

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

IN RE:

**RFI Management, Inc.
DEBTOR**

CHAPTER 11

CASE NO. 17-80247

**AMENDED EMERGENCY MOTION FOR AUTHORITY
TO USE CASH COLLATERAL**

RFI Management, Inc. (the “Debtor” or “RFI”) moves the Court pursuant to 11 U.S.C. § 363 and Rule 4001 of the Federal Rules of Bankruptcy Procedure for an Order authorizing it to use cash collateral pursuant to 11 U.S.C. § 363. In support of this motion, the Debtor shows the Court:

1. On March 29, 2017 (the “Petition Date”), the Debtor filed a voluntary petition seeking relief under Chapter 11 of the Bankruptcy Code. The Debtor continues in possession of its assets as debtor-in-possession. No official committee of unsecured creditors has been appointed.

2. The Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §§ 151, 157 and 1334 and this is a core proceeding within 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

3. RFI works as a subcontractor installing a full range of flooring products and wall materials, principally in Hotel Properties across the United States and in Puerto Rico.

4. The Debtor experienced rapid growth in the past two years, but also has had serious cash flow issues. This led to the Debtor's taking out a series of short-term, high-interest loans that temporarily relieved cash flow pressures, but ultimately increased them.

5. The Debtor does not believe that any creditor has a lien on cash collateral as that term is defined in Section 363(a) of the Bankruptcy Code. In the event that a creditor does have a lien on cash collateral, the Debtor asserts that the value of any such lien is *de minimus*. Accordingly, Debtor is filing this Motion in an abundance of caution and to propose that any creditor asserting a lien on cash collateral receive a replacement lien to the same extent, validity and priority as existed prior to the Petition Date.

6. On or about November 16, 2016 the Debtor entered into a document styled a "Future Receivables Sale Agreement" with Swift Financial Corporation ("Swift") (the "Agreement"). Under the terms of the Agreement the Debtor sold Swift \$176,850.00 for 14% of "Future Receivables." The Agreement has no interest rate and no fixed time to collect these Future Receivables. A copy of the Agreement is attached as Exhibit 1.

Notwithstanding the Agreement, All Accounts Receivable Currently Due to the Debtor Are Property of the Estate

7. The Agreement purports to transfer some portion of the Debtor's "Future Receivables" as of November 16, 2016. Article 9 of the Uniform Commercial Code, as codified in both Delaware and North Carolina law, applies to any sale of accounts. 6 *Del. C.* § 9-190(a)(3); N.C. Gen. Stat. § 25-9-109(a)(3); *see, e.g., In re Clean Burn Fuels, LLC*, 492 B.R. 445, 457 (Bankr. M.D.N.C. 2013) ("Although Article 9 generally applies to transactions intending to create security interests, it also applies to sales transactions that create the same risks of secret liens as Article 9 transactions.").

8. The Agreement refers to both a dollar amount of receivables sold (\$176,850.00) and a percentage of receivables sold (14%). Exh. 1, Page 1. These references are not consistent, meaning that no data existed or was exchanged indicating that \$176,850.00 constituted 14% of receivables or that 14% of receivables amounted to \$176,850.00.

9. The ambiguity in the description of the collateral sold is material. The contradictory descriptions in the Agreement do not allow Swift to accurately identify what property it contends is not property of the estate. *See 6 Del. C. § 9-203(b)(3)(A); N.C. Gen. Stat. § 25-9-203(b)(3)(a).*

10. The inaccuracy of the description of the collateral sold continues in the UCC1 Financing Statement filed by CHTD Company¹ against RFI Management Inc. on November 16, 2016. A copy of the UCC1 is attached as Exhibit 2. Even assuming that the UCC1 was properly filed on Swift's behalf (and the Debtor does not concede this), it is insufficient to perfect any purported sale of the Debtor's receivables. The UCC1 contains the following description of collateral:

Present and future accounts, receivables, chattel paper, deposit accounts, personal property, assets and fixtures, general intangibles, instruments, equipment and inventory (as those terms are defined in Article 9 of the Uniform Commercial Code ("UCC"), wherever located and with respect to these items, all proceeds now or hereafter owned or acquired by you (collectively, the "Collateral").

The description in the financing statement is inconsistent with the already ambiguous description of the collateral purportedly transferred. The Agreement describes the collateral transferred as

¹ There is no corporation or limited liability company registered to do business as "CHTD Company" in the state of North Carolina, no certificate of assumed name filed with the North Carolina Secretary of State, no indication that CHTD Company is a representative of Swift and no indication that CHTD Company has been assigned the debt.

“Future Receivables,” which is defined as receivables that are “received by the Business after this Agreement becomes effective.” Exh. 1, Section 1(f). In other words, what is transferred is actual cash that the Debtor receives, as opposed to a right to payment. The UCC1 financing statement contains a list of categories of collateral that mirrors a section of the Agreement that discusses a security interest the Debtor purportedly granted – *not* a sale. *See* Exh. 1, Section 12. *None* of those categories match the definition that Swift has given to “Future Receivables.” In addition, Section 7 of the UCC1 gives a creditor the ability to indicate that this is recording a transaction between seller and buyer – and that section is blank.

11. Absent the filing of a proper financing statement, the Debtor retains all rights to the accounts receivable that were purportedly transferred: “For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.” 6 *Del. C.* § 9-318(b); N.C. Gen. Stat. § 25-9-318(b).

12. Even if the descriptions of the collateral purportedly transferred are adequate, the future interest in accounts transferred that the Debtor retains under Article 9 is sufficient to include such accounts as property of the estate under 11 U.S.C. § 541. As previously noted, a creditor/purchaser must file a financing statement to perfect a transfer of accounts. Financing statements expire after 5 years and the creditor/purchaser must file a continuation statement to retain its interest in the accounts. 6 *Del. C.* 9-515(a), (c); N.C. Gen. Stat. § 25-9-515(a), (c). As a result, the Debtor retains a future interest in the accounts; *i.e.*, there is an inherent possibility that the Debtor (and its available strong-arm powers of 11 U.S.C. § 544) will regain the power to sell the accounts again to a bona fide purchaser for value. Such future interest constitutes an

interest in property sufficient to bring any purportedly transferred accounts under the definition of property of the estate contained in 11 U.S.C. § 541(a).

13. Further, the Agreement defines “Future Receivables” as “any Receivables received by the Business after this Agreement becomes effective.” The receivables listed in the petition, while owed to the Debtor, are inchoate and were not received by the Debtor before it filed. They do not meet the Agreement’s definition of “Future Receivables” and thus were not transferred under the Agreement.

14. In the Agreement, Swift concedes that it is “entering into this Agreement knowing the risks that [RFI’s] business may slow down or fail, and [Swift] assumes these risks... .” Exh. 1, Section 2. The Northern District of Texas, describing a similar agreement, described it as “a *series* of account purchase transactions.” Express Working Capital, LLC v. Starving Students, Inc., 28 F. Supp. 3d 660, 671 (N.D. Tex. 2014) (emphasis added). There has not been a completed transaction – rather a series of purchase transactions, some of which have been complete, some of which have not.

The Extent of Any Security Interest Held by Swift is Ambiguous

15. In its Objection to the Debtor’s Motion seeking to use cash collateral, Swift states that if the purportedly transferred accounts remain property of the estate, Swift should be considered a secured creditor with respect to the Debtor’s assets. While the Agreement does include the grant of a security interest, it is not at all clear what obligation that interest secures.

