and recorded interviews is true, accurate



22 N 3RD Street Philadelphia, Pennsylvania 19106
Phone: 215-922-2636 Fax: 888-305-7562

and complete in all respects. If any such information is false or misleading, Merchant shall be deemed in material breach of all agreements and the representations and warranties contained herein between Merchant and CBSG and CBSG shall be entitled to all remedies available under law. Merchant and each of the above-signed Officers/ Owners authorizes CBSG, its agents and representatives and any credit-reporting agency engaged by CBSG, to (i) investigate any references given or any other statements or data obtained from or about Merchant or any of its Owners for the purpose of this Agreement, and (ii) pull credit report at any time now or for so long as Merchant and/Owner(s) continue to have any obligation owed to CBSG.

ANY MISREPRESENTATION MADE BY SELLER/MERCHANT OR OWNER IN CONNECTION WITH THIS AGREEMENT MAY CONSTITUTE A SEPARATE CAUSE OF ACTION FOR FRAUD OR INTENTIONAL MISREPRESENTATION
FACTORING AGREEMENT TERMS AND CONDITIONS

I. GENERAL TERMS OF AGREEMENT (MUTUAL REPRESENTATIONS AND WARRANTIES)

1.1 Electronic Fund Transfer. Upon request from PURCHASER ("hereinafter CBSG or Purchaser") Seller/Merchant ("hereinafter Merchant") shall execute such forms or agreements acceptable to PURCHASER, with Bank acceptable to PURCHASER, to obtain electronic fund transfer services. Merchant shall provide PURCHASER, and/or its authorized agent with all the information, authorization and passwords necessary for verifying Merchant's receivable, receipts and deposits into the account Merchant shall authorize PURCHASER and/or its agent to deduct the amounts owed to PURCHASER for the Receipts as specified herein from settlement amounts which would otherwise be due to Merchant from electronic check transactions and to pay such amounts to PURCHASER by permitting PURCHASER to withdraw the SPECIFIED DAILY AMOUNT by ACH debiting of the account. The authorization shall be irrevocable without the written consent of PURCHASER.

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

1.3 Term of Agreement. This Agreement shall have a term as set forth above. Upon the expiration of the term, this Agreement shall automatically renew for successive similar terms, provided, however, that during the renewal term(s) Merchant may terminate this Agreement upon ninety days' prior written notice (effective upon receipt) to PURCHASER. The termination of this Agreement shall not affect Merchant's responsibility to satisfy all outstanding obligations to PURCHASER at the time of termination.

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

1.5 Financial Condition. Merchant authorize PURCHASER and its agents to investigate their financial responsibility and history, and will provide to PURCHASER any bank or financial statements, tax returns, etc., as PURCHASER deems necessary prior to or at any time after execution of this Agreement. A photocopy of this authorization will be deemed as acceptable for release of financial information. PURCHASER is authorized to update

such information and financial profiles from time to time as it deems appropriate.

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

1.7 Indemnification. Merchant jointly and severally indemnify and hold harmless Processor, its officers, directors and shareholders against all losses, damages, claims, liabilities and expenses (including reasonable attorney's fees)

incurred by Processor resulting from (a) claims asserted by PURCHASER for monies owed to PURCHASER from Merchant and (b) actions taken by Processor in reliance upon information or instructions provided by PURCHASER.

1.8 No Liability. In no event will CBSG be liable for any claims asserted by Merchant under any legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is waived by Merchant.