16. The Agreement states that “[t]here is no interest rate nor any fixed time period during which the Amount Sold must be collected by Purchaser. Purchaser is entering into this Agreement knowing the risks that Business’s business may slow down or fail, and Purchaser

assumes these risks based on Business's representations, warranties and covenants set forth in this Agreement, which are designed to give Purchaser a reasonable and fair opportunity to receive the benefit of its bargain." Exh. 1, Section 2. The representations and warranties that Swift acknowledges will provide adequate protection of its interests are designed to ensure that the Debtor continues to operate and use capital for business purposes. In the Agreement, Swift admitted that it was taking the risk of receiving payments over what could be a very long time. The fact that the Debtor is now operating as a debtor-in-possession under Chapter 11, with all of the accompanying duties and reporting requirements, is alone sufficient to provide adequate protection of Swift's interests.

General Provisions

17. The Debtor reserves for itself and any trustee subsequently appointed in this Chapter 11 proceeding or in any subsequent Chapter 7 proceeding, any and all rights to challenge, avoid, object to, set aside or subordinate any claims, liens, security interests or rights of setoff against the Debtor's property, or the rents, profits and income generated therefrom.

18. The Debtor is currently anticipating a continuation of operations by way of this proposed reorganization. The Debtor believes that in order to maintain existing operations and retain maximum value of its business, the Debtor will be required to incur certain operating expenses. The Debtor's only significant source of income is through continued business operations and the resulting accounts receivable generated by them. The Debtor has no other readily available cash with which to operate its business. As a result, the Debtor respectfully requests a preliminary hearing on this Motion to avoid closing operations down and immediate, irreparable harm to the Estate.

19. The Debtor represents that a reorganization and continuation of its operations will generate the greatest source of funds for creditors, including Swift. The Debtor will require access to the cash collateral generated by its business operations to continue operations.

20. Furthermore, if Debtor's use of cash collateral is not immediately approved, the Estate will suffer immediate and irreparable harm because it will not be able to pay its expenses from funds generated by business operations.

21. The Debtor is not aware of any other liens or security interests that could constitute "cash collateral" as that term is defined in the Bankruptcy Code.

22. Rule 4001(b)(2) of the Bankruptcy Rules states:

Hearing. The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Pursuant to Rule 4001, the Debtor respectfully requests a preliminary hearing authorizing it to use cash collateral as specified in this Motion.

23. The Debtor seeks authority to use cash collateral through and including the effective date of a confirmed plan of reorganization or liquidation, a sale of substantially all assets of the estate, or the appointment of a trustee or examiner or conversion of the case to Chapter 7, whichever may first occur; provided, however, without further notice and hearing the Debtor may not use cash collateral for any purpose other than (i) operations in the ordinary course of business, (ii) adequate protection payments (if any) to secured creditors, or (iii) payment of allowed administrative fees, costs, or expenses.

24. A copy of a proposed Order is attached to this Motion as Exhibit 3.

WHEREFORE, the Debtor respectfully requests that the Court:

1. Set a preliminary hearing on this Motion so that immediate harm to the Estate can be avoided.
2. Grant the Debtor leave to pay necessary expenses using current cash collateral generated by its business operations;
3. Grant, as adequate protection, a replacement lien equal in extent, validity, and priority to the lien held by the secured party as of the Petition Date;
4. Enter an Order authorizing the Debtor's use of cash collateral in accordance with 11 U.S.C. § 363; and
5. Grant such other relief as the Court may deem necessary and proper.

Dated: April 4, 2017

PARRY TYNDALL WHITE

/s/ James C. White

James C. White, N.C. Bar # 31859

Michelle M. Walker, N.C. Bar # 41664

100 Europa Drive, Ste 401

Chapel Hill, NC 27517

jwhite@ptwfirm.com

(919)246-4676

(919) 246-9113 fax

ATTORNEYS FOR DEBTOR



FUTURE RECEIVABLES SALE AGREEMENT

Date:	November 16, 2016
Business: RFI Management Inc 704 constitution dr, unit c durham NC 27705	

PURCHASE SUMMARY

Purchase Price: The dollar amount paid to Business that Purchaser is paying now for the Amount Sold.	\$ 150000.00 (1)
Amount Sold: The dollar amount of the Future Receivables that are being sold to Purchaser.	\$ 176850.00 (2)
Origination Fee Percentage: (2.500% of Line 1) The dollar amount deducted from Business's Remittance Account the first business day after Business receives the Purchase Price.	\$ 3750.00 (3)

REMITTANCE SUMMARY

Remittance Frequency Expected frequency the Collected Amount is withdrawn from the Business's Remittance Account.	Weekly (4)
Collected Amount: Dollar amount anticipated to be collected from Business's Remittance Account at the specified Remittance Frequency based upon the Purchased Percentage. The Collected Amount is not a fixed remittance amount and is subject to change pursuant to the Future Receivables actually generated by Business and the Alternative Remittance Amount provisions of Section 3(c) of the Terms and Conditions.	\$ 3684.38 (5)
Purchased Percentage: The percentage of Business's Future Receivables that are being sold to Purchaser. (Please note that this is <u>not</u> an interest rate).	14.00% (6)

DS
ER

Purchaser: Swift Financial Corporation, 3505 Silverside, Suite 200, Wilmington, DE 19810

- A. By signing below (either manually or electronically), you, the undersigned: (1) represent that you are authorized to bind the Business to the terms and conditions of this Agreement; (2) agree that the Purchase Price will be used solely for business purposes and not for personal, family or household purposes; (3) acknowledge that you have read and understand this entire Agreement, including, without limitation, the above Purchase Summary, Remittance Summary, and the Additional Terms and Conditions (including the Arbitration Provision), and the Remittance Authorization; (4) agree to all the terms and conditions of this Agreement on behalf of the Business; and (5) acknowledge that signing any other person's name below, without such person's express consent, constitutes fraud.
- B. This Agreement and the resulting sale of Business's Future Receivables is a commercial transaction. Because this is a sale and not a loan, there is no defined repayment term, there is no specific date by which the entire Amount Sold must be delivered to Purchaser. If Business's business slows down and the delivery rate of Future Receivables decreases or if Business's business closes (and in each case Business has not otherwise violated the terms of this Agreement), there will not be an Event of Default under this Agreement.
- C. Purchaser's obligations under this Agreement will not be effective unless and until Purchaser has completed its review of the Business and paid the Purchase Price to Business.
- D. **BUSINESS CANNOT SELL ITS FUTURE RECEIVABLES TO ANYONE ELSE OR ENTER INTO A FINANCING ARRANGEMENT REQUIRING DAILY OR WEEKLY REMITTANCES DURING THE TERM OF THIS AGREEMENT WITHOUT PURCHASER'S PRIOR WRITTEN CONSENT. VIOLATION OF THIS REQUIREMENT WILL RESULT IN AN EVENT OF DEFAULT AND THE ASSESSMENT OF CERTAIN FEES.**

On Behalf of Business:

DocuSigned by:
By: ER
2A48956379CC407...
Name (Print): Edward Rosa
Title: owner
Date: 11/16/2016

On Behalf of Business (if needed):

By: _____
Name (Print): _____
Title: _____
Date: _____

Guarantor:

DocuSigned by:
By: ER
2A48956379CC407...
Name (Print): Edward Rosa
Date: 11/16/2016

Guarantor:

By: _____
Name (Print): _____
Date: _____

Guarantor:

By: _____
Name (Print): _____
Date: _____

Swift Financial Corporation agrees to the terms of this Agreement:

By: Al Natali
Name: Al Natali
Title: Authorized Representative

Date: 11/16/2016

ADDITIONAL TERMS AND CONDITIONS

1. General Information and Definitions.

- (a) This Future Receivables Sale Agreement (this "Agreement") governs the terms of the purchase of Business's Future Receivables (the "Purchase") by Swift Financial Corporation aka Swift Capital, a Delaware corporation ("Swift" or "Purchaser").
- (b) The words "Purchaser", "we," "us" and "our" mean Swift and Swift's successors and assigns (and for purposes of the Arbitration Provision, the related persons identified in the Arbitration Provision).
- (c) The words "you," "your," "yours" and "Business" mean the entity identified as Business on the first page of this Agreement.
- (d) "Guarantor" means each person who signs this Agreement in his or her individual capacity as Guarantor.
- (e) "Notice Address" means Swift Capital, 3505 Silverside, Suite 200, Wilmington, DE 19810 or any updated notice address that we provide by notice to you at any time.
- (f) "Receivables" means any and all payment rights arising from or occurring as a result of your customers' purchases of goods and/or services from you, whether by cash, checks, money orders, electronic fund transfers ("EFTs"), payment cards (including, without limitation, credit cards, charge cards, debit cards, prepaid cards, benefit cards or similar cards), extensions of credit or any other forms of payment now known or hereinafter developed. "Future Receivables" refers to any Receivables received by Business after this Agreement becomes effective.
- (g) Certain other terms are defined above in the Purchase Summary, Remittance Summary, or are defined below, including in the Remittance Authorization.
- (h) The Arbitration Provision, authorization to check credit, express permission to contact you at any telephone number you provide to us, and consent to receive information electronically are all effective immediately as to Business and each Guarantor. The remainder of this Agreement becomes effective if, and only if, we, in our sole discretion, paid the Purchase Price. We may assign all or any part of this Agreement, and any rights, licenses, responsibilities and/or obligations contained herein without restriction or limitation. **YOU AGREE TO USE THE PURCHASE PRICE SOLELY FOR BUSINESS PURPOSES AND NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.**

2. Delivery of Future Receivables. In exchange for the Purchase Price, Business sells to Purchaser the Amount Sold. You shall deliver to us any and all amounts due under this Agreement, including, without limitation, the Purchased Percentage, or Alternative Remittance Amount if applicable, up to the Amount Sold, the Origination Fee (Line 3 of the Purchase Summary) and any and all applicable fees. There is no interest rate nor any fixed time period during which the Amount Sold must be collected by Purchaser. Purchaser is entering into this Agreement knowing the risks that Business's business may slow down or fail, and Purchaser assumes these risks based on Business's representations, warranties and covenants set forth in this Agreement, which are designed to give Purchaser a reasonable and fair opportunity to receive the benefit of its bargain.

3. Origination Fee and Remittances.

- (a) *Origination Fee:* The Origination Fee is due the first business day after we pay the Purchase Price to you. The Origination Fee is not refundable.
- (b) *Delivery of Future Receivables.* Until the Amount Sold is collected by us in full, along with any assessed fees, you shall deliver to us the Purchased Percentage, or the Alternative Remittance Amount if applicable, according to the Remittance Frequency. Your first remittance will be due either: (i) the first business day after you receive the Purchase Price if your Remittance Frequency is daily; or (ii) the first Weekly Remittance Day you specify in Exhibit A after you receive the Purchase Price, if your Remittance Frequency is weekly. If you do not select a Weekly Remittance Day, we will select one in our sole discretion. We may add the Returned Payment Fee or other fee(s) to any payment.

3 of 13 Initials of Individual Signer(s):

DS
ER

(c) **Alternative Remittance Amount.** At Purchaser's option, Purchaser may allow Business to make an "Alternative Remittance Amount" each payment day until Purchaser receives full delivery of the Amount Sold and any assessed fees. In such circumstances, Business shall deliver to Purchaser Business's monthly bank statements for all bank accounts (the "Bank Statements") within ten (10) days of Business's receipt thereof. If, upon Purchaser's receipt of Bank Statements, such Bank Statements reflect that Purchaser has collected from Business's Remittance Account(s) during such month an amount in excess of the Purchased Percentage of Business's Future Receivables for such month, Purchaser shall promptly credit the Business's Remittance Account with an amount equal to the difference between (i) the amount actually collected by Purchaser from the Business's Remittance Account during such month and (ii) an amount equal to the Purchased Percentage of Business's Future Receivables for such month. If, upon Purchaser's receipt of Bank Statements for all Bank Accounts for a given month, such Bank Statements reflect that Purchaser has collected from the Business's Remittance Account during such month an amount less than the Purchased Percentage of Business's Future Receivables for such month, Business shall promptly owe and deliver to Purchaser an amount equal to the difference between (i) the amount actually collected by the Purchaser from the Business's Remittance Account during such month and (ii) an amount equal to the Purchased Percentage of Business's Future Receivables for such month. If the amount collected from the Business's Remittance Account is within \$5 of the Purchased Percentage of Business's Future Receivables for such month, neither Purchaser nor Business is required to make additional transfers for that month. This right to make an Alternative Remittance Amount terminates once an Event of Default occurs.

4. **Fees.** Purchaser does NOT CHARGE ANY BROKER FEES to Businesses that sell their Future Receivables to Purchaser. If Business is charged such a fee, it is not being charged by Purchaser. Additionally, because this is not a loan, Purchaser does not charge any interest, finance charges, points, late fees or similar fees. To the extent permitted by applicable law, we will charge the following fees, in addition to the Origination Fee:

(a) **Returned Remittance Fee.** If for any reason any EFT or other remittance is returned unpaid or cannot be processed, we will charge a \$35 fee. We will charge this fee only once for any returned or dishonored remittance, regardless whether it is honored upon resubmission.

(b) **Collections Administration Fee.** Upon the occurrence of any Event of Default (as defined below), we will charge a fee in the amount of 10% of the then-current remaining Amount Sold at the time the fee is assessed, less any assessed fees.

(c) **Stacking Fee:** if Business sells any of Business's Future Receivables without Purchaser's prior written consent (including, but not limited, "stacking" or Business entering into a financing arrangement requiring Business to make daily or weekly payments or remittances), in addition to any Collections Administration Fee, Business will be charged 10% of the original Amount Sold to reflect the increased risk to Purchaser of being paid.

5. **Performance Guaranty.**

(a) By signing this Agreement, each Guarantor assumes, jointly and severally, the full, complete and timely performance of all of Business's obligations under the Agreement if a breach of any of Business's representations, warranties or covenants occurs. If such a breach occurs, then Guarantor(s) shall perform under this Agreement including paying, or causing to be paid, any amounts due that Purchaser would otherwise be entitled to collect from Business. This guaranty is a guaranty of performance and not a guaranty of collection. Purchaser may proceed to enforce its rights against each Guarantor prior to, contemporaneously with or after, any enforcement against Business or without any enforcement against Business. The Guarantor(s)' obligations are unconditional and absolute and shall remain in full force and effect and without regard to and shall not be released, discharged or in any way affected by (a) any amendment to this Agreement; (b) any exercise or non-exercise of or delay on exercising any right, remedy, power or privilege under or in respect of this Agreement; (c) any bankruptcy, insolvency, arrangement, composition, assignment for the benefit of creditors, or similar proceeding commenced by or against Business or any of its officers, directors or principals; (d) defects in the formation or authority of Business; or (e) any other circumstance that might otherwise constitute a legal or equitable discharge of a guarantor or surety. If payment of any sum by Business is recovered as a preference or fraudulent conveyance under any bankruptcy or insolvency law, the liability of Guarantor(s) under this guaranty

shall continue and remain in full force and effect notwithstanding such recovery. By this provision, the Guarantor(s) is notified that a negative credit report reflecting on his/her credit record may be submitted to a credit reporting agency if the provisions of this Section are triggered by a breach of this Agreement by Business. Each Guarantor acknowledges receiving a copy of this Agreement and having read the terms of this Agreement, including, without limitation, the guaranty set forth in this paragraph, and the Guarantor's signature will serve as confirmation that the Guarantor understands all terms and conditions of this Agreement. Each Guarantor agrees that this guaranty is continuing and absolute and that Purchaser may modify or extend the terms of this Agreement, or compromise, settle or release any other obligor under this Agreement without notice or consent by Guarantor and without affecting Guarantor's liability. For the avoidance of doubt, Guarantor is obligated to pay the Amount Sold and any assessed fees only upon the occurrence of an Event of Default.