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

1.10 Sale of Receipts. Merchant and CBSG agree that the Purchase Price under this Agreement is in exchange for the Purchased Amount and that such Purchase Price is not intended to be, nor shall it be construed as a loan from PURCHASER to Merchant. Merchant agrees that the Purchase Price is in exchange for Future Receipts pursuant to this Agreement equals the fair market value of such Receipts. PURCHASER has purchased and shall own all the Receipts described in this Agreement up to the full Purchased Amount as the Receipts are created. Payments made to PURCHASER with respect to the full amount of the Receipts shall be conditioned upon Merchant's sale of products and services and the payment therefore by Merchant's customers in the manner provided in Section 1.1. IN NO EVENT SHALL THE AGGREGATE OF THE AMOUNTS RECEIVED BE DEEMED AS INTEREST HEREUNDER. In the event that a court determines that PURCHASER has charged or received interest hereunder, and that said amount is in excess of the highest applicable rate, the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by applicable law and PURCHASER shall promptly refund to Merchant any interest received by PURCHASER in excess of the maximum lawful rate, it being intended that Merchant not pay or contract to pay, and that PURCHASER not receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by Merchant under applicable law. MERCHANT ACKNOWLEDGES THAT PENNSYLVANIA LAW APPLIES TO THE WITHIN AGREEMENT.

1.11 Monthly Assessment of Merchant Cash Flow Merchant hereby authorizes PURCHASER to initiate one or more ACH debits at the specified "Daily

Retrieval Rate" from the Account as an approximation of the base payment due under the Specified Percentage. It is the Merchant's responsibility to provide financial information (e.g. bank statements, credit card processing statements, general ledger) regarding its gross receivables, to reconcile the daily payments made against the Specified Percentage, permitting PURCHASER to debit or credit the difference to Merchant on a monthly basis so that the Daily Retrieval Rate equals the Specified Percentage.

1.12 Power of Attorney Merchant irrevocably appoints PURCHASER as its agent and attorney-in-fact with full authority to take any action or execute any instrument or document to settle all obligations due to PURCHASER from Processor, or in the case of a violation by Merchant of Section 1.12 or the occurrence of an Event of Default under Section 4 hereof, from Merchant, under this Agreement, including without limitation (i) to obtain and adjust insurance; (ii) to collect monies due or to become due under or in respect of any of the Collateral; (iii) to receive, endorse and collect any checks, notes, drafts, instruments, documents or chattel paper in connection with clause (i) or clause (ii) above; (iv) to sign Merchant's name on any invoice, bill of lading, or assignment directing customers or account debtors to make payment directly to PURCHASER; and (v) to file any claims or take any action or institute any proceeding which PURCHASER may deem necessary for the collection of any of the unpaid Purchased Amount from the Collateral, or otherwise to enforce its rights with respect to payment of the Purchased Amount.

1.13 Protections Against Default. Merchant represents and warrants that it will not violate Conditions (a) through (e) below and in the event of default thereunder the following Protections 1 through 8 may be invoked by PURCHASER, immediately and without notice to Merchant in the event: (a) Merchant takes any action to discourage the use of electronic check processing that are settled through Processor, or permits any event to occur that could have an adverse effect on the use, acceptance, or authorization of checks for the purchase of Merchant's services and products including but not limited to direct deposit of any checks into a bank account without scanning into the PURCHASER electronic check processor; (b) Merchant changes its arrangements with Processor in any way that is adverse to PURCHASER; (c) Merchant changes the electronic check processor through which the Receipts are settled from Processor to another electronic check processor, or permits any event to occur that could cause diversion of any of Merchant's check transactions to another processor; (d) Merchant interrupts the operation of this business (other than adverse weather, natural disasters or acts of God) transfers, moves, sells, disposes, transfers or otherwise conveys its business or assets without (i) the express prior written consent of PURCHASER, and (ii) the written agreement of any purchaser or transferee to the assumption of all of Merchant's obligations under this Agreement pursuant to documentation satisfactory to PURCHASER; or (e) Merchant takes any action, fails to take any action, or offers any incentive—economic or otherwise—the result of which will be to induce any

Merchant Initials

[Handwritten Signature]

Merchant Initials

[Handwritten Signature]



22 N 3RD Street Philadelphia, Pennsylvania 19106
Phone: 215-922-2636 Fax: 888-305-7562

customer or customers to pay for Merchant's services with any means other than checks that are settled through Processor. These protections are in addition to any other remedies available to PURCHASER at law, in equity or otherwise pursuant to this Agreement.

Protection 1. The full uncollected Purchase Amount plus all fees due under this Agreement and the attached Security Agreement become due and payable in full immediately.

Protection 2. Upon breach of ANY MATERIAL PROVISION OR BREACH OF REPRESENTATIONS AND WARRANTIES in this Agreement, PURCHASER may enter that confession of judgment (judgment) with the Clerk of the Court and execute thereon.

Protection 3. Purchaser may enforce its security interest in the Collateral identified in Article III hereof.

Protection 4. The entire Unpaid Purchase Amount shall become immediately refundable to PURCHASER from Merchant.

Protection 5. Purchaser may proceed to protect and enforce its rights and remedies by lawsuit. In any such lawsuit, in which Purchaser shall recover judgment against Merchant, Merchant shall be liable for the full costs of PURCHASER'S legal action, including all reasonable attorneys' fees and court costs.

Protection 6. Merchant shall, upon execution of this Agreement, deliver to PURCHASER an executed assignment of lease of Merchant's premises in favor of CBSG. Upon breach of any provision in this paragraph 1.13, PURCHASER may exercise its rights under such assignment of lease.

Protection 7. PURCHASER may debit Merchant's depository accounts wherever situated by means of ACH debit or facsimile signature on a computer-generated check drawn on Merchant's bank account.

Protection 8. In the event Merchant changes or permits the change of the Processor approved by CBSG, or adds an additional Processor, in violation of Section 1.11 above, CBSG shall have the right, without waiving any of its rights and remedies and without notice to Merchant, to notify the new or additional Processor of the sale of the Receipts hereunder and to direct such new or additional Processor to make payment directly to CBSG of all or any portion of the amount received by such Processor.

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

1.15 Confidentiality. Merchant understands and agrees that the terms and conditions of the products and services offered by PURCHASER, including this Agreement and any other PURCHASER documentations (collectively, "Confidential Information") are proprietary and confidential information of PURCHASER. Accordingly, unless disclosure is required by law or court order, Merchant shall not disclose Confidential Information of PURCHASER to any person other than an attorney, accountant, financial advisor or employee of Merchant who needs to know such information for the purpose of

advising Merchant ("Advisor"), provided such Advisor uses such information solely for the purpose of advising Merchant and first agrees in writing to be bound by the terms of this Section 1.13.

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

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

2.1 Financial Condition and Financial Information. Bank and financial statements, and future statements furnished to PURCHASER, fairly represent the financial condition of Merchant at such dates. Merchant has a continuing, affirmative obligation to advise PURCHASER of any material or adverse change in its financial condition, operation or ownership. PURCHASER may request statements at any time during the performance of this Agreement and the Merchant shall provide them to PURCHASER within 5 business days. Merchant's failure to do so is a material breach of this Agreement.

2.2 Governmental Approvals. Merchant is in compliance and shall comply with all laws and has valid permits, authorizations and licenses to own, operate and lease its properties and to conduct the business in which it is presently engaged.

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

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

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

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

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

2.8 Estoppel Certificate. Merchant will at any time, and from time to time, upon at least one (1) day's prior notice from PURCHASER to Merchant, execute, acknowledge and deliver to PURCHASER and/or to any other person, person firm or corporation specified by PURCHASER, a statement certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and stating the dates which the Purchased Amount or any portion thereof has been repaid.

2.9 No Bankruptcy. As of the date of this Agreement, Merchant does not contemplate and has not filed any petition for bankruptcy protection under Title 11 of the United States Code and there has been no involuntary petition brought or pending against Merchant.

Merchant further warrants that it does not anticipate filing any such bankruptcy petition and it does not anticipate that an involuntary petition will be filed against it. In the event that the Merchant files for bankruptcy protection or is placed under an involuntary filing Protections 2 and 3 are immediately invoked.