(b) *Provisions of Agreement Applicable to Each Guarantor:* Sections 8 (Our Rights upon Default), 9 (Representations and Warranties), 10 (Covenants), 14 (Business Information; Reporting Information to Credit Bureaus), 15 (Telephone Recordings), 16 (Contacting You; Phone and Text Messages); 17 (Correspondence), 18 (Bankruptcy), 21 (Limitation of Liability), 22 (Waiver of Right to Trial by Jury) and 24 (Arbitration Provision) and any other relevant Section apply fully to each Guarantor individually, and each reference to "you," or "your" in such Sections of this Agreement shall be deemed to apply not just to Business but also to each Guarantor individually.

6. **Right to Cancel.** Business may cancel this transaction at any time within ten (10) days after Purchaser forwards any or all of the Purchase Price to Business. However, in order to cancel the transaction, Business must return to Purchaser the entire amount of the Purchase Price received by Business within that same ten (10) day period. Notwithstanding the foregoing, the Origination Fee (if any) is non-cancellable and non-refundable.

7. **Events of Default.** Subject to applicable law, we may declare you to be in default under this Agreement if any one or more of the following events occurs and is continuing (each an "Event of Default"):

- (a) You fail to make any required remittance of Future Receivables or payment when due except as otherwise permitted by this Agreement;
- (b) You fail to inform Purchaser prior to a scheduled daily or weekly remittance that the Remittance Account has insufficient funds due solely to a decline in Receivables as demonstrated by written documentation provided by Business, such that a scheduled remittance is returned or dishonored;
- (c) You fail to maintain the Bank Accounts (as defined in Exhibit A) or open a new bank account to deposit Receivables without our consent;
- (d) You fail to provide copies of all documents and requested information related to your financial or banking affairs within five (5) days after a request by us;
- (e) You use any portion of the Purchase Price for personal, family or household purposes or to fund a dividend or other distribution to Business owners;
- (f) You breach any representation, warranty, agreement, promise or covenant set forth in this Agreement, or you or any of your employees or agents provides us with any false or misleading information;
- (g) You make any act or omission that has the result of interfering with or circumventing, the remittance or payment to us of any amount owed under this Agreement, including, but not limited to: (i) conducting business under an alternative name; (ii) depositing Receivables into any bank accounts other than the Bank Accounts; (iii) encouraging customers to make payments by cash that you fail to deposit into the Bank Accounts; or (iv) manipulating the use and form of business entities for the purpose of avoiding your obligations under this Agreement;
- (h) You fail to permit us or our agent to conduct a site inspection of your business at any reasonable time during the term of this Agreement;
- (i) Without our prior express written consent, you enter into any credit, cash advance or other financing arrangement requiring daily or weekly payments or remittances;

- (j) Without our prior express written consent, you sell any of your assets outside of the ordinary course of business;
 - (k) Without our prior express written consent, you sell any of your Future Receivables while you owe any amount under this Agreement;
 - (l) Without our prior express written consent, you undertake or permit a change of control of your business;
 - (m) You become subject to any material judgment or garnishment following the date of this Agreement;
 - (n) You default on any other agreement that you have with us or any of our affiliates.
8. **Our Rights Upon Default.** Upon any Event of Default,: (a) all unpaid amounts of the Amount Sold and any assessed fees shall be immediately due and payable or, including all Receivables or Future Receivables until the entire balance, fees and deficiencies are paid in full; (b) commence an action against you to collect all amounts owed in connection with this Agreement; (c) charge and recover from you the Collections Administration Fee and/or the Stacking Fee (if applicable), all of our out-of-pocket costs and expenses, including reasonable attorneys' fees, arbitration costs, and/or court costs, incurred by us in connection with the defense, protection or enforcement of our rights under this Agreement (including, without limitation, in connection with any bankruptcy proceeding) and any other fees that may be due and owing (collectively, "Costs of Collection"); (d) withdraw funds from any of your Bank Accounts by ACH debit, up to the unpaid amount that you owe us under this Agreement (including the fees as set forth in Section 4 and any Costs of Collection); and (e) we may exercise any and all rights or remedies available to a secured creditor under Article 9 of the Uniform Commercial Code or analogous state laws. All rights available to us are cumulative and not exclusive of any other right or remedy available to us in law or equity.
9. **Representations and Warranties.** You and any individual signing this Agreement as a Guarantor represent and warrant to us, as of the date hereof and each day the Amount Sold and any assessed fees remain unpaid, as follows:
- (a) The Future Receivables are not subject to any claims, charges, liens, restrictions, encumbrances or security interest of any nature whatsoever not disclosed to us prior to executing this Agreement;
 - (b) As of the date the Purchase Price is paid to Business, Business is not the subject of a bankruptcy or reorganization proceeding that has not been discharged or dismissed, do not have a plan to make a bankruptcy filing and have not met with a bankruptcy attorney within the past six months;
 - (c) All information that you have provided to us is true, correct and accurately reflects your financial condition and results of operations;
 - (d) Business has all required permits, licenses, approval, consents and authorizations necessary to conduct your business;
 - (e) Business is in compliance with all laws, regulations and requirements that affect your business;
 - (f) You (and each Guarantor) have full power and authority to enter into and perform your obligations (and each Guarantor's obligations) under this Agreement;
 - (g) Business is financially solvent (i.e., your assets exceed the value of your liabilities);
 - (h) Business has the legal right and ability to execute this Agreement and perform all of its obligations under this Agreement without violating any other agreement, obligation, promise, court order, administrative order or decree, law or regulation to which it is subject;
 - (i) Business is duly qualified, licensed and in good standing in each state in which it is doing business;
 - (j) Business's papers and all amendments thereto have been duly filed and are in proper order, and any capital stock, member interest or other equity issued and outstanding was and is properly issued;
 - (k) Business's books and records are accurate and up-to-date and accessible to us;
 - (l) Business's legal name is exactly as shown on this Agreement;

- (m) All of the Bank Accounts are maintained at U.S. financial institutions and all of the Bank Accounts were established and are used solely for business purposes and not for personal, family or household purposes.

10. Covenants. Until all amounts outstanding under this Agreement have been paid in full, you and any individual signing this Agreement as a Guarantor covenant to us:

- (a) Business will: (i) preserve, renew and maintain in full force and effect your corporate or organizational existence, if any; (ii) take all reasonable action to maintain all rights, privileges and franchises necessary or desirable for the normal conduct of your business; and (iii) remain duly qualified, licensed and in good standing in your state of organization (if any) and every other state in which you are doing business.
- (b) Business will comply with: (i) all of the terms and provisions of your organizational documents and bylaws, if any; (ii) your obligations under your material contracts and agreements; and (iii) all laws and orders applicable to you and your business, except where the failure to do so could not reasonably be expected to risk a material adverse effect on your financial condition, business or prospects or your ability to perform your obligations under this Agreement.
- (c) Business will pay, discharge or otherwise satisfy at or before maturity, all of your material obligations of whatever nature, including without limitation all amounts as they are or may be due under this Agreement.
- (d) Business will not, without our prior written consent, (i) merge or consolidate with or into any other business entity; (ii) sell your assets or enter into any joint venture or partnership with any person, firm or corporation; (iii) change your name, place of business, chief executive officer, mailing address or organizational identification number, if any; (iv) change your type of organization, jurisdiction of organization or other legal structure.
- (e) Within five (5) days after our request, you will: (i) provide us with such information about your financial condition and operations as we may from time to time reasonably request; and (ii) sign any and all documents and provide any and all information and authorizations that we, in our sole discretion, deem necessary to implement this Agreement (including any document, information or authorization that we need in order to access, for purposes of electronic inquiry, any of your Bank Accounts).
- (f) You will promptly provide notice to us in writing upon becoming aware of any Event of Default or the occurrence or existence of an event which, with the passage of time or the giving of notice or both, would constitute an Event of Default.
- (g) Business will not sell or pledge any Future Receivables to another party without our prior written consent other than a sale or pledge pursuant to an agreement, not subsequently modified, in effect prior to the date of this Agreement and brought expressly to our attention as an agreement providing for a sale or pledge of Future Receivables.
- (h) Business will promptly pay all necessary taxes including payroll, sales and use taxes and you will make any payments that you are required to make pursuant to, and in accordance with, the requirements of any tax payment programs in which you participate.
- (i) Without our prior express written consent, Business will, subject to the terms of this Agreement, continue to conduct all aspects of your business consistent with past practices and employ adequate staffing to maintain the operations of your business, notwithstanding the death or disability of any principal, officer or employee.
- (j) You will not share your on-line portal log-on credentials provided by us with any third party.
- (k) You will use the Purchase Price solely for business purposes and not for personal, family or household purposes.
- (l) You will not make any act or omission that has the result of interfering with or circumventing, the remittance or payment to us of any amount owed under this Agreement, including, but not limited to: (i) conducting business under an alternative name; (ii) depositing Receivables into any bank accounts other than the Bank Accounts; (iii) encouraging customers to make payments by cash that you fail to