2.10 Working Capital Funding. Merchant shall not enter into any arrangement, agreement or commitment that relates to or involves the Receipts, whether in the form of a purchase of, a loan against, collateral against or the sale or purchase of credits against, Receipts or future check sales with any party other than PURCHASER.

2.11 Unencumbered Receipts. Merchant has good, complete and marketable title to all Receipts, free and clear of any and all liabilities, liens, claims, changes, restrictions, conditions, options, rights, mortgages, security interests, equities, pledges and encumbrances of any kind or nature whatsoever or any other rights or interests that may be inconsistent with the transactions contemplated with, or adverse to the interests of PURCHASER.

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

2.13 Default under Other Contracts. Merchant's execution of and/or performance under this Agreement will not cause or create an event of default by Merchant under any contract with another person or entity.

2.14 3rd Party Negotiators with Regard to This Agreement and the Obligations Herein. Merchant hereby agrees not to retain any 3rd party negotiators, consolidators, or credit relief agencies with regard to its obligations under the terms of this Agreement. Merchant will maintain and allow direct communication with PURCHASER at all times during the course of this Agreement and shall not engage any 3rd party to negotiate its obligations as stated in this Agreement. Should Merchant violate this subsection 2.14, Merchant will be liable for the additional fee as specific in the attached Appendix A.

III. EVENTS OF BREACH OF REPRESENTATIONS, WARRANTIES, AND COVENANTS AND REMEDIES

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

[Handwritten Signature]

[Handwritten Signature]



22 N 3RD Street Philadelphia, Pennsylvania 19106
Phone: 215-922-2636 Fax: 888-305-7562

of any Collateral granted under this Agreement; (l) Merchant shall engage a third party to renegotiate the terms of this Agreement on Merchant's behalf; (m) Merchant shall engage a third party in an attempt to cease direct communication and/or contact with PURCHASER; or (n) Merchant shall default under any of the terms, covenants and conditions of any other agreement with PURCHASER.

3.2 Remedies. In case any Event of a Breach of Representations, Warranties and Covenants, Default occurs and is not waived pursuant to Section 4.4 hereof, PURCHASER may proceed to protect and enforce its rights or remedies by suit in equity or by action at law, or both, whether for the specific performance of any covenant, agreement or other provision contained herein, or to enforce the discharge of Merchant's obligations hereunder or any other legal or equitable right or remedy. IN THE EVENT OF VIOLATION OF THE REPRESENTATIONS AND WARRANTIES BY MERCHANT, PURCHASER may also file a Complaint in Confession of Judgment pursuant to the Warrant of Attorney contained herein. All rights, powers and remedies of PURCHASER in connection with this Agreement may be exercised at any time by PURCHASER after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

3.3 Consent to Sale/Transfer of Interest: In event of MERCHANT breach of warranties, covenants and representations under this Agreement, Merchant consents to PURCHASER'S sale or transfer of its remaining interests in MERCHANT'S receivables to a third party buyer of defaulted financial obligations and instruments. More specifically, MERCHANT recognizes PURCHASER'S authority to sell its interests in said receivables to New York Unity Factor, LLC ("NYUF") which MERCHANT authorizes to pursue legal remedies in NYUF's home State of New York in the event of a breach of the warranties, covenants, and representations stated under this Agreement.

3.4 WARRANT OF ATTORNEY TO CONFESS JUDGMENT. UPON THE OCCURRENCE OF A VIOLATION OF THE REPRESENTATIONS AND WARRANTIES MADE HERETOFORE BY MERCHANT, MERCHANT IRREVOCABLY AUTHORIZE AND EMPOWER ANY ATTORNEY OR ANY CLERK OF ANY COURT OF RECORD, TO APPEAR FOR AND CONFESS JUDGMENT AGAINST MERCHANT FOR SUCH SUMS AS ARE DUE AND/OR MAY BECOME DUE UNDER THIS MERCHANT AGREEMENT OR ANY ACCOMPANYING DOCUMENTS, WITH OR WITHOUT DECLARATION, WITH COSTS OF SUIT, WITHOUT STAY OF EXECUTION AND WITH AN AMOUNT, FOR LIEN PRIORITY PURPOSES, EQUAL TO TEN PERCENT (10%) OF THE AMOUNT OF SUCH JUDGMENT, BUT NOT LESS THAN ONE THOUSAND DOLLARS (\$1,000.00), ADDED FOR ATTORNEYS' COLLECTION FEES, WITH THE ACTUAL AMOUNT OF ATTORNEY'S FEES AND COSTS TO BE DETERMINED IN ACCORDANCE WITH THE SECTION OF THIS MERCHANT AGREEMENT "ATTORNEY'S FEES AND COLLECTION COSTS." TO THE EXTENT PERMITTED BY LAW, MERCHANT: (1) WAIVE THE RIGHT OF INQUISITION ON ANY REAL ESTATE LEVIED ON, VOLUNTARILY CONDEMNNS THE SAME, AUTHORIZES THE PROTHONOTARY OR CLERK TO ENTER

UPON THE WRIT OF EXECUTION THIS VOLUNTARY CONDEMNATION AND AGREES THAT ANY REAL ESTATE MAY BE SOLD ON A WRIT OF EXECUTION; (2) WAIVE AND RELEASE ALL RELIEF FROM ALL APPRAISEMENT, STAY, EXEMPTION OR APPEAL LAWS OF ANY STATE NOW IN FORCE OR HEREINAFTER ENACTED; AND (3) RELEASE ALL ERRORS IN SUCH PROCEEDINGS. IF A COPY OF THIS MERCHANT AGREEMENT, VERIFIED BY AFFIDAVIT BY OR ON BEHALF OF PURCHASER SHALL HAVE BEEN FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL MERCHANT AGREEMENT AS A WARRANT OF ATTORNEY. THE AUTHORITY AND POWER TO APPEAR FOR AND CONFESS JUDGMENT AGAINST MERCHANT SHALL NOT BE EXHAUSTED BY THE INITIAL EXERCISE THEREOF AND MAY BE EXERCISED AS OFTEN AS PURCHASER SHALL FIND IT NECESSARY AND DESIRABLE AND THIS BUSINESS CASH ADVANCE AND SECURITY AGREEMENT SHALL BE A SUFFICIENT WARRANT THEREFOR. PURCHASER MAY CONFESS ONE OR MORE JUDGMENTS IN THE SAME OR DIFFERENT JURISDICTIONS FOR ALL OR ANY PART OF THE AMOUNTS OWING HEREUNDER, WITHOUT REGARD TO WHETHER JUDGMENT HAS THERETOFORE BEEN CONFESSED ON MORE THAN ONE OCCASION FOR THE SAME AMOUNTS. IN THE EVENT ANY JUDGMENT CONFESSED AGAINST THE MERCHANT HEREUNDER IS STRICKEN OR OPENED UPON APPLICATION BY OR ON MERCHANT'S BEHALF FOR ANY REASON, PURCHASER IS HEREBY AUTHORIZED AND EMPOWERED TO AGAIN APPEAR FOR AND CONFESS JUDGMENT AGAINST MERCHANT FOR ANY PART OR ALL OF THE AMOUNTS OWED HEREUNDER, AS PROVIDED FOR HEREIN, IF DOING SO WILL CURE ANY ERRORS AND DEFECTS IN SUCH PRIOR PROCEEDINGS.