deposit into the Bank Accounts; or (iv) manipulating the use and form of business entities for the purpose of avoiding your obligations under this Agreement.

- 11. Bank Accounts.** You will maintain the Bank Accounts (as defined in Exhibit A) until all obligations are satisfied under this Agreement. Additionally, you will ensure that all funds arising from Future Receivables are deposited in, or otherwise credited to, the Remittance Account(s), including, without limitation, by: (i) depositing all cash, checks and money orders into the Remittance Account(s) no later than the business day following the business day upon which any of these items are received by you; (ii) directing all EFTs relating to Future Receivables to be directly deposited into the Remittance Account(s); and (iii) directing all of your card processors to directly deposit all card payments into the Remittance Account(s). You will not permit any event to occur that could cause a diversion of any funds from the Remittance Account(s) to any other account or entity. You will provide us and/or our authorized agents with all information and authorizations that are necessary for verifying your Future Receivables, receipts, deposits into and withdrawals from the Remittance Account (s).
- 12. Security Interest.** Business acknowledges that it is selling certain of its Future Receivables to Purchaser and that such a transaction constitutes either the sale of accounts or general intangibles pursuant to the Uniform Commercial Code or analogous state statutes. In order to secure your full performance of your obligations under this Agreement, you grant to us a continuing security interest in and to all of your present and future accounts, receivables, chattel paper, deposit accounts, personal property, goods, assets and fixtures, general intangibles, instruments, equipment and inventory (as those terms are defined in Article 9 of the Uniform Commercial Code ("UCC")), wherever located, and with respect to these items, all proceeds now or hereafter owned or acquired by you (collectively, the "Collateral"). Upon any Event of Default, we may exercise any and all remedies available to secured parties under the UCC or any other applicable law. We have the right, but not the obligation, to create, sign on your behalf and file any and all filings that we determine are reasonably necessary to perfect our security interest in the Collateral, including without limitation, one or more UCC-1 financing statements. You agree that you will, from time to time, promptly execute and deliver all instruments and documents (including any account control agreements), and take all further action, that may be necessary or appropriate, or that we may reasonably request, to perfect our security interest in the Collateral against you and all third parties or to enable us to exercise and enforce our rights and remedies hereunder.
- 13. Indemnity.** You will defend, indemnify and hold us harmless from any damages, liabilities, costs, expenses (including reasonable attorneys' fees) or other harms arising out of any violation of any laws, statutes, regulations, ordinances, contracts or other obligations pertaining to the conduct of your business.
- 14. Business Information; Reporting Information to Credit Bureaus.** You, and each person individually who signs this Agreement on your behalf, in both your individual capacity and as a principal of the Business, authorize us to contact any third party, including any credit reporting or database service, your current, prior or third-party card processors, and your current and prior banks (including, without limitation, any bank where any Bank Account have been or will be maintained), so that we may confirm or obtain any information bearing on your creditworthiness or reputation, and obtain a credit report or background report on you and/or each individual who signs this Agreement on your behalf, together with whatever other information we determine is necessary to review your application or to monitor, maintain and collect on your account and for any other lawful purposes. Such information may include, without limitation, your credit history or similar characteristics, credit card, debit card and other payment card and instrument processing history (including, without limitation, your chargeback history), employment and education history, social security verification, criminal and civil history, Department of Motor Vehicle and other public agency records as well as any other information bearing on your credit standing, credit capacity or character or that we otherwise deem pertinent to this Agreement. This authorization to obtain reports is valid at any time during which this Agreement is in effect.

We may report information about the Purchase Price and this Agreement to other creditors, other financial institutions and credit bureaus. You have the right to dispute the accuracy of information we have reported. If you believe that any information that we have reported to a credit bureau is inaccurate, or if you believe that you have been the victim of identity theft in connection with the Purchase Price or this Agreement, you must write us at the Notice Address, Attn: Fraud/Dispute. Please include your name, address, Advance

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Number, telephone number and a brief description of the problem. If available, please include a copy of the credit report in question. If you believe that you have been the victim of identity theft, you must send us a police report or written statement in a form we provide you alleging that you are the victim of identity theft for a specific debt.

- 15. Telephone Recordings.** You understand and agree that we may monitor and/or record any of your phone conversations with any of our representatives. However, we are not required to monitor and/or record any such conversations.
- 16. Contacting You; Phone and Text Messages.** You authorize us and our affiliates, agents, successors, assigns and service providers (collectively, the "Messaging Parties") to contact you using automatic telephone dialing systems, artificial or prerecorded voice message systems, text messaging systems and automated email systems in order to provide you with information about this Agreement, including, without limitation, information about upcoming anticipated remittance dates, missed remittance or payment dates, returned remittances and/or marketing opportunities. You authorize the Messaging Parties to make such contacts using any telephone numbers (including wireless, landline, VOIP numbers and hereinafter developed technology) or email addresses you supply to the Messaging Parties, the Messaging Parties' servicing and/or collection of amounts you owe the Messaging Parties or any other matter. You understand that anyone with access to your telephone or email account may listen to or read the messages the Messaging Parties leave or send you, and you agree that the Messaging Parties will have no liability for anyone accessing such messages. You further understand that, when you receive a telephone call, text message or email, you may incur a charge from the company that provides you with telecommunications, wireless and/or Internet services, and you agree that the Messaging Parties will have no liability for such charges. You expressly authorize the Messaging Parties to monitor and record your calls with the Messaging Parties. The consent set forth in this Section is not required as a condition of entering into a transaction with us and you understand that, at any time, before or after you sign this Agreement, you may withdraw your consent to receive text messages and calls to your cell phone or to receive artificial or prerecorded voice message system calls by calling the Messaging Parties at 800-923-0007.
- 17. Consent to Receive Electronic Notices and Disclosures; Correspondence.** You agree that we may send to you, either electronically or in writing as we elect, any and all documents relating to the Purchase, the Purchase Price and/or this Agreement. Your consent includes, but is not limited to: (a) transacting business with us online or electronically; (b) receiving disclosures or notices electronically, either via a disclosure on our website or in an email sent to you at an email address provided by you; and (c) receiving electronically all relevant documents, communications, notices and/or contracts related to your sale of Future Receivables to us. Any written or electronic correspondence we send to you will be effective and deemed delivered when emailed or mailed to you at your mail address, as it appears on our records. You shall promptly notify us of any change to your email address or your mailing address. All notices to us must be sent to the Notice Address, with such attention as may be specified in this Agreement. To the extent permitted under applicable law, any notice you send us will not be effective until we receive and have a reasonable opportunity to act on such notice.
- 18. Bankruptcy.** All bankruptcy notices and related correspondence to us must be sent to the Notice Address, Attn: Bankruptcy Notice. You represent and covenant that you have no current intent to file any bankruptcy petition and have not consulted a bankruptcy attorney in the past six months. The fact that Business goes bankrupt or is going out of business, in and of itself, does not constitute an Event of Default.
- 19. Inadvertent Overcharges.** It is not our intention to charge any fees or other amounts in excess of those permitted by applicable law or this Agreement. If any fee or other amount is finally determined to be in excess of that permitted by applicable law or this Agreement, the excess amount will be applied to reduce any amount due under this Agreement or, if there is no amount due under this Agreement, will be refunded to you.
- 20. Delay in Enforcement.** We may at any time and in our sole discretion delay or waive enforcing any of our rights or remedies under this Agreement or under applicable law without losing any of those or any other rights or remedies. Even if we do not enforce any rights or remedies at any one time, we may enforce them at a later date.