3.41 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FACTORING AGREEMENT, THE CONFESSION OF JUDGMENT, THE SECURITY AGREEMENT, OR ANY OTHER DOCUMENTS EXECUTED BY MERCHANT IN CONNECTION WITH THE ADVANCE OF FUNDS TO SELLER, ALL PARTIES ACKNOWLEDGE THAT RECOURSE TO THE MERCHANT AND THE MERCHANT'S ASSETS IS PERMITTED ONLY FOR BREACHES OF THE REPRESENTATIONS AND WARRANTIES MADE BY THE SELLER IN THE FACTORING AGREEMENT.

3.5 Costs. Merchant shall pay to PURCHASER all reasonable costs associated with (a) a breach by Merchant of the Covenants in this Agreement and the enforcement thereof, and (b) the enforcement of PURCHASER'S remedies set forth in Section 4.2 above, including but not limited to court costs and attorneys' fees.

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

IV. MISCELLANEOUS

4.1 Modifications; Agreements. No modification, amendment, waiver or consent of any provision of this Agreement shall be effective unless the same shall be in writing and signed by PURCHASER.

4.2 Assignment. PURCHASER may assign, transfer or sell its rights to receive the Purchased Amount or delegate its duties hereunder, either in whole or in part.
4.3 Notices. All notices, requests, consent, demands and other communications hereunder shall be delivered by certified mail, return receipt requested, to the respective parties to this Agreement at the addresses set forth in this Agreement and shall become effective only upon receipt.

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

4.5 Merchant/Guarantor(s) barred from transfer. This Agreement shall be binding upon and inure to the benefit of Merchant, PURCHASER and their respective successors and assigns, except that Merchant shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of PURCHASER which consent may be withheld in PURCHASER'S sole discretion. PURCHASER reserves the rights to assign this Agreement with or without prior written notice to Merchant or Guarantor(s).

4.6 Governing Law/Jurisdiction/Venue for disputes. All signatories to this Agreement consent that this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regards to any applicable principals of conflicts of law. Any suit, action or proceeding arising hereunder, or the interpretation, performance or breach hereof, shall, if PURCHASER so elects, be instituted in the Court of Common Pleas, Philadelphia County, Federal Court for the Eastern District of Pennsylvania, or the Philadelphia County Municipal Court, (the "Acceptable Forums"). Merchant agrees that the Acceptable Forums are convenient to it, and submits to the jurisdiction of the Acceptable Forums and waives any and all objections to jurisdiction or venue. Should such proceeding be initiated in any other forum, Merchant waives any right to oppose any motion or application made by PURCHASER to transfer such proceeding to an Acceptable Forum.

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

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

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

ll

GH



22 N 3RD Street Philadelphia, Pennsylvania 19106
Phone: 215-922-2636 Fax: 888-305-7562

4.10 JURY TRIAL WAIVER. THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING IN CONNECTION WITH OR IN ANY WAY RELATED TO THE TRANSACTIONS OF WHICH THIS AGREEMENT IS A PART OR THE ENFORCEMENT HEREOF. THE PARTIES HERETO ACKNOWLEDGE THAT EACH MAKES THIS WAIVER KNOWINGLY, WILLINGLY AND VOLUNTARILY AND WITHOUT DURESS, AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH THEIR ATTORNEYS.

4.11 CLASS ACTION WAIVER. THE PARTIES HERETO WAIVE ANY RIGHT TO ASSERT ANY CLAIMS AGAINST THE OTHER PARTY AS A REPRESENTATIVE OR MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW AGAINST PUBLIC POLICY. TO THE EXTENT EITHER PARTY IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST THE OTHER, THE PARTIES HEREBY AGREE THAT: (1) THE PREVAILING PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS OR REPRESENTATIVE ACTION (NOT WITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT); AND (2) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS OR REPRESENTATIVE ACTION.

4.12 Counterparts & Facsimile/Email Signatures. This Agreement may be executed in any number of counterparts each of which shall be deemed to be an original, all of which together shall be deemed one and the same instrument. Further, facsimile and email signatures shall be deemed to be originals for all purposes.

Merchant Initials DS dh Merchant Initials DS GH