- 21. Limitation of Liability.** WITH RESPECT TO ANY CLAIMS YOU MAY HAVE AGAINST US, YOUR SOLE REMEDY WILL BE ACTUAL MONEY DAMAGES THAT SHALL NOT EXCEED THE AMOUNT OF ANY FUNDS OVERPAID TO US. IN NO EVENT SHALL WE BE LIABLE TO YOU FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES OR LOSSES, OR LOST PROFITS, RELATING TO THIS AGREEMENT, IN TORT, CONTRACT, OR OTHERWISE, INCLUDING ANY NEGLIGENCE.
- 22. Waiver of Right to Trial by Jury.** YOU AND WE ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT BUT MAY BE WAIVED IN CERTAIN CIRCUMSTANCES. TO THE EXTENT PERMITTED BY LAW, YOU AND WE KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION ARISING OUT OF OR RELATED TO THIS AGREEMENT. THIS JURY TRIAL WAIVER SHALL NOT AFFECT OR BE INTERPRETED AS MODIFYING IN ANY FASHION THE ARBITRATION PROVISION TO WHICH YOU AND WE ARE SUBJECT, WHICH CONTAINS ITS OWN SEPARATE JURY TRIAL WAIVER.
- 23. Governing Law, Venue and Jurisdiction.** Except as set forth to the contrary in the Arbitration Provision, any claim, dispute or controversy arising from or relating to the Purchase or this Agreement or in any way related to the parties' relationship, whether based in contract, tort, fraud or otherwise, is governed by, and construed in accordance with, federal law and, to the extent state law applies, the law of the State of Delaware without regard to otherwise applicable principles of conflicts of law. This Agreement is made and performed in the State of Delaware. All litigation, suits, court proceedings and other actions (except as set forth to the contrary in the Arbitration Provision) arising from or relating to the Purchase or this Agreement or in any way related to the parties' relationship will be submitted to the jurisdiction of the state and federal courts of the State of Delaware and the exclusive venue for all such suits, proceedings and other actions will be in New Castle County, Delaware or such other jurisdiction that may be mutually agreed to by the parties. No action may be brought in any other state or jurisdiction. Notwithstanding the foregoing, Purchaser may elect to commence litigation and court proceedings in the state and federal courts of the state in which Business is located. The parties waive any claim against or objection to the in personam jurisdiction and venue in the courts of New Castle County, Delaware. ALL PARTIES TO THIS AGREEMENT WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, SUIT, COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM BROUGHT BY ANY OF THE PARTIES HERETO ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO OR CONNECTED WITH THIS AGREEMENT
- 24. Arbitration Provision.**
- (a) Any party may elect to resolve any Claims (as defined below) or disputes by submitting to binding arbitration before one arbitrator selected by an Administrator. "Administrator" means the American Arbitration Association ("AAA"), www.adr.org, 800-778-7879 or JAMS, www.jamsadr.com, 800.352.5267 or, if AAA and JAMS cannot serve, another company selected by you and us or by a court. For purposes of this Arbitration Provision, "we", "us", and "our" mean Purchaser, together with any subsequent holder of this Agreement or participant in the Purchase, and each of our and their respective officers, directors, agents, representatives, contractors, employees, successors and assigns; and "you" and "your" mean Business, its Principals, and each Guarantor, together with their successors. Filing, administrative, hearing and/or other fees, including attorneys fees and costs, will be borne in accordance with the Administrator's rules, except as set forth in Section 8 above related to an Event of Default. For a AAA proceeding, AAA's Commercial Arbitration Rules shall apply. For a JAMS proceeding, Streamlined Arbitration Rules shall apply. Arbitrations may be held via teleconference, but if the arbitrator decides that a hearing is required, the arbitration will be held in Wilmington, Delaware or other state as may be mutually agreed upon. NO CLAIM SUBMITTED TO ARBITRATION WILL BE HEARD BY A JURY.
- (b) "Claim" shall mean any claim, dispute or controversy between you and us that requires a legal decision to resolve, including disputes arising from actions or omissions prior to the date of this Agreement. "Claim" has the broadest reasonable meaning and includes disputes based upon contract, tort, fraud, constitution, statute, regulation, ordinance, common law and equity. "Claim" includes any claim asserted by or against any officer, director, or employee of the Business in his or her individual capacity. However, Claim does not include disputes about the validity, enforceability, coverage or scope of this arbitration provision or any part thereof (including, without limitation, the Class Action Waiver (set forth in subsection (f) below), the final sentence in subsection (e) and/or this sentence); all such disputes are

for a court to decide in which case the sole and exclusive jurisdiction is the state and federal courts located in New Castle County, Delaware and, in such instances, the parties irrevocably waive any objection based on venue or jurisdiction. However, any dispute or argument that concerns the validity or enforceability of the Agreement as a whole is for the arbitrator to decide.

- (c) Any court with jurisdiction may enter judgment upon the arbitrator's award, which will be final and binding except for any appeal right under the Federal Arbitration Act (the "FAA").
- (d) The Purchase involves interstate commerce and this Arbitration Provision shall be governed by the FAA and not by any state law concerning arbitration. The arbitrator shall follow applicable substantive law to the extent consistent with the FAA, applicable statutes of limitation and privilege rules that would apply in a court proceeding, and shall be authorized to award all remedies available in an individual lawsuit under applicable substantive law, including, without limitation, compensatory, statutory and punitive damages (which shall be governed by the constitutional standards applicable in judicial proceedings), declaratory, injunctive or other equitable relief, and attorneys' fees and costs. Upon the timely request of either party, the arbitrator shall write a brief explanation of the basis of the award. The arbitrator will follow rules of procedure and evidence consistent with the FAA, this Arbitration Provision and the Administrator's rules.
- (e) This Arbitration Provision shall survive the termination or expiration of this Agreement, your fulfillment or default of your obligations under this Agreement and/or your or our bankruptcy or insolvency (to the extent permitted by applicable law). In the event of any conflict or inconsistency between this Arbitration Provision and the Administrator's rules or other parts of this Agreement, this Arbitration Provision will govern. If any portion of this Arbitration Provision, other than the Class Action Waiver, is deemed invalid or unenforceable, the remaining portions shall nevertheless remain in force. If a determination is made with respect to any class Claim that the Class Action Waiver is unenforceable, only this sentence of the Arbitration Provision will remain in force and the remaining provisions shall be null and void, provided that the determination concerning the Class Action Waiver shall be subject to appeal.
- (f) **Class Action Waiver:** EXCEPT AS PROHIBITED BY PUBLIC POLICY, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO: (I) PARTICIPATE IN A CLASS ACTION, EITHER AS A CLASS REPRESENTATIVE, CLASS MEMBER OR OTHERWISE; (II) ACT AS A PRIVATE ATTORNEY GENERAL; OR (III) JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST YOU WITH CLAIMS BY OR AGAINST ANY OTHER PERSON, AND THE ARBITRATOR SHALL HAVE NO AUTHORITY TO CONDUCT ANY SUCH CLASS, PRIVATE ATTORNEY GENERAL OR MULTIPLE-PARTY PROCEEDING.
25. **Miscellaneous.** This Agreement shall be binding upon Business and inure to the benefit of Purchaser, its successors and assigns. Neither this Agreement, nor any of the rights, licenses, responsibilities and/or obligations contained therein, may be transferred, assigned, licensed or delegated by Business without our written permission, which we are not required to give. This Agreement constitutes the entire understanding among the parties pertaining to the sale of Future Receivables, and merges and supersedes all prior negotiations, discussions (whether oral or written) and earlier contracts of a similar nature. This Agreement may not be amended, modified or limited except by a written agreement executed by both you and us. Any provision of this Agreement that is found to be invalid under applicable law shall be invalid only with respect to the offending provision and only to the extent of the invalidity and this Agreement shall be construed so as to best effectuate the intent of the parties.

EXHIBIT A

**AUTHORIZATION TO CREDIT AND DEBIT BUSINESS'S BANK ACCOUNT(S)
("REMITTANCE AUTHORIZATION")**

The following is a list of all of Business's bank accounts (as subsequently supplemented, the "Bank Accounts"). The Bank Account(s) marked "Deposit Funds" is the "Deposit Account" and the Bank Account(s) marked "Withdraw Remittances" is the "Remittance Account." However, if no Bank Account is marked as the Deposit Account, we may treat any Bank Account as the Deposit Account. Also, if no Bank Account is marked as the Remittance Account, we may treat any Bank Account as the Remittance Account, and if any payment cannot be initiated by us from the primary Remittance Account for any reason, we may treat any other Bank Account as the Remittance Account.

Deposit Funds	Withdraw Remittances	Account #1 Bank Name:	WELLS FARGO	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Routing #:	533800395	Account #: 1610612606
Deposit Funds	Withdraw Remittances	Account #2 Bank Name:		
<input type="checkbox"/>	<input type="checkbox"/>	Routing #:		Account #:
Deposit Funds	Withdraw Remittances	Account #3 Bank Name:		
<input type="checkbox"/>	<input type="checkbox"/>	Routing #:		Account #:

If your Remittance Frequency is weekly, your remittance day (the "Weekly Remittance Day"), will be set to Monday. If you would like to change your Weekly Remittance Day, please select a day below.

Weekly Remittance Day selected must be a weekday:

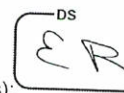
☐ Monday ☐ Tuesday ☒ Wednesday ☐ Thursday ☐ Friday

- (a) *Bank Account Verification.* You promise that each Bank Account identified above or at some later time is your bank account and that you have the power and authority to (i) initiate remittances or payments from such Bank Account and (ii) authorize us to initiate remittances or payments from such Bank Account. You promise that each Bank Account is a legitimate, open, and active bank account used solely for business purposes and not for personal, family or household purposes. You authorize us to verify any information you have provided about any Bank Account and to correct any missing, erroneous or out-of-date information.
- (b) *Payment of Purchase Price.* You authorize and request us to disburse to the Deposit Account by an EFT the Purchase Price set forth on Line 1 of the Purchase Summary (and any other amount we subsequently agree to pay to you).
- (c) *Remittances and Additional Amounts.* You authorize and direct us (or our service provider) to initiate electronic fund transfers ("EFTs") from the Remittance Account for the Collected Amount, or Alternative Remittance Amount if applicable, in accordance with the Remittance Frequency. For the amount due on the date of the final remittance, we may increase or decrease the amount of the EFT to equal the total amount then outstanding under this Agreement. You authorize us to initiate EFTs from the Remittance Account for any fee or charge you owe, and, if an Event of Default occurs, for any amounts due under this Agreement. At our election, we may add any fee or charge you owe us to the EFT we initiate to collect a payment. If any remittance or payment is scheduled to be made on a bank holiday, such remittance or payment will be made on the next business day.

12 of 13 Initials of Individual Signer(s):

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- (d) *Error Correction.* In the event we make an error in processing any remittance, payment or credit, you authorize us to initiate an EFT to or from the Bank Accounts to correct the error.
- (e) *Resubmissions and Dishonored Remittances.* You agree that we may resubmit up to two times any EFT that is rejected or dishonored. Your bank may charge you fees for unsuccessful EFTs. You agree that we will have no liability to you for such fees.
- (f) *No Termination.* You shall keep this Remittance Authorization in force so long as this Agreement remains in place and/or any amount remains outstanding under this Agreement.
- (g) *Compliance with Law and Network Rules.* You acknowledge that the origination of EFTs to and from the Bank Accounts must comply with U.S. law and applicable network rules. Business agrees to be bound by the rules of NACHA.
- (h) *Alternative Payment Methods.* If you know that we will be unable to process a daily or weekly remittance by an EFT under this Remittance Authorization, you must: (i) notify us; and (ii) mail or deliver a check or money order to us in the Remittance Amount at the Notice Address, Attn: Remittances or, if offered, remit the Remittance Amount by any pay-by-phone or online service that we may make available from time to time.

A rectangular box containing the handwritten initials "ER". Above the box, the letters "DS" are printed.

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

Exhibit 2

A. NAME & PHONE OF CONTACT AT FILER (optional) Corporation Service Company
B. E-MAIL CONTACT AT FILER (optional) FilingDept@cscinfo.com
C. SEND ACKNOWLEDGMENT TO: (Name and Address) Corporation Service Company 801 Adlai Stevenson Dr Springfield, IL 62703

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

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

1a. ORGANIZATION'S NAME RFI Management Inc				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
704 constitution dr, unit c	durham	NC	27705	USA

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

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

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

3a. ORGANIZATION'S NAME CHTD Company				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
P.O. BOX 2576	SPRINGFIELD	IL	62708	USA

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

Present and future accounts, receivables, chattel paper, deposit accounts, personal property, assets and fixtures, general intangibles, instruments, equipment and inventory (as those terms are defined in Article 9 of the Uniform Commercial Code ("UCC")), wherever located, and with respect to these items, all proceeds now or hereafter owned or acquired by you (collectively, the "Collateral"). THE SECURED PARTY NAMED IN THIS RECORD IS ACTING IN A REPRESENTATIVE CAPACITY FOR PURPOSES OF FORWARDING NOTICES AND INQUIRIES REGARDING THIS RECORD. FOR MORE INFORMATION, PLEASE CONTACT THE SECURED PARTY AT THE ADDRESS LISTED ABOVE OR AT UCCSPREP@CSCINFO.COM

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

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

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

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

☐ Agricultural Lien ☐ Non-UCC Filing

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

8. OPTIONAL FILER REFERENCE DATA:

[123837725]

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

**IN RE:
RFI MANAGEMENT, INC.
DEBTOR**

**CHAPTER 11
CASE NO. 17-80247**

**INTERIM ORDER AUTHORIZING DEBTOR'S USE OF CASH COLLATERAL AND
PROVIDING NOTICE OF FURTHER HEARING**

THIS CAUSE was scheduled for hearing on April 4, 2017 upon the Debtor's Emergency Motion for Authorization of Cash Collateral. Swift Financial Corporation ("Swift") appears to have a lien upon Debtors' accounts receivable to the extent of 14% the proceeds and profits derived therefrom which constitute cash collateral as defined in section 363 of the Bankruptcy Code. It appears to the Court that the terms and conditions set forth below are reasonable and appropriate, are in the best interest of the bankruptcy estate and all creditors and should be approved. It further appears to the Court that the notice of the Motion which the Debtor provided to creditors and parties in interest is adequate and proper.

THEREFORE based upon the Debtor's Emergency Motion for Authorization of Cash Collateral, the arguments of counsel and the record in this case, the Court hereby makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157 and § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. The Debtor filed its petition pursuant to Chapter 11 of the United States Bankruptcy Code on March 29, 2017 (the "Petition Date") and operates as debtor-in-possession. A Committee of Unsecured Creditors ("Committee") has not been appointed.
3. On or about November 16, 2016 the Debtor entered into a document styled a "Future Receivables Sale Agreement" with Swift Financial Corporation ("Swift") (the "Agreement"). Under the terms of the Agreement the Debtor sold Swift \$176,850.00 for 14% of "Future Receivables." The Agreement has no interest rate and no fixed time to collect these Future Receivables.
4. The Debtor is not aware of any other liens or security interests against accounts receivable or inventory, the proceeds of which would constitute "cash collateral" as that term is defined in the Bankruptcy Code.
5. The Debtor asserts that the terms and condition of this Order appear to provide adequate protection of the interests of Swift Financial Corporation in the Debtor's use of cash collateral. Swift Financial Corporation retains all rights with respect to adequate protection, including a right to seek further relief under 11 U.S.C. §§ 361, 362, and 363 and any other remedies available under applicable law.

6. The Debtor asserts that the terms, conditions, and limitations of this Order are reasonably tailored to protect the interests of all creditors of the bankruptcy estate.

7. The requirements of the Bankruptcy Rules and the Bankruptcy Code, including without limitation Bankruptcy Rule 4001(d), have been satisfied for the Debtor's use of cash collateral and for the grant of adequate protection to SWIFT upon the terms set forth in this Order.

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law the Court hereby ORDERS:

1. The Debtor shall maintain Debtor-in-Possession accounts into which it shall deposit all cash, checks and other cash items.

2. The Debtor shall pay 14% of all pre-petition accounts receivable it receives into a separate cash collateral Debtor-in-Possession account (the "Cash Collateral Account").

3. Swift shall each have a lien and security interest in 14% of all pre-petition accounts receivable received by the Debtor;

4. Swift shall have a continuing post-petition lien on the funds held in the cash collateral account in the same categories of property of the Debtor in which and of the same priority as each Swift held a similar, unavoidable lien as of the Petition Date, and the proceeds thereof, whether acquired pre-petition or post-petition (the "Post-petition Collateral"), equivalent to a lien granted under §§ 364(c)(2) and (3) of the Bankruptcy Code, but only to the extent of cash collateral used. The validity, enforceability, and perfection of the aforesaid post-petition liens on the Post-petition Collateral shall not depend upon filing, recordation, or any other act required under applicable state or federal law, rule, or regulation.

5. The Debtor shall not use cash collateral except to pay its ordinary, necessary and reasonable post-petition operating expenses.

6. Upon reasonable prior notice, the Debtor shall provide to the Bankruptcy Administrator and representatives and/or employees of Swift all such information as they may reasonably request for the purpose of appraising or evaluating the collateral of the Debtor.

7. The terms and conditions of this Order do not necessarily constitute adequate protection of the interests of Swift in its cash collateral. Nothing in this Order shall waive any rights of Swift unless expressly provided for herein, including but not limited to the right to assert any claim pursuant to Section 507(b) of the Bankruptcy Code with priority over all other expenses of administration in this case and any ensuing Chapter 7 case. Swift retains the right to contend that the terms and conditions of this Order do not constitute adequate protection of its interests and its right to seek further relief under 11 U.S.C. §§ 361, 362 and 363.

8. The Debtor expressly reserves its right to contest the extent and validity of Swift's lien and to seek the use of the alleged cash collateral beyond the stated terms of this Order. Any party may seek further consideration of the relief granted in this Order or other cash collateral issues by filing a request with the Court; provided however that a hearing of such request shall not occur on less than five (5) business days' notice to the Bankruptcy Administrator, the Debtor, and all creditors.

9. This Order shall remain in full force and effect until the earlier of (i) entry of an Order by the Court modifying the terms of the use of cash collateral or the adequate protection provided to Swift; (ii) entry of an order by the Court terminating this Order for cause, including but not limited to breach of its terms and conditions; or (iii) upon filing of a notice of default as provided in this Order.

10. The following shall constitute events of default:

- a. If the Debtor fails to deposit funds in the Cash Collateral Account as set forth in this Order;
- b. If any post-petition lender to the Debtor or any other creditor of the Debtor shall acquire a post-petition security interest in or lien upon the Post-petition Collateral having priority over the security interests and liens in such property held by Swift unless Swift expressly consents to such subordination in writing.
- c. If the Debtor fails to comply with any of the other terms and conditions of this Order;
- d. If the Debtor uses cash collateral in a manner other than as agreed in this Order;
- e. Conversion of this case to a proceeding under Chapter 7 of the Bankruptcy Code; or
- f. Appointment of a trustee or examiner.

11. Upon the occurrence of any one of the Events of Default enumerated above and thereafter upon the giving of notice of such Event of Default by Swift to the Debtor and the Debtor's failure to effect a cure thereafter within five (5) days from the giving of such notice, then (i) the Debtor shall immediately cease using cash collateral, and (ii) Swift may seek relief from the automatic stay provided by Section 362(a) to enforce its rights and remedies with respect to the Post-petition Collateral upon not fewer than five (5) business days prior written notice to the Debtor, the Debtor's counsel, and to counsel for any Committee (or if no Committee has been

appointed, the 20 largest unsecured creditors of the Debtor as reflected in the Debtor's Schedules), with a copy to the Office of the Bankruptcy Administrator.

12. Upon filing of a written notice of default with the Court by Swift (which shall be served upon counsel for the Debtor by email and overnight courier and served upon the Bankruptcy Administrator by U.S. Mail) the Debtor may request a hearing to challenge the declaration of default. The parties shall have the right to seek an expedited hearing on any challenge by the Debtor, provided, however, that such hearing shall not occur on less than three (3) business days' notice to the other parties.

13. Nothing in this Order shall be deemed to authorize or direct the Debtor to pay any pre-petition debt.

14. The Debtor shall pay all state and federal taxes as they become due and will make all tax deposits and file all state and federal returns on a timely basis.

15. The Debtor shall not dispose of any assets except pursuant to Orders of this Court obtained after due notice and hearing.

16. If any or all of the provisions of this Order are hereafter modified, vacated or stayed by any subsequent order of this Court or any other court, such stay, modification or vacation shall not affect the validity or enforceability of any lien or priority authorized or created hereby prior to the effective date of such modification, stay, vacation or final order to the extent that said lien or priority is valid, perfected, enforceable and otherwise non-avoidable as of the Petition Date. The validity and enforceability of all liens and priorities authorized or created in this Order shall survive the conversion of this case to a proceeding under Chapter 7 of the Bankruptcy Code or the dismissal of this proceeding.

17. The terms of this Order shall be binding upon any Committee (if formed), and upon any trustee subsequently appointed, including but not limited to a Chapter 7 trustee upon conversion of this case to a case under Chapter 7 of the Bankruptcy Code; provided however, the findings, conclusions, or orders set forth herein are made on an interim basis, shall not constitute a final decision on any legal or factual issue, and are without prejudice to the right of any party to raise, contest, or seek the same or a different outcome at any subsequent hearing.

18. This Order shall be in effect until _____.

19. A further hearing (which may be a final hearing) on this Motion will be held at _____ o'clock a.m. on _____ in the Courtroom, U.S. Bankruptcy Court, _____, at which time the Court will further consider the Motion for Authority To Use Cash Collateral.

20. The Debtor shall serve a copy of this Order upon the Bankruptcy Administrator, creditors asserting a lien on any property of the estate or an interest in cash collateral, and the creditors holding the 20 largest unsecured claims, and shall file a certificate of such service with the Clerk.

END OF DOCUMENT